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Industrial Relations in Malawi

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Introduction

This chapter examines industrial relation in Malawi over a period of more than four decades. Central to the analysis is the role of the state and the international donor community in shaping Malawi's industrial relations since independence. The role of the labour movement shifted from a vibrant to a docile one during move from the colonial period to the country's independence as a one-party state, then again to a more buoyant role during the return to multiparty democracy in the 1990s. The chapter starts with the political and economic context of the country before examining the origins and present state of trade unions in Malawi. It also discusses industrial relations legislation and present industrial relations practices. These include freedom of association, collective bargaining, disputes resolution and the right to strike.

The country and context

Situated in Southern Africa and bordered by Zambia, Tanzania and Mozambique, Malawi, called Nyasaland under British colonial rule during the period 1891–1963, covers 118, 500 sq. km. A small landlocked country with a population of 12 million, Malawi was a member of the federation of Rhodesia and Nyasaland (Malawi, Zambia and Zimbabwe) between 1953 and 1963. The Nyasaland African Congress (NAC) formed in 1944 to agitate for independence called Hastings Kamuzu Banda, then practising medicine in Ghana, to lead the independence struggles. The arrival of the charismatic Banda was the beginning of the end of colonial administration in Malawi (Pike, 1968). Malawi gained independence under Banda on 6 July 1964 before becoming a republic and one-party state in 1966. For three decades, Malawi was ruled by a dictatorial Malawi Congress Party government until it became transformed into a multiparty democracy in 1994. Intense human rights repression and overall, poor governance¹ created a great deal of discontent with the one-party regime. The landmark Catholic Bishops' letter of 8 March 1992 was highly critical of the

existing social, political, cultural order and general economic decay, abuse of human rights and low wages and called for political reforms (Dzimbiri *et al.*, 2000). The withholding of non-humanitarian aid by donors to secure tangible and irreversible evidence of transformation in basic human rights weakened the state's grip on power and allowed voluntary pressure groups to agitate for political and economic reforms. The outcome of the 1993 national referendum, declared free and fair by the international community, returned Malawi to a multiparty state (Dzimbiri, 1994). The 17 May 1994 General Election saw the defeat of Banda's MCP and the success of Muluzi's United Democratic Front (UDF). In 1999, the Muluzi's UDF government entered its second term of office. In 2004 the same UDF took over Government under Bingu wa Mutharika as president in a third multiparty elections. In 2005, due to intraparty conflict and the need to extricate himself and pursue his zero tolerance policy on corruption without inhibitions, Dr Mutharika left the UDF and formed his Democratic People's Party.

The Malawian economy is agriculture-based and depending on climatic conditions, agriculture accounts for more than one-third of GDP and over 90 per cent of export earnings. It employs nearly half of those in formal employment, and directly and indirectly supports an estimated 85 per cent of the population. The country's staple crop is maize, although tobacco is by far Malawi's largest export, followed by tea, cotton and sugar; mineral resources are poor.

In response to economic crisis, Malawi was forced to embark on a World Bank and IMF Structural Adjustment Programme in the early 1980s. The growth rate further declined in the 1990s because of fluctuations in the small-holder agricultural sub-sector. Economic growth rate declined from 4.1 per cent per annum in 1989 to -12.4 per cent in 1994 and -3.1 per cent in 1998 (Chipeta, 1999). The formal sector, which includes those in estate agriculture and the formal industrial sector, absorbs 13 per cent of the economically active (NSO, 2001:10).

Real wages have declined since the 1960s. Malawian workers experienced continued erosion of standards of living from the 1980s through into the 21st century. According to Chipeta (1999: 38), the consequence has been a fall in workers' living standards, rising incidence of malnutrition among children and adults, an increase in malnutrition-related diseases and deaths, decreasing morale and low productivity among workers. In 1994, the Government formulated the 'poverty alleviation policy' – as a strategy for improving the living standards of the people through free primary school education, adult literacy programmes – and to address environmental degradation, infant mortality, overpopulation and the spread of HIV/AIDS (GoM, 1995a). In late 2000 Malawi was approved for relief under the Heavily Indebted Poor Countries (HIPC) programme (GoM, 2004). The IMF and the World Bank continue to urge the Government to control expenditure, privatise public corporations, liberalise the economy and remove subsidies.

