

SOCIAL PROTECTION: THE STATE REGULATION OF THE EMPLOYMENT RELATIONSHIP IN MALAWI - ACHIEVEMENTS AND CHALLENGES.

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Abstract

Achieving full productive employment and decent work for all is one of the identified key strategies to eradicate extreme poverty and hunger in the World. A country workforce needs social protection in order to benefit from productive employment and realize decent work. Social protection in Malawi, in respect of labour and employment, entails the government's role to regulate the workplace employment relationships in which the State, through Ministry of Labour, has to regulate legal framework within which employers and employees interact; to make statutory provisions relating to minimum conditions of employment and to provide structures for the conciliation, mediation and arbitration services. This role of government regulation has been undertaken with difficulties and sometimes without difficulties in Malawi since independence. This paper explores some achievements and challenges that the State has experienced in the regulation of the employment relationship since independence in 1964. Five specific objectives were formulated to help achieve this purpose which are: to define the scope of social protection by the State within the context of labour and employment relationship; to outline the roles played by the State in regulating the workplace employment relationship; to discuss mechanisms used by the State to fulfill each role; to highlight the State's achievements and failures with respect to its role performance in social protection within labour and employment and finally to identify challenges and draw recommendations that can help address some faced challenges by the State in its effort to effectively provide the required social protection. The paper used desk review and document analysis method which involved an extensive review of the available relevant literature. The State has achieved a meaningful progress as evidenced by the adequate and relevant enacted labour legislative Acts since 1964 to date as one clear indication of the State's responsiveness to the protection needs of its employment workplace population. The paper has however highlighted non-compliance to labour legislative laws as an overall challenge that has greatly compromised the protection of workplace parties. Finally, several suggested recommendations for the Government action have been drawn.

Key words are: Social protection, Employment relationship, Labour legislation, Labour force / Workforce, Social dialogue, Labour policy, Vulnerability and Decent work.

Introductory Background Information

Malawi is one of the poorest countries in the World today, scoring very low on the United Nations (UN) human development index and on average incomes (Torres, 2000). According to Torres, the overall low economic growth since 1977 with a simultaneous high growth rate of the population and of the labour force are some of the reasons for the high poverty levels. Out of the 13 million plus people in Malawi, 52.4 % of them are poor¹. Deep and severe poverty is more pronounced amongst the vulnerable groups of individuals in Malawi which comprise of persons with disabilities; under-five children; orphans; lactating and pregnant mothers; the unemployed and underemployed individuals; the land-constrained individuals in rural areas; and individuals in households affected by disasters, households headed by orphaned children as well as the elderly and single-parent headed households (especially the female headed households) (MGDS, 2006).

It is within the view of the International Labour Organisation (ILO) that the main route out of poverty is work. However, it is not just work that will eradicate poverty. It must be full productive employment and decent work² that is well supported and protected by the State (Banda, 2009). This is why one of ILO's current priorities is to promote opportunities for women and men to obtain decent and productive work through conditions of freedom, equity, security and human dignity, among others while at work. The realization of all these favourable work conditions requires social protection by the State. Hence the need for the State to commit itself towards the implementation and promotion of social protection policies as recommended under the Millennium Development Goals (MDGs) and as prioritized by ILO in order to achieve meaningful progress towards the realization of full productive employment and decent work for the country's population.

Malawi, like any other country worldwide, has been striving to formulate and implement different social protection policies and programmes aimed at eradicating or reducing poverty since its independence in 1964 to date. This has been the case despite the fact that Malawi still registers one of the poorest countries. This is not strange but rather normal because every country faces various challenges besides its achievements in respect of each and every developmental arena that the country may be undertaking. Thus the ILO through its recent studies³ found out that different countries experience and will be experiencing different challenges in their attempt to secure decent work for their women and men through implementation of their various set strategies. It is therefore important to investigate the country's achievements and challenges regarding its performance over time with respect to each of its deliverables to its populace in order to see where, how and why the country is succeeding or failing so that it can build on the previous experience to improve on its future undertakings. This paper therefore explores some achievements and challenges that the State, through the Ministry of Labour, has experienced in the regulation of the employment relationship⁴ since independence in 1964. The paper focuses on social protection and on the formulation, implementation and/or enforcement of the minimum employment standards in Malawi. Specifically, the paper defines the scope of social protection by the State within the context of employment relationship; outlines the roles played by the State in regulating the workplace employment relationship; discusses mechanisms used by the State to fulfill each role; highlights the State's achievements and failures regarding its role performance in social protection within labour and employment; and finally identifies challenges and draws some broad policy recommendations from which the formulation and effective implementation of the regulation of employment relationship could be made.

Social Protection and Employment Relationship

Social Protection is defined by the United Nations⁵ as a programme concerned with the preventing, managing, and overcoming situations that adversely affect people's well being. According to (OECD, 2009)⁶, Social Protection refers to broad range of policies and programs designed to reduce poverty and vulnerability by promoting efficient labour markets, diminishing people's exposure to risks, and enhancing their capacity to manage economic and social risks, such as unemployment, exclusion, sickness, disability and old age. Whereas in terms of (ILO, 1999), social protection refers to a series of interventions and actions which upon implementation can enhance the capacity of poor and vulnerable people to escape from poverty and enable them to better manage risks and shocks. From these three perspectives, it is clear that social protection is a vulnerable targeted programme.

Social protection is particularly important because it ensures that the vulnerable groups on the peripheral of economic activities are well protected (MGDS I, 2006). Vulnerability can be defined as the likelihood of being harmed by unforeseen events, or susceptibility to exogenous shocks. The most vulnerable groups broadly include persons with disabilities; under-five children; orphans; lactating and pregnant mothers; the unemployed and underemployed individuals; the land-constrained individuals in rural areas; and individuals in households affected by disasters, households headed by orphaned children as well as the elderly and single-parent headed households (especially the female headed households). These are the groups that need the State's social protection.

Social protection is therefore relevant to countries at all levels of development. For instance, Dervis & Evans (2012) observed that "the stabilizing effects of social protection policies can help to minimize the negative impact of recessions in both developed and developing countries, maintain purchasing power and prevent unemployment from being a catastrophic experience". The two further observed that social protection spending can act as a stimulus mechanism as well as acting as a means of rebalancing the economies of emerging markets by boosting domestic demand. In the developing World, Dervis & Evans argued that "creating a social protection floor can reduce poverty amongst vulnerable people at the same time when structural transformations get incentivized". Considering this broad importance of social protection, the World Economic Forum (WEF) in 2012 noted that the establishment of social protection floor is essential in the developing World to reduce poverty and create the conditions for development. Through the established social protection floor, cash transfers to those on low incomes can be designed to be relatively inexpensive; can relieve poverty; boost domestic demand and contribute to the rebalancing of the global economy. And by creating a sense of confidence about income security, citizens can be equipped to withstand what might otherwise be intolerably disruptive processes of structural change. This is enough justification on why most Governments, Worldwide, have been featuring the issue of social protection as a priority area in their national agenda for development.

Having defined the concept of social protection and explained its importance, the next step is to define the scope of social protection by the State within the parameters of the workplace employment relationship.

Both ILO and OECD agreed that social protection measures should include social insurance, social transfers and minimum labour standards. This is a starting point to understand social protection in context of employment relations. Taking two measures of social insurance and minimum labour standards, in context of employment, it can be interpreted that all those employed workers who are either not benefiting from social insurance schemes or subjected to the required minimum labour standards are not socially protected and thus vulnerable employees who need protection by the State or otherwise. And thus, the opposite of such interpretation must also be true in itself. To sum it all, we can say that social protection and indeed vulnerability protection in the context of labour and

employment is broadly defined as to encompass all those disadvantaged workplace workers, that is, the employees who are part of the workforce and even some employers, both of whom are parties to the workplace employment relationship.

In respect of the above, a discussion on the theme of social protection and employment relationship in Malawi, must therefore concern the way the State has, since independence in 1964, been regulating the employment relationship in terms of labour policy formulation and legislation; enforcement / implementation with respect to workers compensation and social insurance coverage such as pension securities or workers health insurance; workers protection from the minimum employment labour standards including workers' treatment based on worker's HIV & AIDs status as well as protection of industrial workers and employers in times of industrial disputes such as strikes or lockouts including workers protection from job losses and cuts just to mention but a few.

The Malawian employees from the numerous informal employment sector workplaces across the country are the most vulnerable group that needs the State's protection utmost. Worse still, it is this informal employment sector that constitutes the greatest number of country's total workforce as compared to the formal employment sector (Durevall & Mussa, 2010). In order to understand and appreciate the need for social protection in respect of the employed and working vulnerables, it is necessary for this paper to include a brief presentation on the current employment statistics for Malawi, that is, the size and employment composition by formal and informal sectors.

Employment Statistics in Malawi

The estimated total number of employed people (workforce) in Malawi is 5,871,797 which represents 86 % of the total labour force currently estimated to be 6,827,671 (Durevall and Mussa, 2010). Durevall and Mussa (2010) found out that there are more employed women as compared to men; there are a total of about 442,000 employees working in the formal public and private sectors and that the rest 5,429,797 are employed working in the informal sector of which 2,430,000.00 are rated as the working poor people who are thus described as the vulnerable employees. A large share of the vulnerable employees comprises the women, and when combined with the large female employment within the total employed labour force, it is clear that most vulnerable employees working in the informal sector are the women. These are the employees who should mostly be targeted in the State's social protection programmes.

The State Regulation of the Employment Relationship in Malawi

As a principle of national policy, the Malawi Republican Constitution of 1994, under section 13 (1) provides that the State shall actively promote the welfare and development of the people of Malawi by progressively adopting and implementing policies and legislation aimed at achieving peaceful settlement of disputes, by adopting mechanisms by which differences are settled through negotiation, good offices, mediation, conciliation and arbitration. The Ministry of Labour is one of the institutions mandated to provide Alternative Dispute Resolution (ADR) services in labour disputes.

