



The State and Labour Control in Malawi: Continuities and Discontinuities Between One-party and Multiparty Systems¹

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Abstract

An analysis of state-labour relations in Malawi over a period of four decades reveals, like in other countries in Southern Africa, tendencies towards continuities and discontinuities in labour controls. While Malawi's political system has undergone a major transformation to democracy in the 1990s after three decades of dictatorship which was hostile to trade unions through administrative, political and legal apparatuses, the democratic state has been marked by 'diplomatic' hostility through divide-and-rule and hide-and-seek tactics. Using different means the state has succeeded in curtailing freedom of association in varying degrees during the one-party and multiparty periods. Thus, while labour control as an objective of the state has not changed, the means have changed dramatically. The desire to achieve political stability and economic development, against a changed international political order demanding human rights and good governance in the 1990s, explains the current 'diplomatic' hostility in Malawi's industrial relations. The role of the international donor community in exporting democratic structures and values to societies that do not have an in-built culture of democracy similar to western societies is viewed as a further explanation for the creation of significant degrees of discrepancies between labour policy and practice in Malawi.

Résumé

En examinant de près les relations entre l'État et le monde du travail au Malawi, sur quatre décennies, l'on observe, comme dans bon nombre d'autres pays d'Afrique subsaharienne, diverses continuités et discontinuités au niveau du contrôle du milieu du travail. Si le système politique du Malawi a connu des

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changements significatifs tendant vers la démocratie, dans les années 90, après trois années de dictature combattant les syndicats à travers divers instruments administratifs, politiques et juridiques, le nouvel État démocratique, lui, se distingue par une certaine hostilité " diplomatique ", en tentant de diviser pour mieux régner, mais également en déployant des tactiques contradictoires. Usant de diverses méthodes, l'État est parvenu à limiter la liberté d'association à divers degrés, pendant la période du parti unique et du multipartisme. Ainsi, tandis que le contrôle du monde du travail demeure l'objectif de l'État, les moyens employés pour ce faire ont cependant radicalement changé. Le souhait d'instaurer une certaine stabilité politique et de favoriser le développement économique, dans un nouveau contexte politique international exigeant le respect des droits humains et une bonne politique de gouvernance (années 90), explique certainement l'actuelle hostilité « diplomatique » qui caractérise les relations diplomatiques, au Malawi. Le rôle qu'a joué la communauté internationale des bailleurs de fonds dans l'exportation de valeurs et structures démocratiques auprès des sociétés n'ayant pas une culture démocratique intrinsèque, justifie également la présence des diverses contradictions entre la politique établie régissant le monde du travail et la pratique réelle.

Introduction

Based on archival sources such as documents, official statistics and newspapers, and primary data sources in the form of questionnaires and interviews this paper analyses contrasting approaches to labour control during the one-party and the multiparty periods in Malawi. The one-party period stretched from 1966 to 1993 and the multiparty from 1994 to date. While the state demonstrated a policy of 'open' hostility to labour control during the one-party period, it was 'diplomatically' hostile through 'divide and rule' and 'hide and seek' tactics during the multiparty period. Thus, there are interesting paradoxes of continuities and discontinuities in state-labour relations in spite of changes in political systems. In its concluding remarks, the paper stress two major points: the dilemma between economic development and human rights and the role of the international donor community in influencing state behaviour and therefore industrial relations.

The first part provides empirical evidence on state-labour relations in southern Africa as a framework for discussing Malawi's experience. The second part examines labour control in Malawi during 1966-91. Later, a brief discussion of the transition to multiparty democracy is made before analyzing its impact on labour relations. The new policy on industrial relations, rebirth of trade unions, constitutional and legal reforms, are examined before analyzing forms of labour control in the multiparty period. The question of dilemma and role of international donor community concludes the paper.

The state and labour control in Southern Africa: An overview

One of the typical features of African states since independence has been a shift in political management systems. A significant transformation of the superstructure of the state occurred after independence (Tordoff 1997:1-13). Most of the countries moved from initial pluralism toward the concentration of power in the hands of a single party and president. Tordoff (*ibid*) notes that in some states, it meant heavy concentration of powers in the office of the president to the detriment of other ministries. There was a move from federal and quasi-federal constitutions adopted at independence to unitary structures, as in Ghana, Uganda, Zaire, Nigeria and Zambia. These moves were justified by the perceived fears that sub-national structures would aggravate sectional sentiments and therefore make the task of national integration more difficult. Unbalanced economic growth whereby development concentrated in a few regions or enclaves created an urgent need to create economic development in other backward areas. This was compounded by the fact that, at independence, the new states inherited problems of finance, acute shortage of qualified personnel to manage socio-economic development programmes and the scarcity of indigenous entrepreneurial class (*ibid*). Consequently the role of the state became crucial in economic development. It had to invest in social infrastructure, expand education, health, agriculture, and housing, among other services; formulate development plans, and engage in industrial and commercial undertakings through public enterprises. According to Nwabueze (1974), it was the need for state formation, consolidation of new nationhood and state boundaries, modernization of the economy and socio-economic development, which forced political elite to adopt different paths towards economic, social and political transformation.

Beginning with Ghana in 1960, Kenya and Zambia in 1964, Uganda, Nigeria, Botswana and Malawi in 1966 and Gambia in 1970, all former British colonies broke away from the dual British model of separate head of government and head of state in favour of executive presidential system. This meant the subservience of the legislature and the judiciary to the executive and the integration of other non-political organisations into the ruling party and state machinery (Nwabueze 1974:242). Such states could not tolerate any other pockets of power and therefore any organisations of significance such as trade unions, co-operative societies, farmers' association, women's and youth movements, were integrated into the executive wing of the state. For Nkrumah, his Convention Peoples' Party was 'a mighty tree' and non-political organisations were its 'many branches' (*ibid*:249). According to Nwabueze, what emerged was a highly centralised governmental structure

where the legislature and judiciary were subordinated to the executive; bicameralism was replaced by unicameralism and federalism by unitarism and the emergency of one-party states characterised by concentrating too much power in the presidents (*ibid*: iii-iv).

As a result of dissatisfaction with the economic and political performance of the state after three decades of independence, reforms occurred. Between the 1980s and 1990s a move from one-party systems and socialist ideologies toward multiparty systems and liberalised economies took place (Chazan et al., 1994:64-66). It was increasingly believed that the revival of Africa's economy was dependent on getting rid of authoritarian, corrupt and inefficient one-party regimes and that multiparty system of government could halt Africa's downward economic spiral. As one Zairean politician noted: 'we cannot do anything in the economic field until we change the political field' (Tordoff 1997:14).