Origins and present state of trade union movement: an overview

The development of an organised labour movement was the product of a series of strikes against poor wages and working conditions by teachers, night soil workers, domestic servants and rail workers during the 1940s in Blantyre (McCracken, 1998). The Transport and General Workers Union (TGWU) was the first registered union in 1949 and this was followed by the Commercial African Trade Union (CATU) in 1952. In 1954, the Nyasaland Railway Workers Union (NRWU) was formed. The Trades Union Congress of Nyasaland was formed in June 1956. 1956 to 1963, saw the formation of many more unions. By independence in 1964, Malawi had 19 trade unions with a membership of 4,763 (Ministry of Labour, 1969). However, the need for independence shaped the functioning of trade unions during the colonial period. As workers associated poor working conditions with foreign government and employers, they felt that they had a duty to join nationalist politicians who agitated for independence. Workers organised political strikes in collaboration with nationalist politicians in support of independence struggles on the assumption that economic benefits - in the form of higher wages and good conditions of employment - would emerge with political independence (Wood, 1992). Between 1947 and 1963, there were 247 strikes recorded by the Department of Labour.

Independence and trade union movement

When Malawi became independent from Britain in 1964, she soon drifted to single party rule: a one-party constitution was adopted in 1966. It was during the one-party period that an authoritarian state emerged. An attack by six cabinet ministers on President Banda's domestic and external policies six weeks after the 6 July 1964 independence celebrations led to the President clamping down on his opponents.

In the run-up to independence, the trade union movement had already experienced a number of setbacks. The first involved the Malawi Congress Party (MCP) changing its position vis-à-vis workers' interests. With signs in 1960 that Britain was ready to end its rule, MCP's attention focused on encouraging unity and socioeconomic development at the expense of workers' interests. Trade unionists saw MCP's concept of unity as tantamount to absolute trade union subordination to the MCP (McCracken 1988) and this widened the gulf between the labour movement and government.

After independence, labour controls continued, as the independent regime assumed the characteristics of the colonial authority: violent repression combined with a highly centralised system of governance, which bore hard on the labour movement. The Government's negative attitude towards unions stemmed from the assumption that the unions' demands would push up production costs and that industrial action would disrupt production and reduce profits. Political leadership in turn influenced management systems at the

By the end of the 1980s, the trade union movement was so docile that an observer could have concluded that there were no trade unions at all. Out of 19 trade unions at independence, 5 remained on paper – the Malawi Railways Workers Union, the Building Construction, Civil Engineering and Allied Workers Union, the Transport and General Workers Union, the Local Government Workers Union and the Plantation and Agriculture Workers Union. They were 'on paper' because they held no meetings, conducted no elections, although at times leaders benefited from seminars and workshops funded by the state. As the following sections will demonstrate, this harsh industrial relations climate changed in the early 1990s.

Industrial relations legislation

tage of employers.

Throughout the one-party period, the state used the Trade Unions Act 1958, the Trade Disputes (Arbitration and Settlement) Act of 1952 and the Employment Act 1964 as the major industrial relations legal framework. One of the key problems to this framework was that it restricted freedom of association through the empowering of the Registrar of Trade Unions to control the formation and registration of trade unions, operation and financial management of the unions, international affiliation and assistance to trade unions from international trade union fraternity. Collective bargaining was never spelt out in the Trade Unions Act 1958. Reliance was put on Wages Advisory Councils and Wages Board created under the Minimum Wages (Miscellaneous Provisions) Act 1964 to determine wages and conditions of service but Government's Low Wage Policy of 1968 made these councils and board mere talking shops. The exclusion of collective bargaining in the Trade Union Act 1958 had created a gap in the legal framework and prevented the development of bargaining experience among workers and employers. There was also severe control of the right to strike as there was no clear framework for strikes in non-essential services. Essential services were severely restricted in the Trade Disputes (Arbitration and Settlement) Act 1952. The Ministry of Labour was under-funded and poorly staffed to the extent that it could not afford to inspect workplaces to check minimum standards of service including wages, or review legislation which became obsolete as economic and social conditions kept on changing. The massive strike waves of 1992–93,

amidst international pressure for good governance, observance of human rights and accountability, led to major reforms in industrial relations legislation.