In strategic terms, the Ministry of Labour is a professional Ministry charged with the responsibility of ensuring that there is social justice, peace and skills development in the country as a prerequisite for economic growth and poverty reduction. Its vision statement is "decent work, high quality, harmonious and productive workforce" whereas its mission statement through which this vision can be realized is "the development of harmonious relations and skilled human resources in the labour market through the enhancement of decent work, social justice and peace as well as the

development of technical and vocational training” so as to ensure the required decent work, high quality, healthy and productive workforce in the country.

The Ministry’s mandates are stipulated in the Laws of Malawi, particularly in the labour legislative Acts. These legislative Acts contain a number of principle mandates to be undertaken by the Ministry which include: to effectively and judiciously administer (enforce) the provisions of these Acts without fear or favour; to promote and enforce sound, safe and effective workforce systems and practices appropriate to the requirements of the nation; to continuously conduct research on the needs and priorities of the industry and government with a view to adopting new administrative instruments in order to enhance enforcement and performance; to periodically review legislation so as to keep in line with current government policy on decentralization or delegation of authority necessary for effective work performance; and to ensure that the overall workforce performance of the industry continuously remains high.

Primarily, the State regulation of employment relationship in Malawi is done through the work of the Ministry of Labour as shown within the Ministry’s mandates above. Thus the Ministry’s roles are the main subjects for discussion in this paper. In specific terms, the State, through the Ministry of Labour, plays the following major roles:

1. Formulates legal framework and policies within which employers’ and employees’ interactions take place. This is done by enacting, through parliament, various labour legislative laws. For instance, Malawi as an independent State inherited a number of labour legislative Acts that were passed before 1964 some of which are repealed and replaced by some recent enacted labour legislation Acts after independence in 1964 and subsequently after the multiparty in 1994. Legal framework includes the State’s role of making statutory regulatory provisions such as the minimum wage rates and/or other subsidiary regulations such as workers compensation process regulations and industrial / labour disputes settlement process regulations, workplace health and safety regulations among others.
2. Enforces the compliance with enacted labour laws by all employers and employees as two industrial relations most key players. This enforcement role in Malawi is mainly done by the Ministry through its core functions of labour inspections and labour disputes settlement. Nevertheless, the enforcement can also be done by way of advocacy through social dialogue⁸ interactive meetings with social partners - the employers and employees as well as through various established and maintained tripartite labour advisory structures and councils as is provided for in the Labour Relations Act of 1996.
3. Provides labour disputes settlement services through conciliation, mediation and arbitration processes. The earlier two processes are mostly done by the Ministry of Labour (district labour offices) across the country whereas the latter process is mainly done by the Courts and Industrial Relations Court (IRC) in particular which was established by parliament enacted labour relations Act of 1996; and,
4. Finally, the State/Government plays another equally important role as a “Model employer”. In Malawi, like in any other developing countries, the State through the whole public service workforce is the biggest employer and thus influences the development/shaping of the country’s employment relationship (Dzimbiri, 2008).

In performing the above regulatory roles, the Malawi Government – Ministry of Labour has since independence in 1964 to date registered some achievements while at times faced with some difficulties or challenges that have been discussed in the next sections of this paper.

The State's Achievements and Failures in the Regulation of Employment Relationship

1. Formulation of Labour / Employment Legislation and Policies

Malawi joined International Labour Organisation (ILO) as a member state soon after her independence in 1964. The ILO is a specialized agency of the United Nations (UN) established in 1919 to seek the promotion of social justice and internationally recognized human and labour rights (UN, 2000). ILO, among other issues, formulates international policies and programmes to help improve working and living conditions. It also creates international labour standards to serve as guidelines for national authorities to adopt and put them into action (ILO, 2006). The international labour policies and standards are the recommendations, protocols and conventions which are usually adopted and ratified by several countries worldwide. These international labour policies and standards are social protection measures or instruments in respect of labour and employment. The fact that Malawi became the ILO's member state immediately after her independence demonstrates her first level commitment towards the assurance of social protection amongst her workplace parties in the employment relationship.

Malawi, as a result of becoming a member state of ILO, has since ratified a total of 29 ILO conventions as instruments to help regulate the employment relationship. Ratification of a convention means adoption of a convention by an ILO's member state thereby making a formal commitment to give effect to the provisions of such ILO's ratified conventions. Whereas, the term: "Convention" means a formal international binding agreement with legal effects. The implication for Malawi's ratification of such conventions is that provisions contained in such conventions can be applied as part of Malawian laws enforceable in the country. Table 1 shows Malawi's 27 ratified conventions that contain social protective provisions for the protection of the parties to the employment relationship.

Table 1: ILO Conventions Ratified by Malawi Government.

Name of Ratified Convention	Ratification year
Right of Association (Agriculture)	1965
Workmen's Compensation (Agriculture)	1965
Equality of Treatment (Accident Compensation)	1965
Minimum Wage - Fixing Machinery, 1928	1965
Minimum Wage Fixing Machinery (Agriculture), 1951	1965
Underground Work (Women)	1965
Penal Sanctions (Indigenous Workers)	1965
Labour Inspection	1965
Contracts of Employment (Indigenous Workers), 1939	1965
Contracts of Employment (Indigenous Workers), 1947	1965
Night Work (Women) (Revised)	1965
Migration for Employment (Revised)	1965
Right to Organise and Collective Bargaining	1965
Equal Remuneration	1965
Abolition of Penal Sanctions (Indigenous Workers)	1965
Indigenous and Tribal Populations	1965
Discrimination (Employment and Occupation)	1965
Recruiting of Indigenous Workers	1966

Labour Inspection (Agriculture)	1971
Tripartite Consultation (International Labour Standards)	1986
Nursing Personnel, Termination of Employment	1986
Forced Labour	1999
Freedom of Association	1999
Abolition of Forced Labour	1999
Minimum Employment Age	1999
Labour Administration	1999
Worst Forms of Child Labour Convention	1999

Source: Malawi Decent Work Country Programme book (M-DWCP 2011-2016), page 46.

Malawi has thus domesticated most of the provisions of the ratified conventions into our own enacted labour legislative Acts. For instance, relevant provisions from the Freedom of Association and Protection of the Right to Organise; the Right to Organise and Collective Bargaining; and the Tripartite Consultation (International Labour Standards) conventions have been domesticated in the Labour Relations Act, of 1996 which is a law 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. Similarly, relevant provisions from the Minimum Wage-Fixing Machinery; the Contracts of Employment (Indigenous Workers); the Discrimination (Employment and Occupation); and the Termination of Employment conventions have been domesticated in the Employment Act, of 2000 which is a law 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. Table 2 shows various Labour Legislative laws that have been developed and passed by Malawi Parliament as labour laws to provide minimum employment labour standards in Malawi.

Table 2: Labour Legislative Acts (Laws) enacted and applied in Malawi.

Before independence to 1964	Effective Year	After independence from 1964	Effective Year
Employment of Women, Young Persons and Children Act, Cap. 55:04	1939	Regulation of Minimum Wages and Conditions of Employment Act, Cap 55:01	1964
Workmen's Compensation Act	1946	Employment Act, Cap. 55:02	1964
Trade Disputes (Arbitration and Settlement) Act, Cap 54:02	1952	Factories Act, Cap. 55:07	1965
Trade Unions Act, Cap 54:01	1959	Factories Amendment Act, Cap. 55:07	1980
		Workers Compensation Act, 21 of 1990	1990
		Public Service Act	1994
Labour Legislation (Miscellaneous Provisions) Act, Cap 56:01	1961	Labour Relations Act	1996
African Emigration and Immigrant Workers Act, Cap. 56:02	1961	Occupation Safety, Health and Welfare Act	1997
Apprenticeship Cap 55:06	1962	Employment Act	2000
Employment of Women, Young Persons and Children Amendment	1963	Workers Compensation Act, 7 of 2000	2000

Act, Cap. 55:04			
		Employment (Amendment) Act	2010
		Pension Act	2011
		Employment (Prohibition of Hazardous Work for Children) Order – Employment Act – Subsidiary Legislation.	2012

Table 2 shows a total of 8 and 13 labour legislative Acts that have been enacted by Malawi Government before and after 1964 respectively. The mere passing of more responsive labour legislative Acts after independence than before it, is one State’s achievement on its own.

However, between 1964 and 1994, Malawi’s employment relationship was governed by a set of labour legislation Acts which were full of oppressive provisions on the part of the employee. Some of these Acts had been those enacted by colonial government which were thus inherited with some few amendments by the Malawi government after 1964. It must be mentioned here that the first Malawian Republican Constitution of 1966 was not a supreme law of the land unlike the current Constitution of 1994 meaning that some provisions from the labour legislative Acts that had oppressive effects on employees were still applicable and followed by employers as valid laws even if they were to be found in contradiction with some of the related employment provisions contained in the first Republican Constitution of 1966. This is one way to show how unprotective were the employees within their employment relationship from their employers, to the extent that their rights at work as human beings were never enjoyed. Sikwese (2010) wrote that:

Before the commencement of the new Constitution, labour was a mere commodity governed by the “Law of Contract”. After 1994, labour became part of an individual’s human rights and governed by the “Public Law”. An employment relationship was primarily based on the agreed terms and conditions of the employment contract whether oral or written.

The Law of Contract is a kind of law that is based on common law, said to be applicable everywhere in the World, to the extent that it is not a situational law unlike the specific public law that is framed based on the country’s situational analysis. A critical look at Sikwese’s quoted words, points to the underlying principle mainly exercised by the employers which was the freedom for them to contract at will and thus the State had no business in the conduct of that contract. This is why an employment contract at that time, according to Sikwese, would be terminated by merely giving an employee notice of termination without regard to any economical consequent implications in terms of terminal benefits on part of the employer.