Protracted strikes, demonstrations and national political conferences were held to demand multiparty elections and the removal of incumbent presidents in favour of democratic governments. Western governments began to pressurise African states for good governance from the 1980s and into the 1990s (Tordoff 1997:40). The World Bank and the IMF continued to insist on economic liberalisation, transparency and accountability as preconditions for further financial assistance. In most of Southern Africa, the demand for democratisation as a precondition for continued financial assistance started with the collapse of communism in Eastern Europe and the wind of democratic dispensation across Africa (ESARP 1994:26). By the middle of the 1990s, countries such as Ghana, Kenya, Tanzania, South Africa, Angola, Mozambique, Zaire, Zambia, Togo, Morocco, Benin, Gabon, Tunisia and Malawi had adopted multiparty political systems. Although these developments did not reduce the role of the state in Africa, they nonetheless modified the power balance between states and civil society organisations like trade unions. The centrality of the state in social economic development and political stability, which led to the adoption of authoritarian political systems and later democratic systems, has had impact on state-civil society relations.

This meant a regular change in the 'frontier of control' of the state vis-à-vis other elements of civil society. At one stage the state had adopted more elements of an authoritarian political systems and, at another, more liberal democratic elements. Thus, one would see the state becoming more interventionist and controlling, and adopting elitist policies far removed from the interests of the masses at one stage, with a more guardian and arbiter role in favour of open market and more competitive behaviour at another. It is

also possible to see a hybrid variant where some aspects of liberal democracy and the authoritarian mode co-existed within the same stage. Tanzania's Julius Nyerere, who advocated 'Ujamaa socialism', and Zambia's Kenneth Kaunda, who advocated 'humanism' ideology as a development strategy, became violators of human rights through one-party dictatorship (Mihyo 1995:204).

Labour controls in Southern Africa

Against this background one central question is to find out the impact of changes in political systems on state-labour relations. In the immediate post-independence era control of indigenous voluntary groups such as trade unions became a typical feature in state such as Zambia, Tanzania, Kenya to name a few. Labour rights such as freedom of association, collective bargaining and the right to strike were heavily curtailed and unionism was re-structured to fit the needs of independent states.

For three decades after independence in 1964, Zambia's industrial relations were influenced by the one-party state led by Kaunda in its attempts to control and incorporate the labour movement within the state machinery (Mihyo 1995:203-4). Kaunda used his massive powers to impose, punish, reward, detain, appoint and dismiss. The state restructured industrial relations policies by creating industrial unions and worker participation in management schemes controlled by party branches and state appointed managers. It integrated the Zambian Congress of Trade Unions (ZCTU) with the ruling United National Independent Party (UNIP). This was to ensure that ZCTU acted as UNIP's administrative wing in communication and civic education to workers on the productionist role trade unions were called to play in line with state economic development policy and plans. The state controlled unions, increased the Registrar's power to supervise trade unions; and restricted international affiliation and funding. It used detention powers and presidential intervention in industrial relations matters to control unions (Gertzel 1979:335-337). Intimidation and marginalisation of dissenters, surveillance and arrest of ZCTU leaders were other means to weaken unions (Mihyo 1995:208). According to Liatto (1989:101), the state used the 'carrot and stick' approach through the legal framework, wages and salaries, control of ZCTU leadership, and the process of engineering consent (through worker participation mechanisms, political exhortation and workers' education) to tame Zambia's labour movement.

In Kenya, the colonial state was able to sabotage the growth of African trade unions by identifying and persecuting trade union leaders as communists. The colonial state banned the first trade union in 1947 and deported its leaders. When unions became legal, the state enacted the Trade Union Registration Ordinance and a Deportation Ordinance Act with provisions for state control

over unions and workers (Iwuji 1979:201). A Nairobi strike in the 1950s was ruthlessly crushed by the state using the police and the army. Up to 300 workers and union leaders were imprisoned (ibid:203). These repressive measures affected both union membership and union activities. For example, a one-day operation, to crack down union supporters on 24 April 1954, reduced the Local Government Union membership from 1,300 to 500 with consequent closure of union offices.

Post-independence Kenya also experienced state control over trade unions. Although unions were allowed and the right to strike was included in the labour laws, the 1962-63 strikes after independence provoked the wrath of the political elite. Tom Mboya, then Minister of Labour, threatened to take away the right to strike if workers abused it (ibid: 234). Following inter-union disputes between the Kenya Federation of Labour (KFL) and the Kenya African Workers' Union (KAW), a 1965 presidential decree created the Central Organisation of Trade Unions (COTU) and de-registered KFL and KAW (ibid: 207). In 1974, a presidential decree banned unofficial strikes. This, perhaps, reflects Mboya's view that 'a Government sometimes needs unusual powers to enforce some decisions' (in Etukudo 1995:54). According to Liatto (1989:238-9), through a series of tripartite agreements in the period 1964-1980, the state co-opted union leadership, influenced collective bargaining through wage freezes and curtailed the right to strike through a presidential ban on strikes.

Owing to the predominance of the white settler economy and the need for the state to meet settlers' desire for cheap labour, the colonial state enacted several laws (Shadur 1994). Starting with the Master Servant Act 1901 to the Industrial Conciliation Act 1959, the colonial state aimed at suppressing labour rather than the development of trade unions among black workers (Liatto 1989:262).

When unions were recognized under the 1959 Act, their number grew to 26 in 1962 but had declined to 22 in 1966. Shadur (1994:61-62) argues that unions remained extremely weak not only because of financial problems and leadership ineffectiveness, but also due to state control through close police surveillance, breaking strikes, harassment and arrest of leaders. Trade union weakness in Zimbabwe was also attributed to the unusual political history of the country. For Shadur, the post-independence period witnessed a high degree of state corporatism aimed at controlling unions, employees and strikes thereby enforcing industrial peace. Like the ZTUC in Zambia, the Zimbabwe Trade Union Congress was used as an administrative arm of the state to interpret and implement state policies and programmes of economic development. The state crushed all strikes that had characterised Zimbabwe at independence

and some years later (*ibid*:72-74). Mugabe intervened, like his Zambian counterpart, in introducing extensive legislative powers aimed at neutralising militant unions. Other measures included beating with button sticks, suspended sentences, arrests, and detention or dismissal of strikers. Mugabe's public speeches carried strong warnings. Following protracted strikes at Wankie Colliery, Swift transport, and Express Nickel Mine, for instance, Mugabe warned that his Government's priority was law and order and he would give the police whatever authority was necessary to end lawlessness (Shadur 1994:86).

Between 1947 and 1953 the colonial state repressed trade unions until the Tanganyika Federation of Labour (TFL) emerged later as an amalgamation of small unions. Nyerere's view that 'everybody was paid too much except the poor peasant'² perhaps spoke more about the expected behavioural orientation of workers in independent Tanzania. For him, 'although one of the purposes of trade unions was to ensure for workers a fair share of the profits of their labour, such fairness would be judged in relation to the whole society' (in Nwabueze 1974:375). Between 1962 and 1963, the state passed legislation to eliminate 'dissident' unions and to consolidate 'loyal' unions into the industrial wing of Tanganyika African National Union-TANU (Bienefeld 1975:243, in Liatto 1989:243).

