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AUTHORITARIANISM, DEMOCRACY AND INDUSTRIAL RELATIONS IN SOUTHERN AFRICA: CONTRASTING STATE RESPONSES TO ECONOMIC DEVELOPMENT AND HUMAN RIGHTS DILEMMA IN MALAWI

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ABSTRACT

This paper examines the differing ways in which the one-party dictatorial state, which reigned in Malawi during 1966-1991, and the multiparty democratic state (from 1992) dealt with economic development objectives and labour rights. While the two state formations handled labour relations differently, their anti-union attitude remains largely similar. Although the democratic state has, in principle been positive to unionism, at the level of practice, a wider discrepancy exists between law provision and practices. Widely shared by most Southern African states, this phenomenon is explained in terms of the role of the state in economic development and the dilemma it faces in dealing with national development objectives and human rights.

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INTRODUCTION

Like most of the countries in Southern Africa Malawi has witnessed unprecedented political change from Ball's (1983) totalitarian to a liberal democratic state in the 1990s. This transition created a parallel transformation in the institutional and legal framework which has guaranteed both collective and individual labour rights in Malawi's industrial relations system. One of the central assumptions of this paper is that whether in a totalitarian or democratic state, political elites will employ different strategies to achieve economic development and political stability. As a major single employer, the strategies chosen by the state and the manner in which they are employed will to a large extent influence industrial relations. This paper contrasts state responses to the dilemma between the need to meet economic development programmes and human and labour rights such as freedom of association, collective bargaining and the right to strike.

It is argued that while both the one-party and multiparty state had created different industrial relations regimes, their attitude to trade unions was the same. Their strategies differed because of the different contexts in which they operated vis-a-vis the international world order. Their attitude to trade unions had been similar because they placed high priority on economic development. The first part presents the impact of the Banda regime on industrial relations and how that shaped labour rights. A brief discussion of the transition process follows and analysis of its impact on industrial relations is made. Finally, the paper examines the attitude of the multiparty state towards unionism and its impact on industrial relations.

Totalitarianism and Industrial relations 1964-91

Malawi has experienced four phases of state formations. From the pre-colonial period of kingdoms and empires through the colonial era, and independence in 1964, she became a one-party state for three decades before adopting a multiparty political system in the 1990s. It was during the one-party period that a totalitarian state emerged. A totalitarian political

system is characterised: by an official ideology, a single mass party led by a dictator, use of terror by government to enforce obedience; government monopoly of communication and weapons, and central control of the economy (Ball, 1983: 45). It is argued that totalitarian dictators are tyrannies, and the ruler is not responsible to anyone else for what he does (Friedrich and Brzezinski, 1963: 464). The need for state formation and survival in crisis situations, the presence of a political culture that supports such systems, and the need to bring about rapid social change are factors responsible for the creation of authoritarianism (Macridis, 1986: 213-215).

The demands for political stability, national integration and socio-economic development amidst scarce human, material, financial and administrative resources made the Malawian state a major actor in social, political and economic development since independence. The near collapse of Government within weeks of independence as a result of a cabinet crisis and Chipembere rebellion (McCracken, 1968: 206) was a major justification for Banda to accumulate tremendous amount of power, a trend common in most states in Commonwealth Africa after independence and described as 'presidentialism and executive dominance' (Nwubueze, 1974:246). The consequence was the subordination of the other branches of government to the party and president (Tordoff, 1997:4). As Phiri and Ross (1998:11) noted, 'all executive authority was concentrated in the Office of the Life President, checks and balances were very limited and ineffectual and absolute and unquestioning loyalty to Banda himself was required ...'. Banda used the Malawi Congress Party (MCP) for the mobilisation of people for rural development as well as an instrument for political control. As the largest employer and actor in economic development through the public service, public corporations (UNIDO, 1987:14) and quasi-government Malawi Young Pioneers (MYP) training bases (MCP, 1967) and elite-owned companies (Kydd and Christiansen, 1982: 355-375), the state became the biggest actor in industrial relations.

Apart from the top-down terms and conditions of service model in the public service, the state used various strategies to weaken the labour movement to ensure industrial peace (Dzimhiri, 2001: 21): streamlining of unions from 19 to 5 (Ministry of Labour, 1969: 63), harassment and detention of trade unionists, rewarding loyal unionists, the integration of unions into the ruling party (Ananaba, 1977: 52) and the employment of party functionaries to witch-hunt union activists (Chiume, 1982:51). The MCP involvement in disputes settlement and arbitration and the creation of party branches at workplaces to involve workers in party activities (*Malawi News*, 14 May 1971:14) were other strategies. The president, ministers, Members of Parliament and party officials from grassroots to national level committees called for hard work and the observance of unity, loyalty, obedience and discipline. At the 1974 MCP annual convention in Lilongwe, the President asked MCP central executive committee members, cabinet ministers, parliamentary secretaries, Members of Parliament, the women's league and the MYP to be vigilant. He warned that anyone involved in subversive activities had to be reported to party authorities who would 'deal with them since the country needed political stability' (*Daily Times*, 28 May 1974:1).

Employers refused entry of unionists to workplaces and threatened activists with dismissals or reporting them to the MCP. These strategies succeeded in creating a pro-government labour movement. Speeches by trade union leaders, employers and the Minister of Labour during the opening and closing ceremonies of trade union training courses or workshops were very revealing. During the 1966 May Day celebrations, Kelly Zidana, then secretary general of the Trade Union Congress of Malawi (TCUM) urged unions to assist with the planning of the country's economic development. He advised that 'our demands must be economically possible, supported by solid economic facts and morally justified ... they must not be selfish demands which make progress at the expense of equally needy people' (*Daily Times*, 6 May 1966, p.7).