New labour policy

Growing pressures from the shopfloor forced the state to rethink its industrial relations policies: in 1993 the state published a new policy on collective bargaining and trade unions. It formally promised to encourage the right to organise and engage in collective bargaining and affiliation to international organisations and to support employers and workers' education programmes and the training of union leaders. The encouragement of freedom of association and non-victimisation in employment and the provision of the necessary legal framework and administrative arrangements for freedom of association and collective bargaining were other facets of the new policy. Unlike the one-party constitution which did not make any provision for labour rights, the 1995 National Constitution, enshrined human rights provisions that supported independent trade unions. Section 13(l) provided for the peaceful settlement of disputes through negotiation, good offices, mediation, conciliation and arbitration. Section 31 gave the right to fair and safe labour practices, fair remuneration, the right to form and join trade unions or not form or join trade unions, fair wages and equal remuneration for work of equal value and the right to withdraw labour.

The Labour Relations Act 1996

The enactment of the Labour Relations Act (LRA) 1996 to 'promote sound labour relations through the protection and promotion of freedom of association, the encouragement of effective collective bargaining and the promotion of orderly dispute settlement conducive to social justice and economic development' represented a further step to reform. This Act signified a major transformation by making adequate provisions to enhance freedom of association, collective bargaining, dispute settlement and the right to strike. It prohibits discrimination on grounds of race, colour, nationality, ethnic or social extraction, religion, political opinion, language, sex, marital status, family responsibilities, age, disability, property or birth. Unlike the previous Act the Registrar's power to control union formation and operation is limited. The Registrar cannot cancel the registration of a trade union at his own volition unless at the request of the organisation itself or by an order of the Industrial Relations Court (IRC). The LRA gives unions' freedom to receive external funding and to spend monies on activities without the authority of the Registrar of Trade Unions although trade unions are required to send annual audited accounts to the Registrar. The right to strike was confirmed by the 1995 Constitution.

Employment Act 2000

Individual employment rights are now embodied in the Employment Act 2000. It incorporates employment principles enshrined in the 1995 constitution and the ILO conventions. One significant provision is that the EA applies to all employees including those in Government, public authority or corporation (s.2), unlike the previous Act that applied to the lowest paid employees only. The Act prohibits discrimination in recruitment, training, promotions, terms and conditions of employment, termination of employment and termination on grounds of race, colour, sex, language, religion, and political or other opinion. The Act is clear on hours of work, overtime, payment of wages, annual leave, and maternity leave, disciplinary procedure, dismissals and remedies for unfair dismissal. While the employer has the power to summarily dismiss an employee on grounds of misconduct, lack of skill or any other reason, an employee has a right to lodge his grievance with the IRC for 'unfair dismissal' or 'unfair labour practices' with the burden of proof resting with the employer. The balance of power created by the EA has reduced the powers of employers and the state and enhanced workers' power. While in the past the state could dictate labour-related issues for employers and employees to comply, and employers could change the 'rules of the game', the EA empowers workers to challenge the employer's right to manage.

Present industrial relations practices

In assessing the current industrial relations practices key issues to be examined include freedom of association and trade unions in the 1990s and beyond; collective bargaining, dispute resolution and the right to strike.

Freedom of association: trade unions in the 1990s and beyond

The resurgence of the labour movement after three decades of dormancy needs to be understood against the background of the wider impact of the 1992–93 strike waves following the transition to plural politics. Against the background of positive state policy in industrial relations, through the encouragement of trade unions and collective bargaining that came with the 1993 policy on trade unions and collective bargaining, a process of worker self-organisation and renewal started. In October 1993, the Trade Union Congress of Malawi (TUCM) organised a Commonwealth Trade Union Council funded workshop aimed at resuscitating the labour movement. On 27 June 1995 the TUCM was legally registered under the name Malawi Congress of Trade Unions (MCTU). By the end of 1994 the Ministry of Labour had registered twelve private and public sectors unions (the existing five and seven new ones).

The number of registered unions increased from 12 to 19 during 1994–99. Table 5.1 shows union membership by 1999.