A series of strikes in sisal plantations, mines and railway unions from independence to 1972 demanding unconditional Africanization, led to an army mutiny, which forced the state to take action. 200 union leaders were arrested; competing union federations, including TFL, were abolished and an Act of Parliament created a National Union of Tanganyika Employees (NUTA). All unions became affiliated sections of NUTA (Mihyo 1979:250). The general secretary and his deputy were to be appointed by the President. NUTA's role was to study wage structure annually; advise the government on wages in accordance with the country's income and wages policy; implement the wages and incomes policies; settle disputes between members themselves and implement and propagate the policy of the ruling party (*ibid*:250).

In 1978, NUTA was replaced by the Jumuiya ya Wafanyakazi Tanzania (JUWATA). JUWATA was responsible for the interpretation of TANU's policy to the workers and to ensure that workers complied with the party's directives. They were also responsible for the protection and defence of party policy against those opposed to Tanzania's Ujamaa socialism; promotion of worker education, creativity, productivity, confidence, pride; and protection of workers' rights and improvement of wages and other conditions of employment (*ibid*:252). Like Mboya who supported the need for government's strong hand in Kenya, President Nyerere justified state intervention in

industrial relations as the only way in which 'any African government could act in accordance with the aspirations and wishes of its people' (Etikudo 1995:54).

During the multiparty systems in most of these states, union activity has also come under increasing state control in spite of adoption of international labour conventions and worker-friendly legal framework. The negative state attitude towards trade unions is reflected in different countries in the Southern African region. Madhuku's (1997) study on Botswana, South Africa, Namibia, Zambia, Zimbabwe, Malawi, Lesotho and Swaziland, revealed different degrees of state restrictions on the right to strike. He argued that these restrictions could be explained by the high priority accorded to economic development, with human rights being perceived as luxuries (ibid:529). Similarly, in a study of Zambia, Botswana, Swaziland, and Malawi on union rights, Sibanda (1999:16-19) 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'. Although 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 1997:4-5). There was 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). Though 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 1996:4-6).

Labour control during the one-party period in Malawi: 1966–1991

Independent from 73 years of British colonial rule in 1964, Malawi became a one-party state in 1966. She adopted a multiparty political system in the 1990s. The need to maintain political stability, bring national integration and spearhead socio-economic development amidst scarce human, material, financial and administrative resources made the Malawian state a major actor in social, political and economic development from independence. The near collapse of Government within weeks of independence as a result of a cabinet crisis and Chipembere rebellion (McCracken 1968:206; Short 1974:197-230) was a major justification for Banda, the first president, to rise to 'presidentialism and executive dominance' (Nwabueze 1974:242). Banda

stressed his desire to maintain political stability, an efficient, incorruptible and honest administration, and economic development, and if he had to detain up to 100,000 to achieve these goals, he would do it (Dept. of Information, 1965:7). 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 single 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 1967:5) and elite-owned companies (Kydd and Christiansen: 1982), the state became the biggest activist in repressing labour rights. The impact of the 1964 cabinet crisis and the quest for political stability and economic development not only shaped the role of the MCP in labour relations but also impacted on the attitude of political elites towards labour rights. Coupled with a restrictive legal framework for labour relations the final outcome was the total domestication of the labour movement.

The cabinet crisis and labour relations

The cabinet crisis was an attack by six cabinet ministers on President Banda's domestic and external policies six weeks after the 6 July 1964 independence celebrations. At the domestic level, the ministers were opposed to the introduction of hospital fees and the policy on Africanisation of the public service and public corporations, and also the Skinner Report, which called for the scaling down of conditions of service for the civil service. On external policy, they criticised him on his position in relation to Southern Rhodesia, Portugal, Mozambique, China and Taiwan. The 1964 cabinet crisis heightened state hostility to the labour movement. The punishment of expulsion, banishment and detention without trial inflicted on the dissenting cabinet ministers extended to their colleagues in the labour movement, as many unionists were seen as rebels. Among Chipembere's friends were a number of trade union leaders who received the same punishment on the dissenting politicians (Ananaba 1977:51). As Lwanda (1993:69) argues, the cabinet crisis not only removed any lingering opposition from Banda's Government, but also ensured that the next generation of potential leaders of Malawi, both intellectual and technocrat, were consigned to exile. The cabinet crisis, according to one analyst, 'cast a dark shadow on labour rights - the freedom of association and the right to strike to defend workers' interests'.³ According to Chiume

(1982:217), 'youths were ordered to spy on members of their own families ... became infused with terrible delight in beating and killing people after the cabinet crisis. There was a witch-hunt against trade unionists and rebel politicians and that Banda infiltrated Tanzania and Zambia with spies posing as political refugees (ibid:224).

Although workers had grievances, the absence of freedom of expression due to the fear of intimidation and harassment after the cabinet crisis meant that they could not openly articulate these grievances. As Mangozo⁴ noted, the one-party state did not want to hear of any organisation that had the potential to challenge its policies. The arrest and self-exile of strong unionists such as Chihana, and the MCP's harassment and intimidation of union leaders and members weakened the labour movement. By removing key figures in the labour movement, Banda's regime cleared the way for its further consolidation over the economic and political spheres in Malawi without any inhibitions. Throughout the one-party period, the attitude of political elite towards the labour movement was hostile.

The MCP in labour relations

As a key policy making body in the Government through the annual convention (*Daily Times*, 23 July 1973:1), the MCP shaped labour relations through compulsory integration with unions, intervention in trade disputes, recruitment of key personnel in organizations, harassment of unionists at workplaces, inculcating worker discipline, and public threats against dissent. In the 1965 MCP convention, an amendment to the party's constitution was made to provide for recognition of the Trade Union Congress of Malawi (TUCM) as the only union federation. There was a policy of compulsory affiliation of unions to the MCP, a proviso that was endorsed in section (d) of the MCP membership card. This provision gave the MCP power to control unions' affairs, including election of office bearers and ensuring they conformed to party interests (Ananaba 1977:52). Unionists who challenged such things as the state's wage fixing machinery were removed, and sometimes arrested and replaced by individuals willing to uphold government policies (Otanez 1995:51).

State control over unions through union affiliation to the MCP ensured that union leaders were accountable to the state. This view is further supported by the experiences of the Teachers Union of Malawi (TUM). Formed in 1945 as an association, it registered as a union two months after independence. It then changed from a union to an association in the same year and back to a union in 1966. It was banned in 1976 because it was outspoken. It was re-established in 1982 as an association under the management of the

Ministry of Education who made membership a compulsory requirement for all teachers and also appointed officials of the association. As Kamphonje⁵ noted, although the union was financially powerful, because the Ministry made membership compulsory and deducted fees at source, it was politically and professionally weak.