At a closing ceremony of the Trade Unions' Seminar at Chancellor College in 1970, TUCM chairman Justin Liabunya, reminded union leaders that the primary aim of trade unions was to find ways of helping the President to develop the country (*Daily Times*, 6 August 1970:8). In 1986, the Plantation and Agriculture Workers Union acting general Secretary warned members in Mulanje against any form of insubordination to employers and appealed to them to work hard. He asked them to respect employers and help President Banda to develop the country (*Daily Times*, 11 February 1986:3). The Minister of Labour warned union leaders to adhere to what was required in Malawi and that they 'should be reasonable in their approach to relevant matters' (*Ibid*: 8).

Thus unionists shifted their role perception from that of defending the interest of their members to that of helping the president to achieve Malawi's political and economic development. The colonial legal framework inherited from the colonial state undermined freedom of association, collective bargaining and the right to strike. The Trade Union Act 1958 restricted freedom of association by enhancing the power of Registrar of Trade Unions to control the formation, registration, affiliation and financial management of unions. The prevalence of a unilateral system of wage and salary determination and conditions of employment in public and private sector organisations, the presidential intervention in wage determination, wage freezes and the 1969 low wages and salaries policy, undermined the growth and development of collective bargaining. This was also further exacerbated by the absence of collective bargaining provision in the Trade Union Act 1958 and state reliance on Wages Advisory Councils and Wages Advisory Board. Furthermore, the Trade Disputes (Settlement and Arbitration) Act 1952 circumscribed the right to strike by prohibiting strikes in essential services and remaining silent in non-essential services.

The above political, legal and administrative context made it difficult for workers to defend their economic interests through strikes. Between 1966 and 1991 the *Daily Times* reported 3 strikes only although it reported 16 strikes for South Africa, Zimbabwe, Britain Australia and America (Dzimhiri, 2008). Similarly, 54 organisations that responded to a questionnaire on their experience of strikes between 1966 and 1991 reported 4 strikes only (*Ibid*: 114). This corroborates oral interviews made among managers, trade unions leaders, employees, state officials and analysts (*Ibid*: 114). Apart from former labour officials who participated in disputes settlement during the

Banda era, 69 out of the 71 interviewees argued that there were no strikes during this period (*Ibid*: 114). The reason frequently given was that it was dangerous to go on strike because of the repressive political culture. As one analyst stressed, 'going on strike was signing own death warrant' (Chiwone, interview). For Ng'ong'ola (1994:2) 'at the height of Banda's iron rule, between 1973 and 1990, it would have been foolish in the extreme, and probably treasonous, for anyone to question ... labour policies being pursued, and to agitate for improvements in the legal regime for industrial relations'. For McCracken (1988: 279-290), 'at a particular juncture conditions permitted a determined group of workers to achieve a significant improvement in conditions but, when the window of opportunity closed, their effectiveness was rapidly eroded'. The success of the railwaymen in Nyasaland in 1960 was no guarantee the continued influence of events in Dr Banda's Malawi as the labour movement was inherently weak (*Ibid*: 290).

However, both the ILO Yearbook of Labour Statistics and the Ministry of Labour recorded 182 strikes during 1966-91 (Dzimhiri, 2016). Most of these strikes ranged from half a day to one day, and were over workloads and human relations problems with supervisors on tea estates in Mulanje and Thyolo. For the Ministry of Labour officials, these strikes 'were minor and unofficial' (Manda, 1994:47). And for McCracken (1988:280), they constituted 'the most trivial forms of independent worker action'. Whilst the country experienced 156 strikes in the first 13 years of the one party state, the last 13 years had 26 strikes only - an average of 2 strikes during 1979-1991 (Dzimhiri, 2016).

Political transition and industrial relations reforms

State repression of human rights created pressure for change to a multiparty democratic state in the early 1990s. Although it was dangerous to talk openly about political change, the Catholic Bishops letter 'encouraged the proliferation of criticisms of the government and created the need for change' (Newell, 1995:262). Read in all Catholic churches nation-wide on 8 March 1992, the letter attacked the social, political, cultural and economic decay, the abuse of human rights and deep inequalities. It noted the restrictions imposed on academic freedom and the monopoly of the mass media and censorship that prevented freedom of expression and how people had paid dearly for their political opinions. It also condemned forced gifts to members of the political elite and the denial of access to markets, hospitals, bus depots to those without party cards (Lwanda, 1993).

As O'Maille (1999:151) points out, the date of the pastoral letter is considered a watershed in the story of Malawi's transition to a multiparty democracy. Then Southern African Trade Union Co-ordination Council's Secretary General, Chakufwa Chihana was arrested for denouncing the MCP as a 'party of death and darkness and unreformable' on 6 April 1992 (Dzimhiri, 1998:97). He noted that human rights repression had prevented the emergence of a different political tradition and a political culture of tolerance and that journalists, lawyers, academics, civil servants, church leaders, and trade unionists were victimised for expressing opinions on public issues (Chihana, 1992).