Table 5.1 Union Growth in Malawi – 1999

Name of Trade Union	m Date registered	Membership		Density (%)
		Actual	Potential	
MCTU	27-6-95	17 unions	20 unions	
CSTU	23-1-95	2,000	45,000	4
TUM	1-2-95	35,000	50,000	70
CWU	1-2-95	200	1,000	20
CIWU	1-2-95	10,000	30,000	33
SPAWU	1-2-95	500	12,000	4
HFCWU	9-2-95	5,000	15,000	33
LGEU	9 _† 2-95	1,200	12,000	10
TGWU	1-2-95	3,000	10,000	30
BCCEAWU	17-3-95	20,000	40,000	50
RWU	24-2-95	1,200 .	1,800	67
PAWU	14-2-95	9,000	200,000	4
TGLSSU	14-2-95	1,800	30,000	6
EMWU	15-4-98	284	800	36
CSBTU	21-4-98	na	na	na
ESCOM	21-4-98	1,600	2,000	80
TTAWU	21-4-98	na	na	na
MHCWU	9-11-98	na	na	na
MPTCWU	26-11-98	3,500	5,182	68

Source: Dzimbiri (2002).

By 2000 the Congress for Malawi Trade Unions (COMATU), a second labour federation and an MCTU breakaway, brought the total number of trade unions to 21 (Ministry of Labour, 2000); by 2005 there were 25 unions with a total membership of 119,230.

Employers Consultative Association of Malawi (ECAM)

The Employers' Consultative Association was created in Malawi as a reaction to the growth and development of trade unions in the country. During the one party period it was called the Employers Consultative Association of Malawi (ECAM) and its role has been to function as a representative of the employers in tripartite meetings with Government and trade unions; as an information bureau; to train employers in collective bargaining, dispute settlement and interpret labour laws to its members; and to represent its members at international level. During the one-party period, the association spoke the same language with the Banda regime because the industrial peace that reigned was good for employers. The repression of the labour movement was to their advantage. ECAM held seminars and workshops for its members during the one-party period: it was one of the better organised actors in industrial relations throughout the one-party period. During the transition to a multiparty state, when worker militancy erupted amidst political changes, ECAM, like

the Government of Malawi, was taken unaware because it had not developed the skills required to negotiate with workers due to a long period of industrial peace. It simply issued a statement asking its members to resolve disputes with employees amicably and quickly in the interest of the nation.

Collective bargaining

The political system that existed between independence and 1991 prevented workers from demanding improvements in wages and conditions of employment. Laws of detention without trial and the sudden disappearance of dissidents scared workers and employers. Following the labour law reforms of the 1990s, the LRA made provisions for enterprise and sectoral level bargaining as long as a 20 per cent membership threshold has been attained (s.25). Where an employer refuses to recognise a trade union, the latter can appeal to the IRC, if the employer is the Government or a public corporation; or to the Secretary for Labour for private sector employers/employees. Where the 20 per cent threshold is not possible, a union or an employer association could apply for the establishment of an Industrial Council which is composed of employer and employee representatives to negotiate wages and conditions of employment, establish dispute resolution machinery and develop an industrial policy for the industry concerned. The need for parties to negotiate in good faith, produce written and duly signed collective agreements, the legal enforceability of collective agreements, submission of copy of collective agreements to the Registrar and disclosure of information by parties to the negotiation as entrenched in the LRA have the potential to enhance collective bargaining and the protection of workers' and employers' interests. However, employers, through the Employers Consultative Association, have vehemently protested the 20 per cent threshold as undemocratic and pro-worker. It is worthy noting that collective bargaining has on the majority of cases occurred only after workers have gone on strike. In other words, rather than being the last resort after all effort have failed, the strike is the precursor of collective bargaining. One reason offered by the majority of workers is employers' delaying tactics in handling workers' grievances - the strike is meant to demonstrate that workers are serious. There have been a lot of gains in terms of wages and conditions of employment resulting from the rise of collective bargaining.