In contrast, the 1994 Republican Constitution as a supreme law of the land contains provisions on all aspects of human and fair labour rights and practices that are further detailed in the labour legislative Acts. Thus the current law imposes other conditions, to terminate the services of an employee, which include things such as notices, termination reasons and rights to be heard. These are employees’ protective measures from being victimized while at work. In other words, by supremacy of the Constitution, it means that after 1994 to date, every employment contract and indeed all those terms and conditions of employment entered between an employer and employee must conform with the Constitution and with all provisions which are required labour standards. To demonstrate how protected is the employee under the current labour law following the 1994, a reference is made to the labour relations and employment Acts of 1996 and 2000 respectively. For instance, reading and understanding sections 57, 59 and 61⁹ of the employment Act together, clearly shows that currently it is not just easy for the employer to get rid of the employee from the employment without subjecting such an employee to all necessary rules of natural justice. The

application of these Acts' provisions has resulted into many unfairly dismissed employees in Malawi being reinstated back at work by Courts (Banda, 2008). This is the case despite the fact that section 59 of the same employment Act provides for a summary dismissal based on either of the following five reasons: 1. serious misconduct inconsistent with the fulfillment of his/her employment, that it would be unreasonable to require the employer to continue the employment with such employee in the employment relationship; 2. due to negligence of duties by employee; 3. due to fact that the employee was recruited because he/she lied about possessing some skills or due to poor performance by the employee as a result of lacking required work skills; 4. due to disobedience by employee to lawful orders or work assignments given by the employer; and 5. due to being absent from work without the permission of an employer, and without reasonable excuse. With the past oppressive labour laws, an employee involved in any of these five summary dismissal reasons would be harshly removed from the employment.

Furthermore, with the post multiparty labour laws, employees are allowed to exercise their freedom to form and join trade unions and to exercise their rights to strike or lockout without necessarily losing their jobs according to the Labour Relations Act, a situation that was not the case before 1994. This means that employees are now fully protected from victimization while at work. However, the only challenge that still stands is that Malawi has still done very little on empowering and informing most of the vulnerable employees in the informal employment sector across the country regarding their freedom and protection of their rights while at work. This is due to the State's failure in its work of advisory, information and advocacy and also in supporting the operations of the trade unions by taking advantage of the already existing conducive legal framework guiding the activities of trade unions.

With respect to policy formulation, Malawi has equally made some progress in the way that several employments related policies have been drafted with some of them adopted. Oxford dictionary defines the term "policy" to mean a plan of action, statement of ideals proposed or adopted by government to guide the Government's activities in specific areas. Thus the employment regulating policies are the documents that would provide guidance for the government officials, particularly Ministry of Labour officials, in case of employment issues, and all stakeholders involved in the employment issues to effectively and efficiently discharge their roles. Table 3 shows various employment regulating policies that have been formulated and adopted by Malawi.

Table 3: Employment Regulating Policies Formulated and Adopted by Malawi Government.

Employment Related Policies	Status	Adoption/Draft Year
National Code of Conduct for Child Labour	Adopted	2004
ILO Code of Practice on HIV and AIDS in the World of Work	Adopted	2005
Labour Inspection and Enforcement Policy	Draft	2008
Code of Conduct for Labour Inspectors	Draft	2008
National Labour and Employment Policy	Draft	2010
National Workplace HIV and AIDS (HIV and AIDS Workplace) Policy	Draft	2010
National Action Plan for Child Labour	Adopted	2010
National Child Labour Policy	Draft	2010
Malawi Decent Work Country Programme (M-DWCP 2011-2016)	Adopted	2011

Table 3 shows a total of only 4 policies that have been formulated and adopted by Government to direct or guide the implementation of labour services. This represents 44 % adoption rate. The rest 5 policy documents in the table are still in draft forms yet to be adopted by Government. The adoption

rate of 44 % of the total initiated policy instruments indicates that Malawi is still lagging behind in labour policy formulation and adoption process.

The fact that Malawi has ratified a good number of ILO core conventions and passed most relevant pieces of labour legislation Acts to date confirms that Malawi has achieved far much better by putting in place various pieces of labour legislation with the objective to ensure fair administration of labour practices in Malawi and thus offering guaranteed protection to every workplace party – the employers or employees. However, as shown in table 3, it is clear that Malawi still lags behind in terms of policy formulation. Secondly it is also evident from the same table 3 that all the prepared policies (both the adopted and draft ones) are dated or initiated in the late 2000s and no single policy is shown to have been initiated in the years before 2000. Thus the observation that Malawi seems to have not done much on policy formulation to do with the implementation of labour and employment services is held to be true.

Since it is the policy that guides or that is supposed to guide the implementation process of every Ministry's mandated activities, then it can be purported that Malawi Government – Ministry of Labour - has been enforcing its labour legislative Acts without proper policy documents to guide the implementation process. This seems to have been the case for many years from 1964 until late 2000 when it is evident that several of the Ministry's policies were being drafted. Worst still, the absence of a clear particular policy implies that any effort to implement the particular policy's related legislative Act / law is likely to pose several implementation challenges. This is likely to be the case because, according to the Ministry of Justice – Attorney General's Memorandum, "Legislation which is the formal expression of a legislative policy must be drafted after the policy sought to be implemented by the legislation itself is first determined".

For instance, the Ministry of Labour¹⁰ stated that the migration for labour within and outside Malawi has been defined by the colonial and post-colonial legacy. The design of the Agriculture system after independence, where the subsistence agriculture sector and rural areas were meant to be reservoirs of cheap labour to commercial estates mostly through the tenancy labour system, naturally promotes internal migration. Externally, Malawi was a labour reservoir for mines in the Northern and Southern Rhodesia as well as in South Africa through what was popularly known as The Employment Bureau of Africa (TEBA) and WENELA (Witwatersrand Native Labour Association) Ltd division of the labour migration system. The government of Malawi, in the late 1980s stopped this system. Since then, Government has not had any policy to govern internal migration since independence and external migration since the stoppage of TEBA in 1987. It has thus been very difficult to trace the movement of people within the country, let alone outside the country. Labour administrative measures have been used to track adults and children who are recruited to be used as tenancy labour in the estates. However in the absence of clear guiding policies several challenges have been faced thereby causing great suffering to most of the vulnerable employees especially in the informal employment sector such as the tenant employees and others. In addition, Malawi has recently failed to effectively or successfully implement some of the 'would be' initiated employment programmes largely due to absence of the country's clear policy to inform the implementation process. A case in point is the failed Malawi labour export programme deal meant to create employment opportunities for Malawian jobless youths to go and work outside Malawi i.e. to South Korea, for example. In absence of a clear national labour and employment policy, several challenges emerged ranging from administrative challenges to political challenges leading to indefinite suppression or cancellation of the programme.

In conclusion, with regard to labour policy formulation and legislation, it is clear that Malawi through the two processes of ratification and legislation can summarise the following as achievements on part of social protection for her employment workplace parties: Malawi joined

ILO as a member state in 1964 and sustains its membership to date. ILO is the World body that promotes social justice and advocates for the internationally recognized labour and employment rights. Malawi has ratified 27 ILO Conventions that contain social protective provisions for the protection of the parties to the employment relationship. Most of such provisions have been domesticated into our respective labour legislative Acts. The domestication of the ratified international labour standards into our enacted labour legislative Acts has made our country labour laws acceptable internationally thereby guaranteeing any foreign expatriate to accept and work in Malawi with full protection while at work. In effect, therefore, Malawi recognizes international labour standards that are instrumental in providing employees and employers with all forms of protection while at work. Malawi has thus achieved in offering its employment workplace parties with an international standard protection as any qualified Malawi with a right to secure employment opportunities everywhere in the country or outside the country would feel protected while at work even if it means employed and working in a foreign country as far as such other foreign country is also a member state of ILO that also ratified such international laws.

Engaging foreign expatriate to work in Malawi can help in transferring some much needed skills into our country that in turn can be contributive for our country's development. For instance, Dr Hastings Kamuzu Banda, former State president who ruled Malawi from 1964 to 1994 was against the immediate full Africanisation policy in the Malawi Public service sector after independence in 1964 despite the fact that he himself had discontinued the colonial rule in Malawi with foreign administrators because he had seen that maintaining some foreign needed skills would benefit Malawi.

Finally, Malawi has enacted a total of 13 labour legislative Acts since 1964 more than 8 legislative Acts that were passed and used by the colonial government in Malawi before 1964. Malawi has since 1994 to date repealed and replaced all the oppressive provisions in the labour legislative Acts and made the 1994 Republican Constitution that also contains labour rights as part of an individual's human rights to be the supreme law of the land thereby guaranteeing its employment relationship parties with more social protective measures.

However, on the negative note, Malawi despite having sound labour laws in place failed to offer much of the required social protection to its employed population between 1964 to 1994 due to oppressive provisions on part of the employee that were contained in the labour legislative Acts of that time. Secondly, looking at the years when various policies were initiated or adopted (table 3), it is clear that a number of the Ministry's stated policies were initiated or adopted before 2000 against a number of legislative Acts that had been passed earlier that would have been better enforced through by some well guided policies such as the labour inspections and enforcement policy, the national labour and employment policy among others if they had preceded their respective legislative Acts. As a result, it is clear that Malawi, at 50 years of independence, is still lagging behind in labour policy formulation and adoption as is evidenced by the adoption rate of 44 % of the total initiated policy instruments. This has negative implication on the way Malawi has been implementing its labour and employment services in the country. For instance, Government's initiated programme to be exporting labour to South Korea failed in 2013 due to, among other factors, the country not having the required labour and employment policies to guide the State's activities in such employment programmes.

Furthermore, the delays in policy formulation and adoption have been a problem on its own on part of Malawi government. The problem has some effects on the government enforcement or implementation process. For example, the Ministry of Labour officials have been somehow unguided in the way labour inspections have been conducted in the country. For instance, it is still not clear on how best the informal employment sector need to be inspected in order to address

several challenges faced by the informal sector employees in the country hence social protection for the vulnerable employees is still not yet enjoyed by most Malawian employees despite the presence of various labour protective laws.