The European Community and its members announced a reduction in the balance of payments support to Malawi as a measure to encourage human rights reforms. Donors withheld non-humanitarian aid in order to secure 'tangible and irreversible evidence of transformation' in basic human rights (GoM, 1993a:2). Pressures from Amnesty International, the World Bank, IMF, Organisation of African Unity, and Commonwealth Secretariat, British, and American governments made the state vulnerable. This climate allowed the formation of opposition pressure groups- Public Affairs Committee (PAC), Alliance for Democracy (AFORD) and the United Democratic Front (UDF). As McCracken argues, 'by reversing their previous policy and freezing aid to Malawi, the role of Western creditor states was a crucial factor in undermining the Banda regime' (McCracken, 1998: 234). The 1993 referendum declared free and fair by the international community and 1994 General Election led to the defeat of Banda's MCP and the success of Muluzi's UDF. In Blantyre and other places, 'people waved the yellow flag of the victorious UDF and chanted their goodbye to a dictator who 30 years ago created a police state where opponents were fed to reptiles (Ransdell, 1994: 4). There was an increase in strike activity in Malawi during the transition. A major strike that spread to nearby companies broke at David Whitehead & Sons on 5 May 1992. As van Donge (1995:230) noted, 'the fabric of society seemed fundamentally shaken by riots resulting from industrial unrest which saw widespread looting of shops in Blantyre and Lilongwe'. Public and private sector organisations took turns in strike activity in the following months. The civil service experienced two big strikes that paralysed the country's health, education, transport and other services in 1993 before different sections of the civil service staged theirs. The *Daily Times* reported 90 strikes during 1992-99 (Dzimhiri, 2008). 54 organisations that recorded 4 strikes only for the 1966-91 periods reported 75 strikes involving 70,000 workers and 400,000 days lost (*Ibid*). Official records, which excluded 50 strikes reported 300 strikes involving 270,000 workers and 800,000 days lost (*Ibid*). Employers, state officials, employees, union leaders and analysts the writer interviewed confirmed that Malawi witnessed unprecedented strikes in the 1990s.

The dramatic transformation of the conflict landscape in Malawi's industrial relations in the 1990s is that 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 as well as police intimidation. For example, striking nurses at Queen Elizabeth Central Hospital reacting to 15 heavily armed policemen said, when the latter threatened unspecified action:

We are not moved by any threat from anyone because we are fighting for our rightful cause. With or without police we are going ahead with our strike and would only return to work after our demands are met in full (Daily Times, 11 Nov. 1998:3).

Some challenged Government policy on privatisation and maize prices and refused to meet middle managers and demanded to meet the President Muluzi. In 1995, 1,000 civil servants petitioned Muluzi to intervene in their salary and conditions dispute (*Daily Times*, 26 July 1995:1), having gone to the Second Vice President's Office earlier (*Daily Times*, 21

June 1995:1). The strikers' attitude to Government's dismissal threats when it announced it would not implement the disputed salary recommendations is another evidence of workers' defiance. Those who had received interdiction letters ignored them, closed their offices and the strike continued for three weeks despite Government's directive to dismiss striking civil servants (*Daily Times*, 8 August 1995:1). These strikes revealed the extent to which a communication gap existed as employers found it difficult to call for the attention of angry workers who had stopped working, demanding higher wages or improved conditions of employment before returning to work. As one analyst noted, 'institutions were caught sleeping having enjoyed so much unaccountability' (Chiwone, interview). As one press commentary emphasised, employers and employees had not developed skills and experience required in resolving disputes (*Daily Times*, 19 May 1992:11). The panic reaction experienced during the strikes was seen as the price 'we had to pay for our pretences at peace and calm because the Government's labour policy was threats of dismissals in the work places' (*Nation*, 9 August 1993: 4).

President Banda made a national address in which he acknowledged industrial disputes but appealed for calm and tranquillity to avoid damaging the peaceful reputation Malawi had enjoyed (*Malawi News*, 9-15 May 1992:1). Cabinet ministers, members of parliament and MCP district and regional officials addressed employees, employers and the general public at different places. While they all supported demands for better wages and conditions of employment, they deplored strikes and recommended peaceful dialogue (*Daily Times*, 6 May 1992:1; *Ibid*: 12 May 1992:3; *Ibid*: 19 May 1992: 3). Officials from the Office of the President and Cabinet, Labour Ministry, Finance, Trade and Industry, Economic Planning and Development, Department of Human Resources Management and Development (DHRMD), and Controller of Statutory Bodies, organised a Round Table Conference in Blantyre to express Government's concern over the 1992-93 strike wave. They appealed to companies and organisations to form Joint Consultative Committees (JCCs) 'to facilitate amicable resolve of employees' grievances' (*Nation*, August 9, 1993: 4). They also advised employers to be transparent to workers and that workers should be aware that unrealistic wage hikes would 'wreck the fragile Malawi economy' (*Ibid*). These strikes influenced the Government to change its labour policy. It announced a new policy on collective bargaining and trade unions two months after the formation of the Civil Service JCC (*Daily Times*, 4 October 1993:10). It promised to encourage the right to organise and engage in collective bargaining, to affiliate to international organisations and to support employers and workers' education programme. The provision of the necessary legal framework and administrative arrangement for freedom of association and collective bargaining, tripartite consultations, ratification and adoption of international labour standard and enactment of new legislation, creation of Industrial Relation Court were part of the reform package.