The MCP's supremacy was highlighted in the 1966 Malawi Constitution (s.4) and elaborated in political rallies. Reminding delegates to the 1986 party conference, the MCP Administrative Secretary argued that the party was supreme because the Government and everything that Malawians were enjoying came about through the MCP. He noted that the MCP's ideology of unity, loyalty, obedience and discipline provided a behavioural framework for workers in public and private sector organisations (*Daily Times*, 23 October 1986:3). 'Everyone holding a responsible position in the party, Government or any organisation associated with the party would be in that position as long as he/she worked within the framework of the party' (*Daily Times*, 3 October 1986:3). As one interviewee noted, political leadership of the country influenced management systems at the workplace: managers were dictatorial, one-way communication prevailed as directives were issued from above, and workers had no chance of negotiating their wages and conditions of employment. The worker was a 'yes bwana' (sir), a loyal recipient of instructions from a state-cushioned employer.⁶

Since the 1964 cabinet crisis a typical call for most politicians during their public rallies was the need to intensify vigilance against all forms of subversion because 'in the absence of peace, calm, law, and order there could be no political, economic, and social development' (*Daily Times*, 30 December 1977:3). In this context, any form of protest or expression of dissatisfaction was viewed as an attack on party ideology. Employers invoked party ideology in cases where workers demanded higher wages and improved conditions of work. Not only did employers report union activists to the MYP, designated by the President as his eyes and ears, but also refused entry of unionists on the shop floor. Thus, taking advantage of the negative attitude of the state towards trade unions, employers used state informers at the shop floor to their advantage. As Nyirenda⁷ noted, 'as there was no freedom of expression, employers benefited from our helplessness ... they could change conditions of employment at will and were not obliged to increase wages'. State policies and strategies benefited employers as evidenced by the Employers Consultative Association chairman at the 1979 annual general meeting in Blantyre when he noted that employers in Malawi were fortunate because of 'continued industrial peace under the wise and dynamic leadership of His Excellency Ngwazi Dr Kamuzu Banda' (*Daily Times*, 25 April 1979:1)

According to Otanez (1995:51), the state's ability to demobilise the union movement also helped to sustain a bipartite arrangement, which provided legitimate roles for government, and employers in labour relations while relegating labour to the distant background in labour relations and policy-making.

Managers at David Whitehead and Sons (DWS) and the Eastern and Central African Railway Ltd argued that 'the MCP government viewed companies as state property as the party relied on companies to fund conventions; public functions and party cards drive campaigns'.⁸ They also claimed that state wage controls ensured that companies did not run out of money to fund party activities. Thus, the 1969 cheap labour policy was an attempt to attract investors who could in turn be relied upon to meet MCP's financial needs. MCP controlled labour relations at the workplace through the appointment of chief executives of public corporations to oversee profits and direct them to the party. It also appointed party functionaries on the shop floor to ensure that the rank-and-file observed the MCP ideology of unity, loyalty, obedience and discipline. These political appointees dismissed employees who were suspected to have no allegiance to the MCP. At the workplace workers could not discuss any wage issue for fear of intimidation and harassment by party spies.

The MCP created party branches at workplaces to involve workers in party activities. For example, opening a new party branch at Lauderdale Tea Estate in 1971, the deputy regional party chairman said the branch was created to enable estate workers participate in running the affairs of the country through the party (*Malawi News*, 14 May 1971:14). He asked employees to co-operate with employers and to intensify party activities in the area. The party also intervened in the Ministry of Labour's third party role of conciliation, mediation and arbitration. Workers at Lauderdale Tea Estate for example were to 'seek the advice of their local party leaders if they had problems with the employer'. Why workers had to consult party leaders on labour issues when the Mulanje District Labour Office was less than one kilometre away is evidence of this. According to the district labour officer in Thyolo, MCP's intervention in labour disputes created conflict between the state machinery entrusted with labour relations responsibilities and the party.

The domestication of unions

The hostility between the state and unions hindered the operation of trade unions throughout the one-party period. In 1964, the Ministry of Labour cut to 5 the 19 trade unions formed before independence (Ministry of Labour, 1969:63). Civil service unions were banned and the TUM was renamed the Teachers Association. The MCP dictated 'what tune to sing and how to

dance'.⁹ Although it was the first registered trade union in 1949, the Transport and General Workers' Union (TGWU) remained insignificant throughout the one-party period.¹⁰ Because political leaders knew the potential threat of unions to political stability from pre-independence nationalist struggles, they were keen to weaken trade union power.¹¹ State control of unions led to a slow unionisation during the one-party period. By 1990, union density was 12 per cent (Manda 1994:35).

Speeches by trade union leaders, employers and the Minister of Labour during the opening and closing ceremonies of trade union training courses or workshops reveal the extent of the domestication of the labour movement. For instance, TUCM general secretary, Kelly Zidana, told the nation on the 1966 May Day celebrations that responsible unions should assist the planning of the country's economic development. He warned 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 1966:7). At a closing ceremony of the Trade Unions' Seminar at Chancellor College in 1970, TUCM chairman Justin Liabunya, reminded union leaders that their 'primary aim was to find out how they could help the President Ngwazi Dr Kamuzu Banda, 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 also asked them to respect employers so that they 'could help the Ngwazi develop the country economically' (*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).

The need to do things in a Malawian way was also emphasised by the Minister of Labour, when he briefed a group of migrant workers before they left for South Africa in 1972. 'Don't copy the bad behaviour of your friends from neighbouring countries, instead obey your employers' orders and work hard' (*Daily Times*, 17 July 1972:3). He also warned that it was dangerous for trade union leaders to emulate foreign union ideologies and policies that were not in line 'with the tradition and aspiration of our leaders and governments' (*Daily Times*, 7 August 1991:1).

President Banda wanted absolute loyalty, obedience and discipline in the civil service. At a public rally in Zomba in 1970, he warned civil servants against subversive activities and that 'once caught practising anti-government activities, they would be punished more than the ordinary people' (*Daily Times*, 31 August 1970:1). Anti-government and subversive activities in the context of workers in the civil service need to be understood in relation to

demands for wage increases as well as improved conditions of work. As far as political state elite was concerned, any attempt to initiate changes from below was a sign of lack of loyalty, obedience and discipline and a sufficient case for detention without trial.

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 in the country to be vigilant. He warned that whether a civil servant, a secondary school, technical college or university teacher, anyone involved in subversive activities had to be reported to party authorities so that they could 'dealt with him/her since the country needed political stability' (*Daily Times*, 28 May 1974:1). Banda dismissed his own Secretary to the President and Cabinet 'for not being loyal and honest in carrying his duties' and further warned that the 'Government will not tolerate any civil servant with similar behaviour and attitude' (*Daily Times*, 2 December 1991:1).

As a result of the interventionist role of the MCP in industrial relations, political exhortation against all forms of employee subversion and the imposition of strict adherence to party ideology and discipline, the state managed to create a docile labour movement.