2. The Enforcement of Minimum Employment Standards in Malawi.

2.1. Labour Inspections

Labour inspection is defined as a service within the labour administration functions that is carried out in workplace establishments with employees, by any appointed or designated official who is an expert in labour laws. The inspection work is done in order to check compliance with labour laws in terms of working conditions set by Governments as minimum legal standards of employment (ILO, 2005). The Employment Act No. 6 of 2000 under section 9 mandates the Malawi-Ministry of Labour inspectors to conduct labour inspections in all the country's employment workplaces or establishments. Labour inspection is particularly important due to the following three major purposes: it brings about compliance promotion, the process that encourages workplace parties to act in accordance with required labour standards of employment; it offers advisory services by which workplace employees and employers are told to know about their work entitlements according to labour laws; and it facilitates the promotion of productive and harmonious workplace labour relations through promotion of collective bargaining between employees and employers including their respective organizations.

The work of labour inspection to be effectively implemented to achieve its intended purposes requires resources ranging from material resources to human resources. A discussion on how the Malawi State has performed with respect to enforcement of minimum employment labour standards (labour inspections) should start with how Malawi as a State equips itself in terms of institutional structures and human resources to provide for the effective and efficient administration of labour inspection services in the country.

First, Malawi established the Ministry of Labour portfolio in 1964 and has maintained the Ministry to date with its core function of labour inspections, among others. The Ministry has district labour offices staffed with labour officers in every district and township in the country. The Ministry has undergone various expansions with respect to establishments, administrative arrangements and others, all aimed at improving the Ministry's performance in its mandated functions. Currently, according to (Malema, 2013), Malawi has 28 administrative labour offices of which 7 are in the North, 9 in the Centre and 12 in the South. In terms of labour inspector's numbers, there were only 57 qualified labour inspectors based at these labour offices as in July 2012 (Ministry of Labour, 2012).

Regarding the established inspectors' positions, there were a total of 127 established posts of labour inspectors as in July 2012 in Malawi of which only 57 were filled representing 45 % of these total established posts (Malema, 2013). This means 55 % was the vacancy rate for the country's labour inspectors meaning that the available 57 labour inspectors are less than half of the required 127 total number of inspectors. Furthermore, it must be pointed out that these labour inspectors exclude the Ministry's OSH inspectors who are the factory labour inspectors. Currently, there are about 9 factory labour inspectors in Malawi, one in the North, five at the Centre and three in the South. Thus overall, Malawi has a total of 66 labour inspectors against thousands of workplaces which are supposed to be visited for labour inspections in the country. The total number of employment workplaces to be inspected is currently not known in Malawi for the purpose of ascertaining the inspector-workplace ratio. However, according to the ILO benchmarks, set on the basis of stage of economic development, 1 inspector is required per 10,000 workers in industrial market economies;

1 inspector per 20,000 workers in transition economies and 1 inspector per 40,000 workers in less developed countries (ILO, 2006). Now Malawi with a total of 5,871,797 workforce (Durevall & Mussa, 2010) against a total of 66 labour inspectors means that the inspector-worker ratio is 1: 88,967, that is, 1 inspector per 88,967 workers. This means that Malawi as a less developed country exceed its respective benchmark i.e. Malawi's ratio is 88,967 per inspector (more than 2 times its benchmark level of 40,000). Based on this statistics, it follows that Malawi currently needs a total of 147 well equipped and trained labour inspectors and not 127 as per the current establishment if the State is to effectively perform in the area of enforcement of the minimum employment labour standards by way of labour inspections, among other means.

From 1964 to 1994, the Ministry's work of labour inspection was very much underdeveloped. This was due to Dr Kamuzu Banda's dictatorial type of government in the one party State during when the then existing labour laws were not even developed to the extent of accommodating various human and labour right practices to be enforced for the employee while at work as was the case with effect from 1994 to date. Furthermore, it was the Malawi Congress Party (MCP) officials or the Malawi Young Pioneer (MYP) officials during that time, other than the Ministry of Labour officers, the Inspectors, who were more influential in terms of enforcing or handling labour service issues (Dzimhiri, 2008). This implies that the whole State / Government did not bother to prioritize and to ensure that the work of labour services and/or of labour inspections was done by the mandated government officials. The Government's non commitment in issues of professional labour law enforcements has been reported as one contributing factor for the country's underdeveloped labour inspection work.

The work of enforcement of minimum employment standards in Malawi through labour inspection continues to be ineffectively done to date. This has been the case despite the coming into force of the labour legislative laws that are of international standards. Such scenario is still prevailing due to other reasons that include, among others, lack of clear policies to guide the implementation processes, inadequate human resource and lack of Government's clear commitment in issues of protecting the workplace employment parties from various forms of exploitation. The Government non commitment is reflected in the absence of "labour and employment issues" as one of the key priority areas within the Malawi Growth and Development Strategy (MGDS) papers, the status that has ranked Ministry of Labour to be one of the least financed Ministries by the Government. Table 4 shows how the State- Ministry of Labour - performed in its work of labour inspection over a period of 7 years from 2005 to 2011. This is just an example to show the Ministry's underperformance in the core function of labour inspections. Note that as per the ILO requirements, Malawi as a developing country needs to conduct a total number of not less than 3000 labour inspections per year. This, according to Malawi with a total of 28 working district labour offices, means that at least not less than 107 labour inspections are supposed to be conducted by each district/city labour office every year.

Table 4: Total number of labour inspections conducted at each of the three country's city labour offices of Mzuzu, Lilongwe and Blantyre.

Labour office	2005	2006	2007	2008	2009	2010	2011
Mzuzu	193	303	10	116	42	2	50
Lilongwe	94	78	23	8	44	17	15
Blantyre	6	21	9	648	104	11	43
Total	293	402	42	772	190	30	108

Source: Malema, (2013, p. 90), Masters of Business Administration (MBA) thesis, University of Malawi.

2.2. Statutory Minimum Wage Adjustments and Enforcement

As indicated above, Malawi enacted in 1964 the Regulation of Minimum Wages and Conditions of Employment Act to help set and regulate, among other things, the minimum wages of various wage earning employees in various industries. In addition, Malawi to demonstrate her commitment in the regulation of minimum wages to the global community ratified the ILO Minimum Wage Fixing Machinery Convention in 1965. Finally, the current Employment Act No. 6 of 2000 was enacted following the multiparty democracy to repeal and replace the Regulation of Minimum Wages and Conditions of Employment Act together with other related Employment Acts enacted before 1994. According to section 54 of the 2000 Employment Act, the Minister responsible for Labour, in consultation with organizations of workers and of employers relevant to the group of wage earners, is mandated to fix the minimum wages of any group of wage earners as to the appropriate level of minimum wage to be prescribed. In prescribing the minimum wages, the Minister is supposed to consider a number of factors such as the following: the needs of workers and their families; the general level of wages; the cost of living; the cost of social security benefits; the relative living standards of other social groups; and economic factors such as the requirements of economic development, the levels of productivity and the wage effects on employment. Furthermore the law requires the Minister through such consultations to be reconsidering the levels of minimum wages at least once every three years. However, the same law mandates the Minister through the same procedure to change/modify the procedure for setting wages at any time convenient. The set minimum wage rate shall not be subjected to downward abatement but to upward abatement provided the employer and employee agree to do so. Most importantly is that any employer who could have been paying his/her employees wages greater than the set minimum wage rate before the commencement of any particular set minimum wage rate is not allowed to reduce the wages to the set minimum wage rate following its coming into effect of such particular wage rate. According to framers of the law, this is a deliberate move to protect employees from having their wages being adjusted downward by their employers, a situation that would not be health on the part of employee's income position. Finally, the law points out that any employer who pays wages lower than the set minimum wage rate does commits a punishable offence that attracts a court fine and 10 years imprisonment.

Table 5 shows various minimum wage rates in Malawi kwacha (Mk) per work day set and used at different times in Malawi from 1964 to date.

Table 5: Government Minimum Wage Rates in Malawi kwacha Per Work day by Location

Location	1964	1966	1989	1992	1994	2000	2005	2007	2011	2012	2014
Cities	0.42	0.49	2.17	2.60	3.55	55.00	96.50	129.30	178.25	317.00	551.00
Municipalities	0.36	0.45	1.95	2.34	3.55	55.00	96.50	129.30	178.25	317.00	551.00
Districts	0.27	0.40	1.74	2.09	3.00	42.00	73.50	105.45	178.25	317.00	551.00
Average	0.35	0.45	1.95	2.34	3.37	50.67	88.83	121.35	178.25	317.00	551.00

Source: Author's consolidation of wage rates from Malawi government minimum wage gazettes maintained at the Ministry of Labour headquarters' library.

From table 5, it is clear that Malawi has, from 1964 to date, progressively succeeded in the work of setting and/or regulating the statutory minimum wage rates. For the years 1964 to 1992, the State adopted and operated a 3-tier system of minimum wages comprising of separate wages for cities, municipalities and districts and a 2-tier system of minimum wages comprising of separate wages for rural (districts) and urban (cities and municipalities) areas from 1994 to 2007. This was, among

other factors, to comply with the law requirement that wages be fixed by considering the relative living standards of other social groups. Whereas the State adopted and operated a single tier system of only one minimum wage rate for all the three different areas of the country from 2011 to date.

An analysis of the consolidated annual labour inspectorate reports available at the Ministry of Labour headquarters for the years 2005 to 2011 indicate the underpayments of employees' wages below the statutory minimum wage rates as one of the most common infringements that was reported in each of such reporting years. This is supported by the fact that for all the labour complaints (disputes) that were reported for settlement during this 7 year period from the three city labour offices of Mzuzu, Lilongwe and Blantyre, 15,174 out of the total 34,720 labour disputes representing 43.7 % were disputes of underpayments of wages. Whereas, the rest 19,546 disputes were of other natures such as the disputes involving claim of notice pay; underpayments of overtime wages; non-payment of overtime wages, claim of severance allowance; and disputes of dismissals of which each kind represents less than 10 % of the total labour disputes. Most of these reported labour disputes of underpayments are from informal¹¹ workplace establishments.