Growth of the labour movement

That Malawi's industrial relations system could not manage a more demanding labour force was apparent from the state's panic reaction. In its report to the Consultative Group in Paris

on progress made on governance and human rights, the Malawi Government admitted that it had put in place structures for collective bargaining in response to unprecedented strikes in both the civil service and private sector (GoM, 1993b). The consequence of the positive state policy in industrial relations was the resuscitation of hitherto docile trade unions and the formation of new ones. The Trade Union Congress of Malawi (TUCM) in 1993 organised a workshop attended by the remnants of 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 attended (*Daily Times*, 25 October 1993:1). A new committee emerged at Shire Highlands Hotel in Blantyre to challenge the old TUCM for failing to execute union duties. TUCM had no office, convened no committee meeting, conducted no elections since 1964 and failed to organise workers (*Daily Times*, 10 January 1994:10.). The new committee organised a three-day 'basic educational seminar' in Blantyre (*Daily Times*, 28 February 1994:3). The Kenya-based International Confederation of Free Trade Unions (ICFTU) African Regional Representative promised to assist revamping TUCM to 'ensure that its lost credibility is restored in the country's new political atmosphere' (*Ibid*:3). TUCM registered as Malawi Congress of Trade Union (MCTU) on 27 June 1995. The Civil Service Trade Union (CSTU) was formed in the same year out of dissatisfaction with JCCs (*Daily Times*, 23 August 1993:1). The Ministry-controlled Teachers Association resolved to change its name to a trade union 'in a bid for the organisation to gain more autonomy' (*Daily Times*, 11 November 1993:1). By the end of 1994, there were 12 registered unions and an increased membership from 56,000 in 1990 to 63,270 in 1994 (Manda, 1994:37). By 2000, the number of unions increased to 21 including two labour centres- MCTU and Congress for Malawi Trade Unions (COMATU).

Legal and institutional reforms

Although section 2(1) (iii) of the 1966 one-party constitution provided that Government and the people of Malawi 'shall continue to recognise the sanctity of the personal liberties enshrined in the UN Universal Declaration of Human Rights and adherence to the Law of Nations', section 2(2) had set contrary terms of reference: 'That nothing in or done under the authority of any law shall be held to be inconsistent with or in contravention of section 2 (1) to the extent that the law in question is reasonably required in the interests of defence, public safety, public order or the national economy.' Thus, although the constitution had in principle provided freedom of association indirectly, domestic labour legislation could prevail over such constitutional protection (Kanyongolo, et al.1997: 106). The 1994 democratic constitution stressed the centrality of the constitution as the primary law to be given consideration in the interpretation of all laws. It enshrined human rights provisions that support independent trade unions. Section 13 (1) provides for the peaceful settlement of disputes through negotiation, good offices, mediation, conciliation and arbitration. Section 31 provides for the right to a 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. A major step in the development of industrial relations occurred with 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 and expeditious dispute settlement conducive to social justice and economic development'. Section 4 provides the right to freedom of association, and to form or join organisations of one's choice. Section 5 provides the right of an organisation to draw its constitution, rules and elect officers; organise its administration, activities and draw its programmes; take part in the formation and become a member of any federation of trade unions or employers' organisation; and affiliate to and participate in the affairs of international workers' or employers' organisation and to receive financial and other assistance from them. Section 6 (1) protects individual workers from discrimination; dismissal, prejudice and threats by union leaders or employers on grounds that they have or not joined a trade union.

The LRA has reduced the Registrar's power to control union functioning as the Registrar cannot cancel the registration of a trade union unless at the request of the organisation itself, or by an order of the Industrial Relations Court (ICR) (s.19). The LRA gives unions the freedom to receive external funding and to spend monies on activities a union deems appropriate though each union has to send an annual audited account to the Registrar (s.18). It provides for enterprise and sectoral level bargaining as long as a 20% membership threshold has been attained (s.25). Section 24 (4) provides that where an employer refuses to recognise a trade union, the latter can appeal to the IRC if the employer is Government or a public corporation and to the Secretary for Labour for private sector employers/employees. Where the 20 % threshold is not possible, a union or employer associations' could apply for the establishment of an Industrial Council (IC) (s.27) composed of employer and employee representatives. An IC negotiates wages and conditions of employment, establishes dispute resolution machinery, and develops an industrial policy for the industry concerned (s.30).

The right to strike was guaranteed in the 1994 Malawi Constitution (31 (4)). Sections 42-54 of the LRA also provide for the settlement of disputes and the right to strike after a voluntary procedure has been exhausted. Sections 45-47 provide procedures for strike or lockout in case a dispute is unresolved but prohibits strikes in essential service. Unlike the 1952 Act that had a pre-determined list of essential services and gave the Minister power to determine essential services, the LRA empowers the IRC to make determination (s.45) without any preliminary list. If a dispute in an essential service remains unresolved, either party can apply to the IRC for determination, and the Court's decision is binding to both parties. If 21 days expires after a dispute in non-essential service was reported, the parties might apply to the IRC for further determination. A party might give a 7 day-notice to the other party and the PS of their intention to strike (s.45). In order to protect the right to strike, the LRA provides that the status of collective agreement and employment contract shall not be breached by a strike (s.48). Section 49 provides civil immunities for strikers and workers have a right to return to employment after the strike (s.50). Section 51-52 restrains an

employer from employing temporary labour to replace strikers and gives workers the right to refuse to do strikers' work. The creation of the IRC with to hear and determine labour disputes (s.64) added more credence to the development of dispute settlement procedures in Malawi. The fact that the IRC's decision 'shall have the same force and effect as any other decision of a competent court (s.75) is important because it has an equal number of representatives of workers (5) and employers (5). This suggests that decisions arrived at by the IRC have full participation of the workers' representatives as members are nominated by their most representative organisations. Thus, LRA has reduced the Minister of Labour and the Registrar of Trade Unions' influence on freedom of association, collective bargaining and the right to strike. Individual employment rights are provided in the Employment Act 2000. Its object is 'to establish, reinforce and regulate minimum standards of employment with the purpose of ensuring equity necessary for enhancing industrial peace, accelerated economic growth and social justice.' It incorporates employment principles enshrined in the 1994 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. Section 5 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. 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' and the burden of proof rests with the employer.