The first 13 years of the one-party period experienced 156 strikes, an average of 12 per annum. Between 1980 and 1988, the economy deteriorated as a result of a number of economic and non-economic shocks. It was during this period when the minimum wage was lowest and workers' purchasing power had declined by 42 per cent (GoM 1993:57). Yet strikes fell from 4 in 1980 to nil in 1988. The last 13 years of the one-party state saw a tremendous decline of strike activity from 156 strikes to 26. Government acknowledgement that 1988 was the peak of the 'below poverty line' wage levels (GoM 1993:57) suggests that workers' wage grievances might have piled up. Why were there fewer strikes during the last 13 years when workers' wages were so low? For Manda,¹² with Dr Banda's Press Holding reaching every inch of economic activity, it would be unthinkable for one to contemplate going on strike. According to Chitwanga¹³ 'practical experience taught workers the hard realities of the time; we saw people being murdered, tortured, detained without trial, and banished into exile for expressing different views on the economy'. And for Chiwone,¹⁴ 'to go on strike was tantamount to signing one's death warrant'. '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 agitate for improvement in the legal regime for industrial relations' (Ngo'ngo'la 1994:2).

Another important tool for the control of labour during the Banda regime was the legal framework, which undermined freedom of association, collec-

tive bargaining and the right to strike. The Trade Union Act 1958 restricted freedom of association by enhancing the state's power to control the formation, registration and financial management of unions. The Registrar of Trade Unions could refuse or cancel registration and determine international financial assistance or affiliation. The prevalence of a unilateral system of wage and salary determination and conditions of employment in public and private sector organisations undermined collective bargaining. The absence of trade unions in most sectors including the civil service, the presidential intervention in wage determination, wage freezes and the 1969 low wages and salaries policy created additional limitations to collective bargaining. Reliance on Wages Advisory Councils (WACs) and Wages Advisory Board (WAB), which rarely met (Kantsemo 1995:13), and the absence of collective bargaining provision in the Trade Union Act 1958, further delayed the development of collective bargaining and therefore worker participation in matters affecting their terms and conditions of employment. Attempts by workers to punish the employer through the strike were severely curtailed by the Trade Disputes (Arbitration and Settlement) Act 1952, which prohibited strikes in essential services and remained silent in non-essential services. The restrictive political, legal and administrative environment made it difficult for workers to mobilise any strikes to defend their economic interests. An analysis of *Daily Times* from 1966 to 1991 demonstrates that there were only 3 reported strikes during this period, though the paper did report up to 16 strikes for South Africa, Zimbabwe, Britain, Australia, America and other countries (Dzimbiri 2002:115). On the other hand, 54 organisations that responded to a questionnaire on their experience of strikes between 1966 and 1991 reported 4 strikes (ibid:114). Official statistics from both the ILO Yearbook of Labour Statistics and the Ministry of Labour have shown that there were 182 strikes during 1966-91 (ibid:113). Most of these strikes were less than a day, and were over workloads and human relations problems with supervisors on tea estates in Mulanje and Thyolo. For the Ministry of Labour, these strikes 'were minor and unofficial' (Manda 1994:47). In retrospect, these would constitute what McCracken (1988:280) described as 'the most trivial forms of independent worker action'. Thus, the need for political stability and economic development necessitated the need to control labour radicalism. The consequence of this was to produce an institutional, legal and political environment that created a docile labour movement, which could not use the strike weapon to defend its economic interests during the one-party period.

Democratic transition and labour relations

The one-party repression of human rights created internal and external pressure for change to a multiparty democratic state. Detention without trial, repression of basic freedoms, politically motivated murder of 'dissidents', forced party cards sales, forced attendance of MCP meetings, forced gifts to the head of state and the punitive role of youth league wing of the party in the rural and urban areas, caused disgruntlement with the Banda regime (Dzimhiri 1998:90). It was however dangerous to talk openly about political change until the Catholic Bishops' letter of 8 March 1992 attacked the social, political, cultural and economic decay, the abuse of human rights and deep inequalities. On 6 April 1992, Chakufwa Chihana, then Southern African Trade Union Co-ordination Council's Secretary General, was arrested for denouncing the MCP as a 'party of death and darkness and unreformable' (ibid:97). His 1992 arrest and trial for sedition and subsequent two-year imprisonment for advocating democratic change provoked further discontent against the Banda regime. Donors withheld non-humanitarian aid in order to secure 'tangible and irreversible evidence of transformation' in basic human rights (GoM 1993:2). Pressures from Amnesty International, the World Bank, IMF, Organisation of African Unity, and Commonwealth Secretariat, British, and American governments made the state 'weak and vulnerable' (Migdal 1988:6). 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.

As part of the process, and the consequence of the transition, there was an increase in strike activity in Malawi. Starting at David Whitehead & Sons on 5 May 1992, strikes spread to other companies. As van Donge (1995:230) noted, 'the fabric of society seemed fundamentally shaken by riots resulting from industrial unrest during which there was widespread looting of shops in Blantyre and Lilongwe'. Public and private sector organisations took turns in strike activity during the following months. In 1993, the biggest single employer of over 120,000, the civil service, experienced two big strikes that paralysed the country's health, education, transport and other services. Different sections of the civil service such as teachers, nurses, junior doctors, custom officers, and clerical officers went on strike at different times. Between 1992 and 1999, the *Daily Times* reported of 90 strikes (Dzimhiri 2002:131). Fifty-four organisations that reported only four 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 in-

cluding many in the civil service, shows that there were 300 strikes involving 270,000 workers and 800,000 days lost (ibid:127).

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. Some challenged Government policy on privatisation and maize prices and refused to meet middle managers and demanded to meet the State President Bakili Muluzi.

The 1992-93 wave of strikes revealed the extent to which a communication gap existed between employers and employees. Employers found it difficult to call for the attention of angry workers who had stopped working, asking the employer to meet their demands before returning to work. As one commentator noted, 'institutions were caught sleeping having enjoyed so much unaccountability' (interview). This could be explained in terms of the weakness of the labour movement precipitated by state control of trade unions and the perpetuation of statutory means of wage determination, a top-down culture and a hostile political environment. 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). The paralysis of the one-party industrial relations institutions and law was obvious when both employers and the state failed to handle workers' grievances forcing President Banda, cabinet ministers and party officials to plead with employers and employees to resolve grievances amicably (*Malawi News*, 9-14 May 1992:1). At the bureaucratic level, senior state officials from the OPC, 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 in August 1993 to express Government's concern over the 1992-1993-strike activity. They appealed to companies and organisations to form Joint Consultative Committees (JCCs) 'to facilitate amicable resolve of employees' grievances' (*Daily Times*, 9 August 1993:1). Not only did they advise employers to be transparent to workers, but also advised workers to be aware that unrealistic wage demands would 'wreck the fragile Malawi economy' (ibid:1).