Considering that it is the informal employment sector (Durevall & Mussa, 2010) and that underpayment of wages concerns mainly the informal sector employees, means that most of the employed labour force in Malawi is a victim of low wages hence not socially protected. The fact that such is being evidenced to be the case over a number of years in Malawi (2005-2011 for example), clearly shows that Malawi has not done much in the area of socially protecting her vulnerable employed labour force from being victims of low wages and indeed from social insurance security (i.e. pension by implication) since such low income earnings are not or may not be enough for savings.

One most serious implication with the setting of statutory minimum wage by the State has been the creation of a defensive environment for most of the employers to unrealistically determine wage earnings for their employees by not necessarily basing on their workplace labour productivity outputs as a result of employees' offered labour. For instance, most of the employers in the informal sector workplaces across the country especially those of Asian origins trading in the towns and cities of Malawi (Malema, 2009) end up determining their employees as monthly wages by using those rates that are equal to the government statutory minimum monthly wage rate. This is done despite the fact that such employers' workplace productivity outputs as a result of their employees' labour are far much better (high). It is this situation that keeps on making the poor working Malawians to remain poorer while the Employers becoming more richer thereby maintaining a sustainable but undesirable increase in the difference between the poor and the rich which has negative repercussions on the country's development.

2.3. The Debate on Minimum Wage Setting in Malawi and What Really Ought to be Done

Setting of statutory minimum wage simply means fixing and legalizing certain amount as wage rate per work day. The set wage rate has a legal implication for which no any employer is allowed to pay his/her employee any sum of money as wage below the set wage rate and that whoever does so violates the law and hence shall have deemed to have committed a punishable offence. This minimum wage rate, which becomes applicable for a working employee in Malawi must therefore be determined by considering at most the wage payment capacity of employers of the lowest productive sector/industry across the country if the law is to protect an individual employer from exercising his/her right to employ and pay wages to his/her employees. This must be the case because by considering payment capacities of those employers from the middle or upper productive workplaces or industries will mean imposing impractical employment conditions for most of the informal individual employers across the country hence denying them their right to employ and pay

wages, a situation that in turn will lead in an increase of unemployment rate in the country. It is such minimum wage regulative environment that gives a loophole for most of the employers to peg wage earnings for their employees at the minimum wage rate or slightly close to it thereby victimizing those employees who would deserve higher wages out of their rendered labour services.

However one may argue that the minimum wage rate does not mean every employer exactly pays the minimum wage or close to it. The set wage rate is just the minimum rate. This would be a correct argument according to the minimum wage rate that provides that the employer and employee are allowed to bargain for higher wages and that an employer is not allowed to reduce wage rate to the minimum in cases where his/her employee wage rate was already higher than the set wage rate. However the fact that determining wage rates above the Minimum wage for employees by employers is no longer a legal requirement but just as a condition based on their agreement, leaves the employee usually with a lesser bargaining power than the employer at a disadvantaged position. Employees are likely to be more disadvantaged in this country where the enforcement of employment labour standards is not effective due to inadequate State labour inspectorate personnel among other reasons. Furthermore one would thus think that it would be proper for the State to be setting different minimum wage rates (sectoral minimum wages) for employees from different industries with different levels of productivity as was the case from 1964 to 1994 (see table 5) or for employees from different areas of the country as was the case from 1994 to 2007 (see table 5). Such thinking is good. However it would be very much costly on the part of the State and hence rendering the process tedious or ineffective in the event that such an approach requires the tripartite wage advisory council having more than the required members probably with different expertise for the employees or employers representations. This is because the few tripartite wage advisory council members from the ECAM or trade unions with limited expertise may not be realistically true representations of the different divergent working industries across the country.

Furthermore, the requirement of setting or revising minimum wage rate after every three years is also problematic in its own right especially this time when Malawi adopted the floatation exchange rate system. The ideal of setting minimum wage rates, seem to work well with the fixed exchange rate system and not with the floatation exchange system. Malawi has ever used the flexible exchange system during Dr Kamuzu Banda's rule when Malawi first implemented the IMF Structural Adjustment Programmes (SAPs) around 1980s and later replaced with fixed exchange rate system before floatation again in 1994. Such shifts in the exchange rate systems have happened at certain times in Malawi and finally the current floatation exchange system replaced the Professor Bingu Wa Mutharika's fixed exchange system in May 2012. A number of scholars and commentators have argued that floatation exchange rate system, despite solving the problem of fuel shortage in Malawi, has caused a lot of problems to most of the low wage earners in Malawi (Malawi Newspapers of 2012 -2013). Thus revising wage rate every three years is currently not being considerate since wages fluctuate greatly when measured in terms of what wage earners actually can buy since inflation erodes their real value. Moreover, over the three – year periods, labour cost varies greatly for firms that base their wages on minimum wages. Thus, minimum wages should be revised annually and the law be amended to provide this or else automatic-adjustment of minimum wages would also be necessary to avoid having frequent and costly negotiations every year. The case of Malawi fuel pricing policy that is automatic is one similar practical working example.

According to the Ministry of Labour, 2013 “Model for Performance Direction”, the challenge of low wage payments (below the statutory minimum wage rates) by most employers in the informal sector is mainly a result of, among other factors, a linkage in required work skills and desired work productivity that seem not to be well matching. For instance, the model depicts that the informal sector where lack of skills in its workers is evident, is associated with low productivity which in

turn leads or contributes to the infringement of their rights seen in low wages, in their deprivation of social coverage and thus ultimately leading to lack of decent work. While it is the Ministry's total commitment to address such challenge, there is need for the State (Government) to first invest more in skills development amongst its labour markets' job seekers both the new market entrants as well as those already in the system. This can be done by capacitating the Ministry's already developed skill development and training plans and programmes within its vocational training department and those of the TEVET Authority.

Considering all these problems and implications, it is proper for Malawi to consider replacing the minimum wage setting approach with probably any other suitable thought or researched approaches such as the living wage approach as is being advocated by Peoples' Party (PP) in its 2014 general elections manifesto as long as Malawi continues to use the floatation exchange rate system. If the living wage approach can not be possible with our Malawian economy, then let the current minimum wage setting approach continue but with revision period to be done every year to be responding to changes regarding peoples' varying purchasing powers of their nominal/real income as a result of the "periodic" kwacha appreciations or depreciations. This should be despite the fact that this approach too would also come along with huge costs on part of the State through frequent sittings of tripartite wage advisory council meetings.

The recent hike in the minimum wage rate from Mk317.00 to Mk551.00 per work day representing a 74 % increase was received with different reactions by key social partners. For instance, Trade Unions welcomed Government's decision; however they asked the Government to consider adopting the sectoral minimum wage setting approach. On the other hand, the Employers' organizations through their Employers Consultative Association of Malawi (ECAM) too welcomed Government's decision saying "while it is true that the cost of living has gone up, the cost of doing business has equally gone up as well". The employers' reaction entails that they see merit in the wages to be increasing with the increasing cost of living as per the employees' expectations. However since all those factors that lead into the increasing cost of living are the same factors that lead into increase in the cost of doing business, then the dilemma on what needs to be done to balance the two situations must be explored further. And the Government with a role to regulate the employment relationship is better placed to intervene in such situations.

Employers' reactions can be further interpreted to mean that wages should be determined based on labour productivity and this seem to be in agreement with the employees' reactions that too seem to suggest (through their suggestion of sectoral minimum wage setting approach) that wages be fixed differently based on the sector's productivity suggesting that sectors with more level of productivities should have high levels of minimum wages and vice versa. Hence the need for Government to consider adopting the living wage rate or the sectoral minimum wage rate system of setting wages as per the two key social partners' (employees and employers) perceived consensus.

3. Employee Protection from HIV and AIDS Associated Vulnerabilities

The first HIV case in Malawi was discovered in 1985. Since its discovery, HIV and AIDS has had very profound and negative impact on the Malawi economy. It has affected greatly the delivery of services by the workforce and thus has been recognized as one of the major challenges faced by Malawi in its national development agenda (UNDP, 2001).

The National prevalence rate amongst people aged 15 and 49 years stands at 12 % according to the 2008 National AIDS Commission (NAC) estimate report. This is the age bracket for most of the working employees in Malawi. In addition, the 2004 Malawi Demographic Health Survey (MDHS) indicates that the HIV/AIDS prevalence rate is higher amongst the working women with 15 % of

the total working women being infected as compared to infected men at 13 % of the total working men. Whereas 12 % and 6 % of the non working women and men respectively from the same age bracket were reported to be HIV and AIDS free, percentages that are lower than the percentages for the infected employees.

It is now a fact that HIV and AIDS are a serious public health problem that has socio-economic, employment and human rights implications. In the workplace, unfair discrimination against employees living with HIV and AIDS has been perpetuated through practices such as pre-employment HIV testing, dismissals for being HIV positive and denial of employee benefits and employment opportunities such as trainings among others. It is these HIV and AIDS infected employees who are vulnerable and thus need protection from various forms of vulnerabilities while at work.

One of the most effective ways of reducing and managing the impact of HIV and AIDS in the workplace (i.e. protecting vulnerable employees and employers) is through the establishment and implementation of HIV and AIDS policy and programme in addition to putting in place legal framework to do with HIV and AIDS workplace issues. The establishment and implementation of any HIV and AIDS workplace policy and programme is a state's responsibility that is undertaken by the Ministry of Labour in consultation with employers and employees. The policy would enable employers, employees, trade unions and Government to actively contribute towards national efforts to prevent and manage HIV and AIDS workplace negative impact. This would also ensure that there is coordination in the response to HIV and AIDS in society and consistency in the application and enforcement of rules, regulations and practices with regard to HIV and AIDS. Now the questions to be asked and answered in this paper are: What is it that Malawi has done since the emergency of HIV and AIDS to date as a way of social protection to those vulnerable employees both in the public and private sectors?; Are there any challenges faced in the process and what would be the way forward regarding the faced challenges?

The discovery of HIV/AIDS case in 1985 was after Malawi had been in independence era and governed by the first Republican Constitution for 21 and 19 years respectively. No wonder from 1964 to 1985 Malawi did not do anything in respect of research or formulation and implementation of HIV and AIDS related policies and programmes to the extent that issues or mention of labour practices regarding HIV and AIDS related issues are not even covered in the 1966 Republican Constitution nor are the issues of Human rights and HIV/AIDS related illnesses covered.