State attitude to unionism: window-dressing?

Union growth, legal reforms and the increasing toleration of strike activity are viewed as indicators of a positive state attitude towards freedom of association unlike the open hostility towards unions during the totalitarian one-party state. In spite of this positive image, major actors in Malawi's industrial relations, notably, unionists, employers and analysts view the current democratic state as not being any different. As one unionist puts it, 'the current state simply gives lip service but in practice the freedom that is professed is withdrawn through interference (Mwafulirwa, interview). A closer analysis of the means employed by the multiparty state to restrict freedom of association could be categorised as divide- and rule' and 'hide- and-seek'.

Divide- and-rule tactics

These relate to the alleged state sponsorship of splinter unions and bribing union leadership to weaken the labour movement. The democratic state is, in practice, perceived as encouraging intra-union rebellions (Nyirenda, interview). The MCTU breakaway COMATU created as a second labour federation in 2000 is said to be a state machination to strangle the labour movement. Unionists question why the state registered COMATU contrary to section 11(3c) of the LRA. The latter stipulates that the Registrar can register a union only when the name 'does not so closely resemble that of another trade union

or employer's organisation so as to mislead or cause confusion.' According to MCTU secretary general, COMATU's creation was aimed at weakening the MCTU because of its anti-government image. The state is also implicated in the 'behind-the-scenes' manoeuvres to split CSTU and BCCEAWU. As one unionist argued, the fact that the state has proceeded with the registration of enterprise based unions in building, civil engineering, quarrying and mining contrary to the sectorisation agreement demonstrates the efforts of the state to weaken unions (Antonio, interview). On another note, the multiparty state is good at 'nipping union leaders at the bud and that the poverty and ignorance of the workers in Malawi make them vulnerable to all forms of manipulation' (Chiwone, interview). That the state had silenced the most vocal and articulate CSTU president by giving him a car loan and allocating him a house suitable for a Professional Officer/ Administrative Officer or Under Secretary according to the MPSR is an open secret (*Daily Times*, 10 July 1998:1). The house and the car loan had been a focal point of allegations for his withdrawal from an agreed mass action to force the Government to reduce maize and fuel prices and to raise minimum wage in 1998 (Manda, interview). That president's move from a high density to a mansion in the low-density area coincided with his change of mind towards the mass action suggests that the state's action might not have been unintentional. As a CTSU legal advisor decried in a similar instance in 1995, Government's action was aimed at frustrating civil servants' effort by buying off some of them to weaken their collective power' (*Daily Times*, 2 July 1995:1).

Again, MCTU president's abrupt change of mind against the Government's 1995 maize price announcement was another example of state manipulation of union leadership. As days drew close to the intended strike date, the president announced of MCTU's withdrawal because 'we did not know what we were doing' (*Nation*, 19 July 1995:1). His failure to defend staple food prices to win workers' confidence, suggests that the opportunity cost was attractive. Posting away and victimization of vocal leaders are other tactics. During the 1997 civil service strike against delays in the implementation of the 1995 Commission of Inquiry recommendation, the state posted away TUM's general secretary to South Africa and CSTU leaders to different parts of the country (*Ibid*:69). The CSTU vice president was charged on allegations of smashing the Minister's windscreen; CSTU District Chairman was charged with malicious damage because strikers damaged three ministerial cars in Zomba (*Ibid*).

Hide and seek tactics

These include recognition, labelling unionists as opposition agents, delaying tactics, use of state apparatus to suppress labour rights and unilateral decision-making. Although the LRA is clear on recognition threshold, the state has not formally recognised two public service unions- CSTU and TUM. Since handing over its draft recognition agreement to the Ministry of Education in 1995, 'the Ministry has been looking at it' (Kamphonje, interview). It insists that it was not necessary to sign the document because the state had already welcomed unions (Simenti-Phiri, interview). LRA makes the signing of the recognition agreement, a prerequisite for negotiation. Although the Ministry has not yet refused to

negotiate with TUM, there is danger that the Ministry could challenge the union on grounds that TUM has not been recognised. CSTU did not have a recognition agreement because it is far away from the 20% recognition threshold' (Chunga, interview). In 1999, CSTU had a 4.4% density and 10% in 2000. While this is straightforward, it is not clear why TUM that has achieved 82 % union density remains unrecognised? Nonetheless, the state does negotiate with the two unions.. It is interesting that at times when CSTU threatens to strike, the state warns that the anticipated action is illegal, as the union was not recognised. This is where unionists view the state as employing 'hide-and-see' tactics. The state also viewed union's action as the works of opposition agents. The 1998 mass rally on maize and petrol prices is an example. Opposition political leaders are alleged to use the labour movement to stage mass action against the Government. Both unions and the state accuse each other of meddling in industrial relations through underground manoeuvres. Unions complain of state sponsorship to split CSTU, MCTU and BCCEGWU. When MCTU president visited the State President in 1998, he expressed the existence of strong anti-union elements in the public service and employers as a fundamental challenge facing unions in Malawi. Government officials, on the other hand, blamed MCTU's leadership and alliance with opposition politicians as the source of unions' problems (Manda, 2000:66). The current politicians are wary of the potential alliance that might exist between unions and opposition politicians as they also used workers to dismantle the one-party dictatorial state.