These strikes also forced the state to announce a policy on collective bargaining and trade unions (*Daily Times*, 4 October 1993:10). The Ministry promised to encourage not only the right to organise and engage in collective

bargaining but also to affiliate to international organisations. It promised to support employers and workers' education programme and the training of union leaders and negotiators; to encourage freedom of association and non-victimisation in employment and to provide the necessary legal framework and administrative arrangement for freedom of association and collective bargaining (ibid:11)

Renewal of trade unionism

The renewal of the labour movement stemmed from the wider impact of the 1992-93-strike wave that revealed that Malawi's industrial relations system could not manage a more demanding labour force. Against the background of positive state policy in industrial relations, a process of worker self-organisation and renewal was underway. On 27 June 1995 the TUCM registered as the national federation under the Malawi Congress of Trade Union (MCTU) with a new executive committee signifying a complete change of leadership at branch, regional and national level. By 1994, the civil service had three unions: the CSTU, the Customs Workers Union and the Teachers Union of Malawi (TUM). With the state taking the leading role in trade union development, the number of workers who joined unions increased from 56,000 in 1990 to 63,270 in 1994, representing an increase of 13 per cent and a density of 36 per cent (Manda 1994:48). The growing interest among employees to join trade unions was shown by the overall density of 82 per cent for TUM, 75 per cent for the Railway Workers Union, 50 per cent for the Building Construction, Civil Engineering Allied Workers Union (BCCEAWU) and 40 per cent for the Transport and General Workers Union (TGWU). As the process of union formation, resuscitation and restructuring continued, registered unions increased from 12 to 21 during 1994-2000 (Dzimhiri, 2002:238). The additional unions include: the Malawi Congress of Trade Unions; Civil Service Trade Union; Customs Workers Union (CWU); National Union of Commercial and General Workers, which changed to Commercial and Industrial Workers Union (CIWU); Sugar Plantation and Allied Workers Union (SPAWU); Electronic Media Workers Union (EMWU); Carlsberg and Southern Bottlers Trade Union (CSBTU) and the Tobacco Tenants and Allied Workers Union (TTAWU). The Textile Garments Workers Union had changed to Textile, Garments Leather and Security Services Union (TGLSWU) as it widened its area of representation. Although some unions such as the RWU, BCCEAWU, PAWU, LGEU and the TGWU had existed for three decades, they were re-registered in 1995. None of the above unions was affiliated to a political party although individual leaders and members had their own party preference.

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 interest of defence, public safety, public order or the national economy'.

The 1994 constitution had provided a different constitutional order. It provided that the constitution was the primary law of the country and was 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.

One of the biggest steps in Malawi's industrial relations history was 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 provides for enterprise and sectoral level bargaining as long as a 20 per cent membership threshold has been attained (s.25). Where the 20 per cent 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 (s.31 (4)). Sections 42-54 of the LRA also provide for the settlement of disputes and the right to strike. Section 43 stipulates the need for either party to report any dispute to the Secretary for Labour (PS) to arrange for conciliation after voluntary procedures have been exhausted. The 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, thereby enabling workers to gain more rights. Individual employment rights were provided in the Employment Act 2000 whose 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'.

Labour control during the multiparty period

The growth of trade unions and legal reforms are indicators of a positive state attitude towards freedom of association, collective bargaining and the right to strike. This contrasts sharply with the open hostility towards unions and labour rights during the one-party period. However, union leaders, employees and analysts view the multiparty state as not being different in terms of its attitude to trade unions. BCCEAWU secretary general noted that:

The current Government does allow the formation and operation of unions. However as workers we are interested in results not window dressing. The current state simply gives lip service but in practice the freedom that is professed is withdrawn through interference. The past regime was oppressive and this one is not but on results they are the same. You write examinations to get results and without results examinations are useless.¹⁵

Thus, unionists are not interested in the means but the end. 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

The divide-and-rule tactics relate to alleged state sponsorship of splinter unions to create chaos in the labour movement. While the multiparty state sought to promote unionism, in practice it encourages rebellions within unions.¹⁶ For example the MCTU breakaway Congress of Malawi Trade Unions (COMATU) created in 2000, as a second labour federation is perceived as state machination to strangle the labour movement. In March 2000 four trade unions including the CSTU broke away from the MCTU following differences between the CSTU- president Thomas Banda and MCTU leadership¹⁷ more specifically over overdue union dues. Other unionists questioned the

wisdom of the state in registering COMATU when section 11(3c) of the LRA stipulates that the Registrar would register a union when the name 'does not so closely resemble that of another trade union or employer's organisation so as to mislead or cause confusion'. The closeness between Malawi Congress of Trade Unions (MCTU) and Congress of Malawi Trade Unions (COMATU) suggests that there might be confusion of identity. According to MCTU secretary general, the Government perceived the MCTU as anti-government, and COMATU's creation was aimed at weakening the MCTU. There is a strong perception among unionists that the state is working towards creating splinter unions in the 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 sectorization agreement demonstrates how far the state would want to weaken unions in industries.¹⁸

There is a strong view that the multiparty state is good at 'nipping leaders at the bud' and that the poverty and ignorance of the workers in Malawi make them vulnerable to all forms of manipulation. It is widely held 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 (*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 to K2000 in 1998. The car loan was approved when he became president of the union while the house was allocated to him when unions made a threat of a mass action against government policy on maize and petrol prices.¹⁹

The fact that CSTU president's move from a high density to a mansion in Blantyre's low-density suburb 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).

The sudden change of mind of the MCTU president on a threat of strike against the Government's 1995 maize price announcement was another example of state manipulation of union leaders. Closer to the end of the period of the ultimatum, the union president changed his mind and announced that MCTU was withdrawing its ultimatum because 'we did not know what we were doing' (*Nation*, 19 July 1995:3). The MCTU's failure to defend

staple food prices to win workers' confidence suggests that the opportunity cost was attractive.

The state promoted and sent to foreign services, or transferred other union leaders to other parts of the country to weaken union leadership. During the 1997 longest 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 (Manda 2000:69). At the same time the state arrested and charged workers for participating in the strike or for being union leaders in areas where vandalism occurred. For example CSTU vice president was charged on allegations of smashing the Minister's windscreen in the Northern region. CSTU District Chairman for Zomba was charged with malicious damage because strikers damaged three ministerial cars (ibid:69).

Hide-and-seek tactics

The 'hide and seek' tactics are strategies the state use to acknowledge the presence of unions rights at one time and withdraw them at another. 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, as an employer, the state has not been exemplary in recognising two public service unions- CSTU and TUM. Resuscitated and registered in 1995, TUM has a density of 82 per cent but has since not been recognised. Since handing over its draft recognition agreement to the Ministry of Education in 1995, 'the Ministry has been looking at it'.²⁰ Every time Union leaders reminded the Ministry of Education to sign the document, the Ministry argued that it was not necessary since the state was aware of the existence of unions in Malawi. The hide-and-seek tactic is clear here. If the LRA makes the signing of the recognition agreement, a prerequisite for negotiation, how could the Ministry ignore this proviso? Although the Ministry has not come out to frustrate the TUM, there is danger that the Ministry could challenge the union on grounds that it had not recognised it.