However, public sector reforms that have been going on since the liberalisation of the economy have placed constraints on the scope of collective bargaining. Fiscal discipline by the government as part of IMF and World Bank sponsored reforms has meant that any bargaining process in the public sector has to take account of the imposed restraints on the national budget. At the eve of the New Year in 1996 for example, the President announced a 25 per cent salary increase across the entire public service, only to be frowned upon by donors who threatened to withdraw of funding if the salary increase was implemented. To the embarrassment of the Government, the said salary

increase was postponed to April the following year, and subsequently it was never implemented. The feeling of helplessness by both employees and their employer in collective bargaining in the midst of IMF conditionality have been aptly captured by a local musician, now a member of Parliament, Mlaka Maliro, who in his music, queries the government whether its constituency is the IMF or the people that voted it into power. This is a reaction to the tendency by the Government to listen more to the IMF than to the grievances of its own citizens and employees. Retrenchment, occasioned by privatisation of public enterprises, has reduced not only the membership of trade unions in many sectors, but has also cautioned workers from demanding better conditions of employment and higher wages when there are few employment opportunities left. For example, out of the 42 public enterprises privatised by 2002, about 48,000 jobs were lost against 30,000 new jobs created. Union leaders are even more concerned because they are more vulnerable to selective retrenchment.

Disputes resolution and the right to strike

The procedure for settling disputes and taking industrial action are articulated in sections 42–54 of the LRA. There is a need for either party to report any dispute to the Secretary for Labour (PS) who arranges for conciliation and mediation after voluntary procedures have been exhausted. The PS has to be satisfied that the dispute settlement procedures established in the collective agreement have been exhausted, unless both parties have decided to waive those procedures. If one party to the dispute is the Government (including a public authority or a commercial enterprise in which the Government has an interest), the parties shall agree on the conciliator. Where parties are unable to agree on the conciliator, the Industrial Relations Court shall designate an independent arbitrator on application by either party. The dispute shall be resolved within 21 days otherwise it shall be designated an 'unresolved dispute'. In such cases, the secretary for labour or either party to the dispute shall apply to the IRC for determination if the matter involves essential services or the interpretation of statutory provision or any provision of the collective agreement or contract of employment. But if the matter involves interest disputes, and is deemed unresolved, either party can apply to the IRC for determination or give at least 7 days' notice to the PS that they intend a strike or lockout. The LRA provides procedures for a strike or lockout in case a dispute is unresolved and prohibits strikes in essential service.

It was not until the transition to multiparty democracy that the tremendous awakening of the labour movement really took place: large-scale strikes erupted, starting at David Whitehead & Sons Textile Company on 5 May 1992. As Van Donge (1995: 230) noted, 'the fabric of society seemed fundamentally shaken by riots resulting from industrial unrest in Blantyre and Lilongwe'. In the first two weeks of May 1992, 66 strikes were reported and over 50 people were killed by the police as they opened fire to restore law

and order. Public and private sector organisations participated in the various waves of strikes that characterised Malawi in the 1990s. The biggest single employer of over 136,000, the civil service, experienced two big strikes that paralysed the country's health, education, transport and other services. Teachers, nurses, junior doctors, custom officers, and clerical officers all went on strike at different times demanding increases in salaries, allowances, overtime payments and general improvement in conditions of service, removal of arrogant managers and protesting at Government maize and petrol prices. Between 1992 and 1999, the Daily Times reported of 90 strikes (Dzimbiri, 2002). 54 organisations that reported only 4 strikes for the 1966-91 period reported 75 strikes involving 70,000 workers and 400,000 days lost (ibid: 133). Official records, which did not include 50 strikes including many in the civil service, show that there were 300 strikes involving 270,000 workers and 800,000 days lost compared to 182 strikes, 19,000 workers involved and 27,000 days lost during the 1966-91 period. Thus, the 1992-99 decade experienced a much greater amount of strike activity on all counts compared to the three decades of the one-party period-one and half times the numbers of strikes, 13 times as many workers involved and 28 times as many days lost. Strikers did not just demand improved wages and conditions of employment. They also demanded the removal of senior managers and challenged or defied employers' and Government dismissal threats. Some challenged Government policy on privatisation and maize prices and refused to meet middle managers and demanded to meet the State President or Vice President. Many of these strikes were without warning, used as economic weapons and were political instruments.

Redundancies and union busting

Anti-union behaviour in the form of victimisation of union leaders, refusal of time-off for union activities, refusal of access by unions to workplaces by employers, divide and rule tactics are some of the issues unionists have raised in recent years. Retrenchment is one of the dangers unionists were exposed to. A union leader is the first person to be retrenched. Anti-union attitudes have negatively impacted on the prospects of unions. For instance, out of the 11 unions the Ministry of Labour's study analysed, 6 were declining as shown in Table 5.2.