Again, the voting patterns in Malawi's 1994 and 1999 general elections, reflecting a regionalist trend (Patel, 2000), could make the Government feel that disaffected politicians could use workers. After all, MCTU president comes from the stronghold AFORD and MCTU secretary general from the stronghold of MCP president, Chakuwamba- all key opposition parties. TUM executive secretary argued that political affiliations betrayed unions' unity as what is discussed in private was transmitted directly to politicians in the evening (Kamphonje, interview). The state is criticised for delay in implementing agreed outcomes of collective bargaining. The 1995 salary recommendation that the Government failed to implement is a case in point. The Government accepted to implement the recommendations 'in full' effective from April 1995 (*Daily Times*, 2 March 1995:1). The CSTU threatened and took part in a series of strikes between April and August 1995 to force the Government implement the new wages and salaries when it became clear that the Government did not honour its promise. In August 1995, the Government announced that it would start implementing the new salary structure in phases starting from April 1996 because it had no money. Faced with more threats of strikes, the Government shifted its focus to the need to establish the exact number of civil servants as rumours of 'ghost' employees intensified. It called for another study to verify the number of civil servants on the payroll and those physically in the offices. Although the state verified that there were more 'ghost' workers and that it could save money through cost cutting measures agreed with the CSTU, the new wage and salary structure remained unimplemented (*Daily Times*, 5 May 1995:3). In 1997, the Minister of Finance announced that the Government would not implement the

wages and salaries recommendations not only because it had no money but also that it did not promise wages and salary increases in its 1994 election manifesto. This led to a series of strikes culminating into the 1997 longest strike that accounted for the largest number of days lost. For Antonio (interview), 'this government is good at listening... you can sit talking for hours but when it comes to implementation, nothing comes out'.

Changing negotiating team members during negotiations with the CSTU is another delay tactic (Galafa, 1997:28). In August 1995, talks between the CSTU and the Government mediated by the Law Society of Malawi and the MCTU 'collapsed after the Government had replaced its negotiating team' (*Daily Times*, 14 August 1995:1). Cabinet ministers failed to turn up to a Government-arranged meeting where union leaders were to meet them to discuss workers' concern on minimum wages and the price of maize in 1998 (Chinansi, interview). The current state leaves trade union leaders free range, letting them make mistakes before it comes in to make a negative publicity against union leaders like: 'we have given you freedom to form unions but your unions are not helping you (Chiwone and Stoko, interview). Could this explain why the CSTU is failing to get 20% collective bargaining threshold out of 120,000 employees?

The state uses the police and the law to deny workers the right to strike. As in many other strikes, the police were present to disrupt the nurses' strike at Queen Elizabeth Hospital, and the 1998 MCTU mass strike (Dzimhiri, 2002:157). The Director of Public Prosecution had warned of the criminality of the strike. The High Court rejected MCTU's application to make an injunction restraining the police from blocking MCTU, on grounds that the police and city authorities 'were empowered to determine whether or not an assembly or demonstration should go ahead' (*Daily Times*, 19 February 1998:3). The Ministry of Labour was also another state machinery some union leaders felt was used to weaken the solidarity of the labour movement during a planned strike. Using the state-controlled radio, the Ministry intimidates workers by invoking certain LRA provisions to declare the strike illegal. Union leaders do not have the opportunity to communicate to members using the same radio, and this ensures that only the state's side is heard. This leads to poor turn up at mass rallies, failed strikes and loss of confidence in union leadership and strikes in general. Unilateral decision-making is also another aspect aimed at weakening union power. The DHRMD had been entrusted with human resources management policy in the civil service, and that most of the policy decisions were unilaterally made. Although the state negotiates with the CSTU on wages and salaries and conditions of employment, there was unilateral decision making behaviour in wage rise. CSTU leaders at times hear on the radio or through a circular letter about such changes to which they were not a party. Such manoeuvres are attempts by the state to sideline unions and portray to employees 'how unimportant unions are'. For example, the decision to give ministries the power and authority to 'hire and fire' and discipline civil servants with effect from July 1999 was unilateral. CSTU felt this was meant to weaken union growth and solidarity. Anti-union behaviour in the form of victimisation of union leaders, refusal of time-off for union activities, refusal of access to workplaces

by employers, divide and rule are some of the experiences some unionists in the private sector have experienced in recent years. Retrenchment was one of the dangers unionists were exposed to. 'When you are union leader, you are the first person to be retrenched, I lost my job because I was President of the MCTU women section ... because I was involved in union activities, the employer was not happy to give me time-off most of the time; I was transferred to a division and later declared redundant' (Nyirenda, interview). As the Organising Secretary of the Hotel, Food Processing and Catering Workers Union's noted, 'We organised a branch at Tambala Food Products but when we went the other time, we found that the Human Resource Manager had retrenched the whole department'. Again, the National Bank of Malawi Workers Union (NBMWU) was banned following disagreements with management over annual salary increments. NBMWU accused senior managers of awarding themselves hefty packages and small increments to bankers (*Daily Times*, 19 June 1998:1).