However, the state has not signed CSTU recognition agreement because CSTU 'had fallen far behind the required 20 per cent recognition threshold'.²¹ In 1999, CSTU had a 4.4 per cent density and 10 per cent in 2000. As Anders (2002:47) observes even by 2002, 'it was said that CSTU had no more than 800 members' out of 120,000 civil servants. What is not clear is why TUM's draft remains unsigned when it had achieved up to 82 per cent union density. Although the state has not formally recognised the two unions, it does negotiate with them. It is interesting that 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-seek' tactics. Why the CSTU has not been able to secure up to 20 per cent membership for recognition purposes is also of interest. Out of a potential membership of over 120,000 employees, why should there be only 5,000 registered members? Could the hide-and-seek, divide-and-rule tactics provide clues to the stunted growth in membership in a huge civil service?

Another indicator of 'hide-and-seek' tactics is the manner in which the state viewed union's action. As MCTU secretary general argued, the state viewed unionists as agents of opposition politicians bent on inciting the masses. The 1998 mass rally on maize and petrol prices mentioned earlier are examples of actions the state had treated unionists as opposition agents. For example, when the president of the MCTU visited the state president in 1998, he pointed that the major problems facing unions in Malawi was the strong anti-union elements within the Government and employers. The state president warned at a political rally in Kasungu on 27 January 1998, that the Government would deal with any trade union that incited people to rise against it (Manda 2000:64).

Delays in the implementation of what unions and the state had agreed upon are aspects of hide-and-seek. One example is the 1995 salary recommendation that the Government failed to implement through delay tactics. There were a series of strikes in 1995 that forced the state to appoint a commission of inquiry on salaries and conditions of service in the civil service. 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 to 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 (*Daily Times*, 9 August 1995:1). 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 the presence of 'ghost' workers, the new wage and salary structure remained unimplemented for over two years (*Daily Times*, 5 May 1997:3).

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 'this government is good at listening... you can sit talking for hours but when it comes to implementation, nothing comes out'.²² As a result workers end up hardening their hearts and resort to illegal strikes because they are aware that the Government would do anything in its power to frustrate unions.

The state has the tendency of changing negotiating team members most of the time it is negotiating with the CSTU (Galafa 1997:28). For instance, 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). Union leaders saw the state as employing delay tactics in labour relations. One example was when cabinet ministers failed to turn up to a Government-arranged meeting where union leaders were to meet cabinet ministers to discuss workers' concern on minimum wages and the price of maize in 1998. Thus, 'the state likes preaching freedom without giving it to the workers'.²³

Another mechanism the state uses to deny workers the right to strike is the police and the law. Every time workers decided to strike, the state or employers mobilise the police to tear-gas strikers. Like in other strikes, the police were present to disrupt the nurses' strike at Queen Elizabeth Hospital, and the 1998 MCTU mass strike (Dzimbiri 2002:157). The Director of Public Prosecution had warned of the criminality of the strike. In an attempt to use the judiciary to make an injunction restraining the police from blocking MCTU, the High Court rejected MCTU's application 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 provisions of the LRA to label 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. The consequence of this was the poor turn up at mass rallies, failed strikes, and loss of confidence by workers on their union leaders and strikes in general. As one nurse argued, 'apart from wasted time and causing suffering to patients, strikes do not pay'.²⁴ State interference through the police and the letter of the law makes the availability of freedom of association 'mere window dressing'. Ufulu ulipo koma mphamvu zatengedwa' (there is freedom but our influence is eroded).²⁵

Unilateral decision-making is also another aspect aimed at weakening union power. DHRMD, which is responsible for human resources management policy in the civil service, makes decisions unilaterally. 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. The effect of state behaviour is also felt in the private sector industrial relations.

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. As CIWU vice president stressed, 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'.²⁶ The Organising Secretary of the Hotel, Food Processing and Catering Workers Union's experience supports the victimisation of unionists by some employers: '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'.²⁷ 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 since the advent of democracy in Malawi, there was 'increasing resistance from employers' (*Daily Times*, 11 February 1998:2). Similarly, a Human Rights and Employment study commissioned by the Ministry of Labour to assess the effectiveness of the freedom of association and collective bargaining supports the anti-union behaviour in public and private sector employers (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:10). Anti-union attitudes were viewed as impacting union

growth negatively. For instance, out of the 11 unions the Ministry of Labour's study analysed, 6 were declining sharply (*ibid*).

State officials view the declining union membership as a product of many factors such as loss of faith in unionism by members due to failed strikes, fear of paying union fees, poor leadership, financial constraints, travel problems to meet members, and the alliances some union leaders made with opposition politicians. On the other hand, unionists interviewed view the decline in union membership as a result of the state's 'hide- and- seek' and 'divide- and- rule tactics'.

Thus, in the process of state transformation and legal reforms, there are some aspects of the 'old' regime that are retained to the advantage of the new order. For example, the independent state of Malawi retained most of the colonial industrial relations provisions in the Trade Union Act 1958, Trade Disputes (Arbitration and Settlement) Act 1952 and the Employment Act 1964. Though nationalist elite saw these provisions as repressive during their struggle for independence, they nonetheless retained them. The need for political stability and economic development necessitated a strong state through a strong legal apparatus and a political party. On the other hand, the reforms in the legal framework for industrial relations and other facets of state machinery have not wiped out completely all aspects of the one-party state machinery. The role of the Ministry of Labour to determine registration, supervise union accounts, and some restrictions and procedural requirement in strikes in essential services, dispute procedures, which in principle amounts to 'control' of labour rights, still persist. The unilateral determination of terms and conditions of employment and wages in the mainstream public service through the DHRMD, the OPC and the MPSR continues, as the latter has not been revamped to reflect the current industrial relations framework. While open control of the labour movement through political intimidation and administratively through the Ministry of Labour during the one-party period ended with the democratisation process, the same has resurfaced through 'divide-and rule' and 'hide-and-seek' tactics that the state employs.

Conclusion: Dilemmas and the role of the international donor community

Political repression that existed for three decades in order to achieve economic development and political stability soon after independence created a rather docile labour movement, which could not wage protracted strikes to defend its economist interests during 1964–1991. The transition to a multi-party state in the early 1990s led to an increase in strike activity, the growth in the number of unions, unionists and the reform of the legal framework to

enhance individual and collective labour rights. The 1994 constitution, and the Labour Relations Act 1996, and the Employment Act 2000 provided a legal framework for the realization of worker rights. The number of trade unions increased from 5 in 1992 to 21 by 2000. Despite a positive formal attitude towards freedom of association and other labour rights, the state is 'diplomatically' hostile through 'divide-and-rule' and 'hide-and-seek' tactics. The consequence is a wide gap between what is stipulated in the relevant labour laws and practice on the ground. How do we explain these continuities and discontinuities in state-labour relations in Malawi over the past years? Two points conclude this paper.