While some unions are gaining members, others are losing. BCCEAWU and PAWU are examples of the latter case. State officials viewed membership decline as a product of many factors, such as members' loss of faith due to failed strikes, reluctance to pay union fees, poor leadership, financial constraints, travel problems to meet members, and the alliances some union leaders made with opposition politicians. Unionists viewed the decline as the result of the state's 'hide-and-seek' and 'divide-and-rule tactics' (Dzimbiri, 2004). While these could be genuine explanations for low membership in some unions, the gains shown in the other unions within the same period require other explanations.

Table 5.2 Membership growth and decline in Malawian unions – 1995–99

Name	Estimated no. 1995	Estimated no. 1999	Rise(+)/decline(-)
CSTU	2000	800	-1200
TUM	30,000	35,000	+5,000
TGWU	3,000	6,500	+3,500
LGEU	1,200	1,100	-100
CIAWU	1,000	6,000	+5,000
SPAWU	1,000	6,000	+5,500
HFPCWU	500	5,000	+4,500
RWU	1,2000	800	-400
BCCEWU	20,000	2,000	-18,000
PAWU	9,000	2,000	-7,000
TLSWU	1,800	1,000	-800

Source: Ministry of Labour (2000: 13) - recalculated.

Conclusion

Industrial relations in Malawi witnessed a major transformation in the 1990s following political and economic transformation of the country. Many labour rights that were lost during the one-party era were recovered. Freedom of association, collective bargaining, dispute resolution and the right to withdraw labour are rights Malawian workers have gained in recent years. Nonetheless, the government faces of the challenge of reconciling economic development dictates, and neo-liberal calls for competitiveness and efficiency, with demands by the international community for human rights and good governance. Inevitably, the state wishes to attract private sector investment, which, in the Malawian context is most forthcoming when costs of production – in reality, mostly wages - are low, and there is industrial peace.

Industrial relations reforms in the 1990s stemmed from the political reforms that led into the transition from the one-party to a multiparty state. This major state transformation was possible as a result of international pressure and in particular the withholding of Malawi's non-humanitarian aid and calls for democratic reforms. Since 1989 the World Bank has abandoned its previous purely economistic interpretations of African crisis and advocated instead good governance, gender equality, decentralisation of power, human rights, the need to check corruption and the involvement of local people in decisionmaking (Ihonvbere, 2000). The consequence of this pressure led to the 1993 national referendum and the 1994 general election that in turn led to the formal creation of a multiparty state in Malawi. The one-party state was not subjected to pressures for good governance and democratic reforms for close to three decades. Human rights violations such as detention without trial, forced donations to the president, murder of dissidents, repression of freedom

of speech and association, which Amnesty International documented (1993). did not lead to an international outcry at the time. One reason for this had been Malawi's capitalist and pro-western stance during the Cold War period; Western capitalist nations saw Malawi as a good ally. Like other authoritarian Africa states which received international financial support despite human rights violations (Ihonvbere, 2000), Malawi continued to receive financial aid from the donor community. The fact that such a position was maintained for three decades suggests that the international community indirectly helped the creation of a status quo in the role of the state in industrial relations. By reacting to human rights violations and imposing economic sanctions, the Western donor community facilitated the breakdown of an authoritarian one-party state and the creation of a multiparty state and therefore a new industrial relations regime. The question we cannot answer yet, but is crucial, is how far the externally-induced changes in Malawi have become institutionalised and can be sustained in practice. There are numerous examples of failures of democracies in Africa as evidenced by arguments over electoral results, voting along regional lines as the case of the 1994 and 1999 general elections in Malawi (Patel, 2000) which also resurfaced in the 2004 elections; lack of tolerance for dissenting views, and suppression of labour rights. These are symptomatic of deep-rooted problems, which would continue to confront democracy, human rights and therefore, pluralistic industrial relations in Malawi and some parts of Africa.

Note

Detention without trial, repression of basic freedoms, politically motivated murder
of dissidents, forced party card sales, forced attendance at MCP meetings, gifts to
the head of state, and the punitive role of youth league wing of the party in the
rural and urban areas.

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