According to the Treasurer of the MHCWU, when a strike is agreed, the General Manager called heads of department to ask their subordinates 'to return to their office if they wanted to secure their jobs'. This, he argues, makes threats of strikes meaningless and leads to loss of interest among the shop floor workers in unionism. A 1997 Human Rights Report noted that although unionisation has increased there was 'increasing resistance from employers' (*Daily Times*, 11 February 1998:2). Similarly, a Ministry of Labour study to assess the effectiveness of the freedom of association and collective bargaining supports the anti-union behaviour in public and private sector organisations (Ministry of Labour, 2000:10). The study also blamed the state for constraining freedom of association because it 'took with one hand what the other gave' (*Ibid*). Anti-union attitudes affect unionism negatively. Out of the 11 unions the Ministry of Labour's study analysed, 6 demonstrated a union decline of over 70% between 1995 and 1999 (*Ibid*:13). State officials viewed the declining union membership as a product of loss of faith in unionism, fear of paying union fees, poor leadership and the alliances union leaders made with opposition politicians. Unionists viewed the decline as a consequence of 'hide-and- seek' and 'divide-and-rule tactics' the state employs. Thus, despite the positive official attitude the current state displays towards unions, it is 'diplomatically' hostile unlike the open and conceited effort to suppress freedom of association during the one-party dictatorial state. Both state formations have had similar anti-union attitude except that they have used different means. To a greater extent, this similarity in attitude towards unionism might be explained in terms of the involvement of the state in economic development and the need to maintain political stability. Incidentally, while the one-party dictatorial state did not face international pressure for human rights violation during the Cold War years, the current state has to come to terms with international human rights standards befitting a democratic state. Studies carried in other countries demonstrate that this trend is widely reflected in the Southern African region. Madhuku's study on Botswana, South Africa, Namibia, Zambia, Zimbabwe, Malawi, Lesotho and Swaziland, revealed different degrees of state restrictions on the right to strike (Madhuku, 1997). Similarly, in a study of Zambia, Botswana, Swaziland, and Malawi on union rights, Sibanda (1999:16) argued that, although the ILO Convention

No.48 gave workers the right to organise, and that the UN Declaration of Human Rights recognised union rights as human rights, 'these rights were under threat in Southern Africa'. And though there was a decline in unilateralism in employment in Southern African region, some countries such as Zimbabwe, Botswana and Lesotho did not provide for trade union formation and collective bargaining in the public service (Kalua and Madhuku, 1997). There was also a blanket prohibition of the right to strike in the public service in Zimbabwe, Botswana, Lesotho, and Zambia and Tanzania's top management (Ibid 7). Finally, although most countries in this region oblige employers to bargain collectively with unions which achieve a certain threshold, collective agreements are vulnerable to court review and ministerial sanctions as they are enforceable after being registered by either the Ministry of Labour or the Industrial Relations Court (Christie and Madhuku, 1996).

Conclusion

This paper has demonstrated the impact of both an authoritarian and democratic state on industrial relations in Malawi over a period of four decades. The role of the state in economic development and political stability during the one-party authoritarian political system and democratic epoch shaped industrial relations in different directions. Faced with resource shortage, development imbalances and a political crisis after independence, the state repressed labour rights through political, legal, institutional and administrative means to ensure political stability and economic transformation. The consequence was a pro-government labour movement, which failed to wage protracted strikes, thereby creating a period of industrial peace. That this authoritarianism prevailed for three decades is due to the pro-capitalist stance Malawi adopted, thereby making her a good ally of Western capitalist nations during the Cold War. The transition to a democratic political system in the 1990s after the collapse of communism in Eastern Europe weakened state power vis-à-vis civil society, allowed workers to wage protracted political and economic strikes and 'forced' the state to review its industrial relations policy. The consequence was the growth of the labour movement and legal and institutional reforms for industrial relations, which enhanced workers' collective and individual rights. The central question is why the multiparty state uses 'divide-and-rule' and 'hide-and-seek' tactics to restrict labour rights contrary to the 1994 National Constitution and Labour Relations Act 1996 provisions. The paper points to the significance of the state in industrial relations and the dilemma the current state faces to reconcile economic development policies and demands for human rights imposed by the international donor community. This dilemma creates an industrial relations system characterised by discrepancies between legal provisions and practice.