However, soon after the discovery of HIV and AIDS in 1985, Malawi started researching on the emergency, prevalence, impact of HIV and AIDS among other things. Such work was mainly done by health experts and researchers in hospital and university laboratories as well as by those experts from the country's research institutions.

After 1994, the new Republican Constitution including the Labour Relations Act and the Employment Act came into force and contain provisions that prohibit discrimination based on any health status including HIV and AIDS status. It is on this basis that discrimination in employment based on HIV and AIDS status remains prohibited in Malawi to date.

In 2004, Malawi adopted National Policy on HIV/AIDS and further directed the commencement of the formulation of HIV/AIDS workplace policy by the Ministry of Labour in consultation with employers and employees which got finalized in 2010. HIV/AIDS workplace policy informs or serves as guidelines for various workplaces both, public or private to develop their own specific policies.

In summary, both the National Policy on HIV and AIDS, the National Workplace Policy on HIV and AIDS together with the adopted ILO Code of Practice on HIV and AIDS in the World of Work set out main approaches adopted by the State in the fight against the pandemic in the workplace. These documents provide guidelines for managing HIV and AIDS as a workplace issue. Among others, employers in consultation with employees are encouraged to develop workplace policies to cover, the following areas: First, prevention area where employers are urged to provide safe working environment in occupations to minimize the risk of HIV transmission such as in the health profession. Similarly workers are advised to take all precautionary measures to avoid contracting the virus in the course of their work. Furthermore, provision of information education and training is regarded as key for behaviour change amongst workers and employers and thus encouraged. The message to be conveyed has to cover promotion of safer sex and risk reduction behaviour, non discrimination towards employees living with/ perceived to be living with HIV; encouraging HIV testing and availability of counseling services for employees living with HIV and AIDS. Second, Treatment Care and Support area where employees living with HIV and AIDS need a supportive and conducive environment to ensure that they remain productive for as long as possible. This calls for employers to provide treatment, care and support services in their workplaces. Where an employer does not have the capacity to provide the above services; employers have to provide information and link them to services available. Furthermore, employers are encouraged to provide anti retroviral therapy, when appropriate, to employees living with HIV and AIDS; employers after consultation with employees have to ensure that discriminating is not practiced and that perpetrators are disciplined accordingly; employers have to make every effort to accommodate employees with AIDS and should only terminate employment on health grounds when an employee is no longer medically fit to do any work that is available and that employers have to treat employees living with HIV and AIDS like any other employee.

As result of the State's progress in the setting up of the directive National HIV and AIDS workplace policy instruments, many companies and organizations in Malawi, currently, have developed and adopted their specific HIV and AIDS workplace policies. For instance, a total of 38 % of the 152 formal private sector companies randomly selected and studied in Malawi (Bakuwa, 2009) have developed and adopted formal HIV/AIDS workplace policies; 9 % of the companies have drafted their formal HIV/AIDS specific workplace policies; 8 % of the companies have informal policies on HIV/AIDS whereas 45 % of the companies do not have any form of HIV/AIDS workplace policies at all.

Regarding the public service¹² various specific HIV and AIDS workplace by various public service institutions have been developed and adopted to date. Some of these public institutions include the University of Malawi, ESCOM, country Water Boards etc. All this effort started with the development and adoption of the Public Service HIV & AIDS Workplace policy by the Government as a model employer for its civil service employees.

It must however be noted that despite such State's progress in the employee protection from HIV and AIDS associated vulnerabilities, very little has been done in the informal employment sector with the greatest number of workforce and thus the sector where social protection must have been the State's priority. Based on this fact, it can be argued and concluded that Malawi has not done much in this area despite its registered progress on the same in respect of the formal employment sector which is however very small as compared to the informal sector. A number of challenges are being faced in Malawi that range from implementation to coverage challenges. For instance, the informal employment sector which comprises of greater workforce as compared to the formal sector is still not effectively regulated in respect of HIV and AIDS workplace issues. There is ineffective enforcement through labour inspections of HIV and AIDS workplace issues. The State has no specific legal framework to regulate or support the State's drafted HIV and AIDS workplace

policies. Law commission is still in the process to legislate the HIV/AIDs workplace legislation for Malawi.

4. Workers' Compensation and Employees' Social Insurance Schemes in Malawi

4.1. Employees' Social Insurance Schemes

The structure of the Malawian labour market and the large number of jobs in the informal economy leave the majority of workers without basic forms of social protection (M-DWCP, 2011-2016). Even the single largest employer, Government civil service, does not have an insurance provider.

The operations of employees' pension benefits in Malawi has been voluntary from 1964 to 2010 whereby some employers had to run pension schemes for their employees as part of their own agreed terms and conditions of their employment relationship. This system made some long served Malawians in some workplace institutions, without pension schemes for employees, retired without any pension benefit for their income security following their retirement lifetime except their received lump sum of money in form of severance allowance as provided for in the employment Act of 2000. Worse still, some of such long serving Malawians have not even received the so called severance allowance in cases where their workplace institutions never calculated their severance allowances for them probably due to the fact that such employers did not know that it was their legal requirement to do so to the extent that even the retirees themselves did not even bring such claims before the Ministry of Labour officers for assistance nor did the labour officials come across such cases due to their limited labour inspection visits. You can therefore imagine that there would be so many of such Malawians living and leading a suffering life following their retirements as a result of the state's social security system that was never supported by laws. Thus social protection in terms of employees' social insurance schemes has been selective in the country until 2011 leaving so many other employees still vulnerable to date.

This was the same case even in the Malawi civil service where some several employees categorised as "non classified temporary employees" had worked for more than five years and thereafter terminated without being provided with any regular security income as pension benefits apart from being paid off just an ex-gratia payment as an only lump-sum payment. This has been the case in Malawi for such temporary employees even after the enactment of the Employment Act in 2000 with a clear provision that "no any employee is supposed to be on temporary basis for having served continuously for more than 12 months for one same employer" otherwise such an employee automatically becomes a permanent employee. However in the Malawi civil service such the so called non classified temporary employees who would have been automatically placed on pension schemes as permanent employees were never helped to be so. This treatment left so many of such employees unprotected and hence remained vulnerable retired or redundant workers.

However, for the first time, Malawi enacted the Pension Act no. 21 of 2011 which is a new labour legislative law to provide for mandatory pension in Malawi whereby every employer in the country is required or obliged to make provision for pension for his / her employees whether on permanent or on temporary basis. Under this law, there shall be mandatory life insurance for each employee on pension scheme. This is the first step in developing a comprehensive social security system in Malawi, by beginning with provision of income security to the worker in retirement and the family in case of death of the worker. This new pension law extends its coverage to all government employees as well with effect from June 2011. With this development, it can be recorded that Malawi as a State has registered another notable social protection measure for its working population.

4.2. Workers' Compensation

Malawi's commitment in the area of workers' compensation started with the ratification of the ILO's Workmen's Compensation (Agriculture) convention in 1965. As stated above, some provisions contained in this ILO convention were domesticated in the current Workers Compensation Act. The current Workers Compensation Act No 7 of 2000 is a law that provides for compensation for injuries suffered or diseases contracted by workers in the course of their employment or for deaths resulting from such injuries or diseases; provides for the establishment and administration of a Workers' Compensation Fund.

The current workers' compensation system provides only lump-sum payments and no periodical payments thereafter, and it places liability for compensation with individual employers, with no pooling of risks across the labour market, as is the case with social insurance. The deprivation of a total permanent incapacitated employee, for example, from accessing some periodical or regular income for the rest of his/her life following his/her serious injury while at work is enough reason to show that the State has not done much on social protection with respect to protect vulnerable employees of such categories from their likely economical hardships following their incapacitation.

4.3. Administration of Pension Benefits for the Malawian Pensioners who Worked Abroad

In respect of Malawians who had worked and retired while working abroad or had died while working abroad, the State made agreements with the respective foreign States to receiving and making of payments of pension for migrant workers. Since independence to date, Malawi Ministry of Labour is being represented by Labour attachés in the offices of High Commissioners or Ambassadors to Malawi in those foreign countries such as Zimbabwe, South Africa and Zambia. This is to ensure that the processing of pension and death benefits for Malawian pensioners who worked abroad is being smoothly facilitated. As a service to our senior citizens the Ministry of Labour through its district labour offices periodically receive from the Workers' Compensation Commissioner pension money for migrant workers who worked, for example, in Zambia, South Africa and Zimbabwe for payment. These funds are for terminal benefits for long service (pension benefits) and compensation for injuries suffered during their employment time.

The verification of migrant pensioners' presence is done as per the regulations, whereby the various pension houses (pension institutions in those foreign countries) are required to send life certificates for their pensioners annually to be signed so that they are known to be alive or dead. Upon signing, the life certificates must be returned to their respective pension houses/institutions. If a certificate is not returned, a pension house assumes that the pensioner died and thus his or her pension remittance ceases to be processed. The district labour offices are advised to return the life certificates as soon as possible in order to avoid disruption or stoppage of remittance of such pension moneys. However a number of challenges have been faced by the Ministry in its work of processing such pension benefits. For instance, in the event of inadequate resources, the country labour offices have failed to follow and verify the existence of those pensioners who reside in some hard to reach places of the county; lack of clear policy to guide the process and procedures of managing such a function which has been due to lack of political will and commitment by the State leadership sometimes. This has led into several Malawian pensioners who worked and retired abroad to be left unprotected with respect to their unregulated and sometimes unknown pension benefits. Thus Malawi needs to put in place policy guidelines and to establish separate pension authority within the Workers Compensation Division or within the Ministry of Finance to deal with Malawi pension administration services.