The first concerns the tensions between human rights and economic development. Both in the one-party and the multiparty state, like other developing countries in Africa, economic development has been a major priority in Malawi. Because of the critical resource and material shortage in most poor nations, the state has been in the forefront of formulating and implementing economic development policies. Through its efforts in collaboration with the private sector and non-governmental organisations, the Malawi state has been concerned with increased productivity in order to enhance the welfare and standards of living of the rural people, alleviate poverty, reduce infant mortality and other ills of society (GoM 1987:40). The need to provide workers – who constitute 13 per cent of the economically active – with a decent wage and conditions of employment in a context where the majority of the people live below the poverty line, is one of the most difficult challenges of the state in Malawi. Should it widen workers' rights to higher and better wages at the cost of scaring away private investors who would help the state in developing the country for the benefit of the majority? Should workers be given unrestricted freedom of association, collective bargaining and the right to strike in defence of their economic interests when the state cannot afford to meet such demands?

The IMF and World Bank have over the years insisted on reduction in government expenditure, the need to privatise some public service and corporations as part of economic reforms. These demands have in most cases run counter to workers demands for job security, higher wages and better working conditions. Under these circumstances, it would not be surprising to observe that while the national constitution and labour laws have enshrined freedom of association, collective bargaining and the right to strike, the multiparty state restricts them through 'hide-and-seek' and 'divide-and-rule' tactics.

The one-party state was notorious for the violation of human rights in general and workers' rights in particular in order to achieve political stability and economic development. The consequence was the total control of trade

unions and the suppression of strikes. On the other hand, the multiparty state has witnessed open defiance from unorganised workers who have continued to mount both political and economic strikes in recent years. The fact that the multiparty state manipulates union leaders, creates splinter unions, delays recognition of some unions, uses the police and the law to control strikes, suggests its dilemma in dealing with questions of human rights and economic development at the same time. Thus, tensions between the need to meet demands for human rights and economic development – in which the state takes a major role – will remain one of the major challenges facing industrial relations in Malawi.

The second relates to the significance of the international donor community in influencing the behaviour of the state in Malawi and other developing countries in Africa. 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 economist 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 decision-making (Ihonvbere 2000: 9). 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 dissident, repression of freedom of speech and association, which Amnesty International documented, 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 and Western capitalist nations saw Malawi as a good ally. As Lwanda (1993:76) noted, Banda's moderate policies of modest economic goals, slow Africanisation, stability, unity, loyalty, obedience and discipline were viewed as likely to provide a climate of stability attractive to Western investment. Like other authoritarian Africa states, which received international financial support despite human rights violations (Ihonvbere 2000:10), 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. The question that follows is how far externally- induced changes become institutionalised and 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), lack of tolerance for dissenting views, and suppression of labour rights. This is symptomatic of deep-rooted problems, which would continue to confront democracy, human rights and therefore industrial relations in Africa.

Newspaper headlines confirm these symptoms: 'Democracy is failing in Sub-Saharan Africa' (*Financial Times*, 5 March 2002); 'Zambia's leader in crackdown on dissent' (ibid, 4 January 2002); 'Protests over Madagascar's poll' (ibid, 30 January 2002); 'Madagascar dispute deepens as Ratsiraka rejects vote recount' (ibid, 30 April 2002); 'South African unions condemn Zimbabwe violence' (ibid, 5 March 2002); 'Only closest allies at Mugabe's inauguration' (ibid, 18 March 2002); 'Violence still rising since poll in Zimbabwe' (ibid, 30 April 2002). For Malawi, headlines include 'Catholics denounce UDF attack' (*Daily Times*, 29 October 2001); 'UDF draws up list of journalists to be beaten' (ibid, 1 November 2001); 'Young democrats implicated in intimidation' (ibid, 4 November 2001); 'World jurists protest removal of judges' (ibid, 30 November 2001).

While international structures and institutions of democracy and human rights can be imported from the Western advanced industrial nations to poor developing states like Malawi, is it possible to do the same with values and norms of democracy? Why should the state interfere with freedom of association, collective bargaining and the right to strike in Malawi, when the national constitution and the labour laws reflect international democratic principles and ILO norms? As analysts have noted, externally imposed state transformations through aid have the potential danger of 'propping up theoretically multiparty regimes' (*Financial Times*, 5 March 2002). Thus, until, and only, when an internally developed structure and norms which might have sufficient anchorage within societal norms and traditions are created in Malawi, there will still be significant degrees of discrepancy between what is provided and what actually happens on the ground. As it might be difficult to develop indigenous structures and value systems because of Malawi's incorporation into the capitalist global political economy since the colonial period, Malawi's industrial relations will continue to be characterised by discrepancies. The discrepancy between what is provided in the labour laws and national constitution and what happens in practice. This is similar to the dilemmas between human rights and economic development noted above.

Notes

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2. Quoted from Liatto (1989:243).
3. Phiri, D.B.V. interview, chancellor College, 12 October, 2000.
4. Interview, Chitakale Tea Estate, Mulanje, 15 November, 2000.
5. Interview, Teachers' Union Secretariat, Lilongwe, 22 November, 2000.
6. Mhango, K. Interview, Blantyre, 12 October, 2000.
7. Interview, Blantyre, 12 October, 2000.
8. Kaipa, D. and Neston, P. Interview, Blantyre 12 October 2000.
9. Kamphonje, Lilongwe, 22 November 2000.
10. Vice President, Transport and General Workers Union, Interview, Blantyre 12 October 2000.
11. Antonio, F. General Secretary, Malawi Congress of Trade Unions, Interview, Lilongwe, 22 November 2000.
12. Interview, Blantyre, 6 December 2000.
13. Interview, Chitakale Tea Estate, Mulanje 20 January 2001.
14. Interview, Mpemba, 13 October 2000.
15. Interview, Blantyre, 13 October 2000.
16. Nyirenda, A. Interview, Blantyre 13 October 2000.
17. Anders, G. (2002:47) refers to Antonio as MCTU president. Ken Williams Mhango was then President and Antonio was Secretary General.
18. MCTU Secretary General, interview, 22 November, 2000.
19. Manda, interview, Blantyre, 13 October 2000.
20. TUM Secretary, interview, Lilongwe. 22 November 2000.
21. Chunga, A. Interview, Lilongwe, 22 November 2000.
22. Interview, Lilongwe, 22 November 2000.
23. Nyirenda, A. Interview, Blantyre, 13 October 2000.
24. Kapusa, C. Interview, Blantyre, 13 October 2000.
25. Ibid.
26. Interview, Blantyre 14 October 2000.
27. Ibid.

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