REFERENCES

- Ananaba, W. 1977. *The Trade Union Movement in Africa*. London: C. Horst.
- Chihana, C. 1992. *The Bumpy Road to Freedom: Mitigation Statement on Sedition Trial*, The High Court, Blantyre Malawi.
- Chiume, K. 1982. *PANAF Great Lives: An Autobiography of Kanyama Chiume*. London: PANAF.
- Christie, S. and Madhuku, L. 1996. 'Labour Disputes in Southern Africa: Resolution in Southern Africa: An Overview', in Christie, S. and Madhuku, L. (eds) *Labour Resolutions in Southern Africa*. Cape Town: FES and Institute of Development and Labour Law, University of Cape Town.
- Dokali, E. and Kanyongolo, N. 1996. 'Labour Disputes Resolution in Southern Africa: The Case of Malawi', in Christie, S. and Madhuku, L. (eds.) *Labour Resolutions in Southern Africa*. Cape Town: FES and Institute of Development and Labour Law, University of Cape Town.
- Dzimbiri, L. 1998. 'Democratic Politics and Chameleon-like Leaders' in Phiri, K. and Ross, K. (eds) *Democratization of Malawi- A Stocktaking*. Blantyre: CLAIM.
- Dzimbiri, L. 2001. 'Trade Union Rights in Malawi: Context, Past and Present'. *International Union Rights* 8: 3. 21-22.
- Dzimbiri, L. 2002. 'Industrial Relations, the State and Strike Activity in Malawi', PhD Thesis, Keele University, UK.
- Dzimbiri, L. 2008. *Industrial Relations in a Developing Society: The Case of Colonial, Independent One-party and Multiparty Malawi*. 1st Edition. Gottingen: Cuvillier Verlag. 179.pp
- Dzimbiri, L. 2016. *Industrial Relations in a Developing Society: The Case of Colonial, Independent One-party and Multiparty Malawi* 2nd Edition. Academic Books Publishers: Zomba.
- Friedrich, C.J. and Brzezinski, Z.K. 1963. 'The General Characteristics of Totalitarian', in Eckstein, H. and Apter, D. (eds) *Comparative Politics: A Reader*. London: Macmillan
- Galafa, M. 1997. *Employee Relations in the Civil Service*. MSc thesis, University of Manchester.
- Kalua, E. and Madhuku, L. 1997. 'Introduction' in Kalua, E. and Madhuku, L. (eds) *Ibid*.
- Kanyongolo, N., Zeleza-Manda, A. and Ng'ong'ola, C. 1997. 'Malawi Country Report', in Kalua, E. and Madhuku, L. (eds) *Public Sector Labour Relations in Southern Africa: Developments and Trends*. Cape Town: FES and Institute of Development and Labour Law, University of Cape Town.
- Kydd, J. and Christiansen, R. 1982. 'Structural Change in Malawi since independence: Consequences of a Development Strategy Based on Large-scale Agriculture'. *World Development*. 10: 5,355-375.
- Macridis, R.C. 1986. *Modern Political Regimes: Patterns and Institutions*. Boston: Little Brown and Company.
- Madhuku, L. 1997. 'The Right to Strike in Southern Africa'. *International Labour Review* 136:4, 509-530.
- Malawi Government 1993a. *Situational Analysis of Poverty in Malawi*. Lilongwe.
- Malawi Government, 1993b. *Progress on the Issue of Governance and Human Rights: A Summary*. Malawi Consultative Group Meeting. December.
- Manda, C. 1994. 'Labour Relations in Malawi,' Paper Presented to the *Tripartite Seminar for the Promotion of Sound Labour Relations in Malawi*. Club Makokola, Malawi, November 28-30.
- Manda, M. A. 2000. *The State and the Labour in Malawi*. Glasgow: DuduNsomba Publications.
- McCracken J. 1968. 'African Politics in the twentieth century Malawi' in T O Ranger (ed.) *Aspects of Central African History*, London, Heinemann

- McCracken J. 1969. *Ministry of Labour Report 1963-1967*. Zomba
- McCracken, J. 1988. 'Labour in Nyasaland: an assessment of the 1960 Railway Workers' Strike' *Journal of Southern African Studies*, 14.2.279-290
- McCracken, J. 1998. 'Democracy and Nationalism in Historical Perspective' *African Affairs*, 97, 231-249
- MCP 1967. *Malawi Congress Party Convention: Opening Address by President of Malawi Ngwazi Dr. H Kamuzu Banda*. Mzuzu.
- Ministry of Labour, (2000) *Human Rights and Employment Report*. Lilongwe.
- Newell, J. 1995. 'A Moment of Truth'? The Church and Political Change in Malawi, 1992'. *Journal of Modern African Studies* 33:2. 243-262.
- Ng'ong'ola, C. 1994. *Employment and Industrial Relations in Malawi: A Prospectus for Reform*. Cape Town: FES and University of Cape Town.
- Nwabueze, B.O. 1974. *Presidentialism in Commonwealth Africa*. London: C.Horst.
- O' Ma'ille, P. 1999. *Lining Dangerously: A Memoir of Political Change in Malawi*. Glasgow: DuduNsomba Publications.
- Otanez, M. 1995. *Labour and Democratisation in Malawi*. MA thesis, Institute of Social Studies, The Hague.
- Patel, N. 2000. '1999 Elections in Malawi: Challenges and Reforms', in Ott, M., Phiri, K. and Patel, N. (eds) *Malawi's Second Democratic Elections: Process, Problems and Prospects*. Blantyre: CLAIM.
- Phiri, K. and Ross, K. 1998. 'From Totalitarianism to Democracy', in Phiri, K. and Ross, K. (eds) *Democratization of Malawi- A Stocktaking*. Blantyre: CLAIM.
- Ransdell, E. 1994. 'The End of the Road for a President for Life' in *US News and World Report*, 5/30/94, 116: 21.
- Sibanda, N. 1999. 'Unions Still Fighting for Union Rights-for Human Rights'. *Southern African Political Economy Monthly*. 12:5.16-19.
- Tordoff, W. 1997. *Government and Politics in Africa*. London: Macmillan.
- UNIDO, 1987. *Industrial Development Review Series: Malawi*.
- Van Donge, J. 1995. 'Kamuzu's Legacy: The Democratization of Malawi or Searching for the Rules of the Game in African Politics'. *African Affairs*, 94. 227-257.