5. The State and its Role as a Model Employer

Durevall and Mussa (2010) reported that a total of 442, 000 persons representing 12 % of the total workforce in Malawi were employees in the public and private formal sectors. 222, 000 employees of this total formal sector workforce representing 50.2 % are public servants employed by the Government as their single employer. This means that the rest 49.8 % of the total formal workforce constitute employees of various private formal workplace institutions and /or establishment employers across the country. In this regard, it is therefore clear that the Government is the largest employer of all the formal sector employers in the country. This government status in respect of its largest size of its employed workforce has been the case since Malawi became independent in 1964. For instance, the Malawi civil service employees steadily increased by a 13 % average annual increase from 10,695 in 1964 to 40,762 employees in 1985 (World Bank Report, 1994).

Apart from the State regulation of the employment relationship through its roles of policy and legal framework formulation, compliance enforcement and of mediation, conciliation services amongst workplace parties, the State also influences to a greater extent the shaping of the employment relationship through government activities as an employer for all government employees. In this case Malawi Government has played the role of a model employer in the shaping of the country's employment relationship. This is also true with many other developing countries in the World according to Dzimbiri (2008) who observed that in developing countries where the state is the biggest employer through the civil service, local government, and State – controlled enterprises, [the State] influences industrial relations through its own terms and conditions of employment and attitude towards collective bargaining and the labour movement. This implies that if the State cannot put in place sound and protective social insurance schemes for its own employees as well as to treat them as provided for in the country's labour laws, then chances are high that the private sector employers in the country can treat their employees likewise. Otherwise, the opposite may be true.

This paper, in order to demonstrate how Malawi government as the greatest country employer has performed since independence in 1964 to date in some of its attempts to protect its employees from being subjected to hardships that might result or have resulted due to government's failure to socially protect such employees as required, discusses briefly, some selected circumstances in which Government is seen to have not performed as expected or required. Thereafter recommends on what needs to be done where necessary. The selected circumstances include: public service employees' treatment following the 1964 Malawi cabinet crisis; civil service non-classified temporary employees; government's implemented public works programmes and government's response action about the new pension law of 2011 with respect to civil service pension scheme implementation. It must be pointed on the onset that Government's behaviours in each of such discussed instances have to some extent influenced or disturbed government's social protection work in its role of regulating the employment relationship.

In July, 1964 there was cabinet crisis during when six cabinet ministers who had disagreed with Dr Kamuzu Banda, the State president, on domestic and foreign policies were dismissed. The crisis heightened the State hostility to the public service employees to the effect that all those employees with opposing views had to be punished severely i.e. expelled from work, banished or detained without trial. Courts were not even a place to seek for justice redress because most of the English Judges who were government employees at that time had to resign and go back to their home countries (in England) for fear of not being safe or protected while at work. The cabinet crisis restricted or destroyed basic human rights as well as labour rights that include freedom of association and the right to strike to defend workers' interests (Dzimbiri, 2008). With this behaviour, Government as a model employer set examples to other employers in the private sector

that also followed suit in offering harsh treatments to their employees. Worse still, Kamuzu Banda's Government went ahead adopting, in 1969, the 'Low Wage policy' whose objective was to attract investors who could in turn be relied upon to meet MCP's financial needs. As a result the private sector employers had to enjoy paying relatively low wages to their employees hence less protection in terms of income wise whereas their workforce friends in the public service had to suffer in silence.

In the Malawi civil service, some several employees categorised as "non classified temporary employees" had worked for more than five years and thereafter terminated without being provided with any regular security income as pension benefits apart from being paid off just an ex-gratia payment as an only lump-sum payment. This has been the case in Malawi for such temporary employees even after the enactment of the Employment Act in 2000 with a clear provision to automatically place an employee on permanent basis who serves continuously for more than 12 months for the same employer. However in the Malawi civil service such the so called non classified temporary employees who would have been automatically placed on pension schemes as permanent employees were never helped to be so. This treatment left so many of such employees unprotected and hence remained vulnerable retired or redundant workers.

In respect of compliance with the set statutory minimum wage rates, Malawi Government as employer has been non-compliant in some of its dealings i.e. paying its employees and/or beneficiaries, below the Government set minimum wage rates. This has been demonstrated in the following two instances.

First, is the case with Public Works Programs (PWP) activities. For example, each PWP beneficiary ('employee') is paid Mk300.00 per work day while working for the current Government PWP activities being implemented in various districts across the country from last year, 2013 to date. This pay rate of Mk300 was 6 % and is 84 % less than the minimum wage rates of Mk317.00 per day (effective July, 2012 to December, 2013) and of Mk551.00 per day (effective January, 2014 to date) respectively. Such under payment of wages is the case despite the standing fact that "the bulk of subsequent PWP interventions, building upon the MASAF experience, used a minimum wage as a self-targeting mechanism and required beneficiaries to perform specific tasks on the basis of national task rates. [And moreover], the PWP undertaken by International Non-Governmental Organisations (INGOs) tended to offer much higher wages than the set minimum wage rate" (Charman, 2013).

Public Works Program was initiated by Malawi Government with financial support from the World Bank and other development partners to create employment opportunities for income transfer and in the process build economic infrastructure through labour intensive activities. The program activities include construction, rehabilitation and maintenance of economic infrastructure such as roads and small irrigation systems and improved natural resource management through afforestation, terracing and rainwater harvesting among others. All these public works are geared to generate significant employment opportunities. The program works are also geared to establish infrastructure in previously disadvantaged areas simultaneously providing opportunities for poverty alleviation and a substantial reduction in child labour that perpetuate poverty. Projects such as building roads, tree planting, providing water and electricity are labour-intensive and thus provide jobs during both the construction and maintenance phases.

Second, is the case with Rural Infrastructure Development Programme (RIDP) project activities. For example, each RIDP workplace employee is currently paid Mk10, 850.00 per month which translates to Mk417.31 per work day while working for the employment as a result of Government RIDP contracted activities (RIDP MoU with District Councils, 2013). This pay rate of Mk417.31 is

32 % less than the minimum wage rate of Mk551.00 per day effective January, 2014. The wage rate of Mk417.31 per day shows that RIDP wages were above the government minimum wage rate of Mk317.00 per day before January, 2014 indicating that Government had complied. However, the same Government if it is to demonstrate to other country employers as a role model employer must with immediate effect adjust such wage underpayments to comply with its own set labour laws.

RIDP was initiated by Malawi Government with funds from European Union to contribute to the reduction of poverty in Malawi in line with the Malawi Growth and Development Strategy II. The programme is designed to improve the livelihood of rural population through infrastructure development using labour intensive methods, and the interventions in roads and irrigation infrastructure are being implemented based on district development plans. RIDP works are contracted by government to independent contractors who in turn employs people but still it is Government that determines the program wages. Currently, the implementation of RIDP component 1 (Small Scale Rural Infrastructure) commenced on 1st August, 2011 and currently, activities are being undertaken under Programme Estimate 2 running for a period of 18 months (1st February 2013 to 31st July 2014). The 17 beneficiary districts of RIDP are: Blantyre, Chikhwawa, Dedza, Dowa, Kasungu, Salima, Machinga, Mangochi, Mchinji, Mzimba, Rumphi, Mulanje, Nkhotakota, Ntcheu, Thyolo and Zomba (Nation News paper, 21 February, 2014).

The absence of a labour legislative law regulating the pension schemes of employers and employees in Malawi for 47 years came to an end with the passing of the Pension Act in 2011 as a new pension law. This pension law came into force on 1st June 2011. The law provides for every employer to be running pension schemes for his/her employees. However, this law (under section 2) had exempted Government as employer to comply with, for only 2 years from 1st June 2011. This means government was obliged to comply after 1st June 2013. However to date, Government has not complied yet. The 2012 and 2013 media reports (Mhango, 2012) reported that government's failure to comply despite its effort to do so is due to the huge pension accumulated wage bill of about Mk80 billion that must be transferred to the yet established National Pension Fund (NPF). The pension wage bill to be transferred is a total of the calculated long service entitlements for all civil servants that would become the opening balances as required by section 91 of the Pension Act.

While the government as a model employer is failing to comply with this pension law, the Ministry of Labour officials are attempting as per their mandated laws to enforce or to ensure that, through labour inspections, the compliance with this law, by every other employers in the country including those who had not been running any pension schemes for their employees prior to the commencement of this new pension law in 2011, is effected accordingly. The implication of this failure by government is that other employers from the private sector may also take advantage of not to bother with such compliance. Mhango (2012) observed that "if the Government fails to meet the compliant deadline as well as to put in place - the pension fund Administrator and NPF as required, the whole issue could be politicized as Malawi heads towards general elections in 2014, and that those individuals tasked with implementing the Pension Act [Ministry of Labour officials] could lose focus as they may be caught up in the crossfire of political battles and interests". Whereas, other media commentators described: "Malawi Government as becoming a shame to the nation" with such a compliance failure (<http://www.malawivoice.com>). All these clearly call for the need for Government to comply so as to set as a concrete example or role model employer for all other employers in the country.

Challenges and Recommendations

The State (Government) has achieved a meaningful progress in its role of legislation as evidenced by the adequate and relevant enacted labour legislative Acts since 1964 to date some of which have undergone extensive/several amendments (i.e. severance allowance formula schedule amendments, for example) as a clear indication of the State's responsiveness to the needs of its employment workplace population. However, the outstanding challenge in respect of this State's role of policy and legal framework development is the State's delayed action to legislate the long outstanding tenancy labour bill and also the State's delayed action to adopt policies that are instrumental in guiding and directing the implementation and/or enforcement process of any passed legislative Acts. As such, it is recommended for the State – Ministry of Labour, to speed up the finalisation and adoption of some pending employment related policies as well as the tenancy labour bill that are still in draft forms. Most notable ones are the 'Labour Inspection and Enforcement' policy to guide the performance of labour inspectorate services and the 'National Labour and Employment' policy to guide the operations of the Ministry's employment exchange services that includes the creation of youth and productive employment among others.

The challenge of low wage payment in Malawi, which is rather complex as of now, seems to be a result of a sustained 'cyclical challenge model' which is "Low wages means → Non decent work → which equals → Non socially protected thus → Vulnerable employees → Not productive ones hence → Low wages". Being convinced with this model, I thus equally propose that a response to such a cyclical challenge should also be a 'cyclical response model' which is required to effectively and efficiently address the problem. This cyclical response model must be "the State commitment (through prioritisation process) thus → Adequate resource provision to target → Skills development for high labour productivity, Deliberate inspection policy to prioritise the informal sector inspections, implementation of Living wage / Sectoral minimum wage rate thus → Achieved decent work with employees' motivation effects hence → Dedicated work for high labour productivity that may mean → Economic growth for sustained high wage levels, good taxes for the State hence → State's commitments and good finances to the sector process". The key government policy document to realise this proposed cyclical response model is the Malawi – Decent Work Country Programme (M-DWCP, 2011–2016) which is already adopted and has full of strategic interventions to support such a proposed cyclical response model.

The employee/employer relationships are still prone to exploitation in Malawi. This is obviously due to unequal power relations and bargaining capabilities between the employees and employers. Such a challenge has serious implications mostly in the informal sector employment as compared to the formal sector employment with clear expressed terms and conditions of employment which can be easily followed or enforced by courts in case of violations. The fact that it has been shown that it is the informal sector that has the largest total number of employees within the total country workforce implies that most of the employees in Malawi are still exploited and hence not socially protected. This is despite the existence of the country's sound enacted labour laws full of employee/employer protective mechanisms while at work. Notable informal sector employees being mostly exploited are the household domestic workers; the numerous tenant employees from the tea, tobacco and other plantation industries as well as those employees working in the manufacturing and trading industries and/or shops located in the major cities and townships of Malawi. Unskilled employees in the mining industry/sector are also equally exploited despite the fact that such an industry is within the formal sector employment category due to its nature of operations.

Although the State, Ministry of Labour, has a mechanism for assisting estate tenant employees by certifying their employment contracts with their landlord employers, for example, through the

attestation of contracts, there is no explicit law that is adequately protecting them. Thus there is need for the State to expedite the enactment of the long outstanding Tenancy Labour bill that was first drafted in 1999 but is still in draft form pending fine tuning and cabinet approval.

For the domestic workers, these employees are specifically regulated by section 9 of the Employment Act of 2000 which empowers labour officers to carry out their inspection works even in private homes. However, the same section under subsection 1(c) provides that a labour officer shall be required to enter the private home of an employer for the purpose of inspection only with the consent of the employer himself/herself or under the authority of a warrant issued by a Magistrate. Already this provision in itself, poses some heavy challenges for a labour officer to perform the inspection because the process for sorting permission from the employer will automatically compromise the inspector's work or even the officer's attempt to obtain inspection warrant from the Magistrate is still involving on part of the inspector's preparations to the extent that such inspection attempts may always be avoided by most of the country's labour inspectors so to speak. Most importantly, the practicality of labour inspectors to be visiting various private households with domestic employees in most of the major townships and cities in the country where a lot of dogs including police dogs in some cases have been deployed for security reasons is far much away from being a reality. Otherwise, it shall mean a separate special training altogether (despite the officers' permission to use the police as provided for by the law) for labour inspectors if they are to deliver in this particular area of labour inspection, the training process that may be out of inspectors' mandate as well as very costly and hence not allowed by the state on conflict or economic point of view. In this regard of challenges in respect of domestic workers, it is my strong conviction that the State need to put in place special 'call centres' controlled by district labour officers in all districts across the country where all domestic workers should be required or empowered and encouraged to register their particulars for being working as household domestic workers for purposes of being easily identified and helped. A policy guideline within the labour and employment draft policy to regulate this proposed course of action for domestic workers must be clearly included and defined. This should be in addition to amending the relevant provisions of the employment Act to support such operations of the proposal.

With regard to social insurance schemes and workers compensation related challenges, the State should establish the National Pension Fund (NPF) as well as the Fund Administrator as provided for by the Pension Act of 2011 because all pension contributory deposits shall be deposited into such established NPF to be under the administration of the Fund Administrator. As for workers compensation, the State, to make adequate compensation moneys available (i.e. compensation resource pool), must establish the National Workers Compensation Fund (NWCF) and the Workers Compensation Trustee Board (WCTB) as provided for in the current Workers Compensation Act No. 7 of 2000. This would address the challenge of delays in processing beneficiary claims arising from the need for employers to first provide the necessary financial resources individually. This individual employer liability is the one currently used in place of the awaiting NWCF and it is the one with such a challenge whose solution is being suggested.

The overall challenge that can be concluded with respect to the protection of workplace parties from way back in 1964 to date is that: "at 50 years of independence, most vulnerable Malawian parties to the employment relationships are still not fully socially protected due to the general non-compliance with, or non adherence to the country minimum labour/employment standards - the labour legislative laws. It has been argued by various sections of individuals that the problem of non compliance by the concerned workplace parties is largely due to the State's (Ministry of Labour's) failure in its enforcement work through labour inspection services, among others. While I agree with this argument only to some extent, I still see that even the employers and employees

themselves are contributing to such Government's failure. However, in this paper it is out of intention to focus on employees' or employers' roles but on the State's roles. Thus it is first necessary to note on why this State's failure and then suggest on how the challenge can be dealt with holistically. Every employee in the Ministry of Labour would totally agree with the statement that it is the challenges faced by the Ministry that range from inadequate finances, inadequate well trained workforce (labour inspectors) just to mention a few that contribute to the Ministry's ineffective enforcement or performance within its core area of labour inspection hence the State's (Government) failure to address the overall challenge of non compliance. Having clarified the cause of the overall challenge, it is thus recommended that Government should strategically (that is at top level) consider treating issues of labour and employment as one of the top priorities within the Government MGDS document, which is not the case now) so that improved financing to the Ministry and labour inspectorate services in particular be a priority as well. Otherwise, it would be proper to suggest that, as an alternative possible solution to the non-compliance challenge, the State – Ministry of Labour should see no harm to extend its labour inspection mandate to other institutions including the private sector so that some private companies/firms or CSOs be licensed to undertake the work of labour inspection of course with guidance of the Government labour inspection and enforcement policy that has also been recommended, in this paper, to be finalised and adopted. This is already working with security services in the country. Malawi Human Rights Commission (MHRC), accredited NGOs, Trade Unions, ECAM, Malawi Association Council for the Handcaped (MACOHA) can be some of the institutions to be extended with the labour inspection mandate. This alternative solution should be considered in the event that government fails to expand coverage and improve the delivery of labour inspectorate services (i.e. improve finances and recruit and train more other inspectors for the number to be at least 147 country labour inspectors).

The major challenge facing the State in its regulatory role as model employer is the State's non compliant behaviour with respect to some labour law requirements. As such, there is need for the Government (as employer) to act as a 'First Mover' when it comes to compliance issues with respect to the State enacted labour laws. For example, Government must address its compliance shortfalls regarding the civil service pension and the underpayment of minimum wages, among others. Otherwise its failure would mean acting as a bad example, in its capacity as a model employer, to some employers from the private sector. The bad example case would not be the only resultant problem but also the resultant problem of creating 'favourable environment' for some of the already resistant employers (the law defaulters) when it comes to compliance, the situation that would likely hamper, to some extent, the smooth operations of the Ministry of Labour inspectors in their enforcement work of labour inspection as already observed by professor Mtende Mhango¹³ in his 2012 pension article. The State that has an obligation to offer social protection to its citizens should be the first example to exercise the offering of such social protection to its vulnerable employees and/or beneficiaries when acting as a role model employer.

Notes

1. National Statistical Office (NSO) of Malawi. Integrated Household Survey of 2004 / 2005. www.nso.malawi.net
2. Decent work refers to “the presence of sufficient employment opportunities, adequate social protection, the access of rights at work and positive progress in social dialogue” (ILO, 2004 cited in M-DWCP, 2011-2016).
3. ILO (1999) Report on Establishment of a National Productivity Centre: Feasibility Study, Mimeographed; and ILO (2009), Recovering from the crisis: A Global Jobs Pact, International Labour Conference, 98th Session, ILO: Geneva.
4. Employment Relationship means the interactions or interdependences between employers and employees or employers’ organizations and employees’ organizations – the Trade Unions with Government interventions.
5. Social protection definition by the “The United Nations Research Institute for Social Development”.
6. “OECD” is a unique forum where the Governments of 30 democracies work together to address economic, social and environmental challenges of globalization. It stands for Organisation for Economic Co-operation and Development. The OECD member countries are: Australia, Austria, Belgium, Canada, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxemburg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The Commission of the European Community also takes part in the work of the OECD.
7. Labour force is defined as the total number of all the employed and the unemployed individuals. The employed individuals could either be skilled / professional or unskilled / labourers or expatriates. The unemployed individuals are usually those jobless individuals with potentials to be employed and are actively looking for employment.
8. Social dialogue refers to the interactive forum or meetings or discussions between Government officials, mainly labour officials from the State’s labour department (in case of labour and employment meetings) and key industrial relations social partners – the employees or their trade unions and the employers or their organizations.
9. Sections 57, 59 and 61 of the Employment Act No. 6 of 2000 are the Justification for dismissal, Summary dismissal and Proof of reason for dismissal sections respectively that must be read and understood together in order for the employer to decide to terminate his/her employee procedurally.
10. Child Labour National Action Plan for Malawi (2010 – 2016), Government of Malawi-Ministry of Labour.
11. Informal workplace according to Malawi situation constitute mainly those workplaces owned by individual employers across the country who are in most cases without clear or express terms and conditions of service for employees).
12. Public service include organizations or bodies comprised of four parts as follows: *Civil service* which is made up of all employees (civil servants) serving in various government ministries and departments; *Security organisations* made up of all employees serving in the military, police and prison services; *Local assemblies (councils)* made up of all employees serving in the city, municipality, township and district councils; and, *Statutory bodies* made up of all employees serving in various government controlled companies and institutions).
13. Prof. Mtende Mhango teaches pension fund law and is the Deputy Head of the School of Law at the University of Witwatersrand.

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