

# Comparative Industrial Relations in Malawi & India: Industrial Dispute Settlement Procedures

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*Malawi and India are developing countries with industrial relations systems where workers, at times, stage strikes without following required procedures. This paper, using comparative analysis approach, examines legal industrial dispute procedures of the two countries to explore their complexity and find common cause of staging illegal strikes. The paper reports that the problem of illegal strikes in Malawi and India is mainly due to confirmed complexity of the industrial dispute procedures. Considering the severe impacts of strikes on countries' economies, the authors, however, recommend that the complexity is reasonable, necessary and suitable for developing countries and thus must be preserved to ensure that the law framers' intention to use strikes/lockouts only as actions of last resort is strictly upheld.*

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## Introduction

Trade globalization has led to the growth of multinational companies (MNCs) in the world in the recent past decades. MNCs from developed, middle developed and some developing countries with fast growing economies have taken lead to invest in foreign markets. At the center of managing the MNCs in the foreign markets is the management of the company hired native employees. This calls for managements of the employing MNCs to study/know industrial relations (IR) structures/models and apply the prevailing labor legislation of the host countries to effectively manage their native workforce. In this respect, comparative studies on the countries' industrial relations systems are justifiable and significant to generate knowledge on the IR systems of the studied countries for the benefit and information of foreign investors and MNCs in particular (in their capacity as employers) and for lesson sharing between respective governments' policy makers.

Foreign investors from India have invested in some African countries including Malawi for the past 10 years. For example, they have established private uni-

versities in Malawi such as the Millennium University and others. Indian investors have also expanded their investments in the trading sector to the extent that most of the big trading cities in Malawi have big hardware shops and shopping malls owned by the Indian investors. In addition, there are many Indian contractors who are equally employing many Malawians to undertake their construction activities in Malawi. The key positive implication with respect to such growing investments for the host country industrial relations is the growth of the country's employed workforce. It is this development that motivated the authors to design this paper with a purpose to compare industrial relations of Malawi and India by focusing on the industrial dispute settlement procedures of the two countries.

### **Problem Statement**

Malawi's legal framework of industrial dispute settlement procedure is provided under part V of the Malawian Labor Relations Act (LRA) No. 16 of 1996. On the other hand, India's legal framework of industrial dispute settlement procedure is provided under chapter V of the Indian Industrial Disputes Act (IDA) No. 14 of 1947. The two procedures regulate the management of industrial disputes particularly strikes and/or lockouts that are exercised by workers and employers respectively.

Exercising the right to strike/lockout by workers/employers without violating required provisions as laid down in a particular country's legal industrial dispute settlement procedure is a desir-

able situation by every country in the world especially those that are member states of International Labor Organization (ILO). Contrary to this desirable situation, however, many developing countries including Malawi and India are reported to be experiencing the opposite where strikes are usually staged illegally, that is, they are staged without following legal requirements. This creates undesirable situation which is a problem in itself.

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Comparing the two industrial dispute procedures and exploring why illegal strikes/lockouts are being staged by workers/employers despite having well defined industrial dispute procedures in their labor laws became key issues/questions to be investigated in this paper. The key issues/questions were used to formulate two specific objectives addressed in this paper which are: to briefly outline industrial relations systems of Malawi and India and summarize their legal industrial dispute procedures; and to compare summarized legal industrial dispute procedures and show their implications as well as examine whether they are complex/rigorous with reference to exercise of the right to strike/lockout.

### **Industrial Relations in Malawi & India**

Malawi, a former British colony, is a member of ILO since 1965. As an ILO

member state, Malawi has ratified a total of 29 ILO conventions to date (MoL, 2011; Malema, 2014). The 29 ratified conventions include the two, (the Freedom of Association and Protection of the Right to Organize convention, No. 87 and the Right to Organize and Collective Bargaining convention, No. 98), that relate to the right of workers to organize and to collectively bargain which in turn include the right to withdraw labor. Most relevant provisions of the ratified conventions have been domesticated into the country's labor legislation. This has greatly helped in shaping the Malawian industrial relations system with respect to developing her labor legislation framework. There is a relatively weaker trade unionism system consisting fragmented trade unions most of which are disorganized without definite operating structures (Dzimhiri, 2016). This disorganization has negatively affected trade union density which is currently declining in Malawi.

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In terms of size of labor legislation, Malawi is one of those fewer countries within the Southern African Development Community (SADC) region that have smaller number of labor legislative Acts regulating their developing industrial relations. Specifically, the country has only 5 labor legislative Acts currently in force. These are: Labor Relations Act of 1996; Occupational Safety, Health and Welfare Act of

1997; Employment Act of 2000; Workers Compensation Act of 2000; and Pension Act of 2011. All other colonial labor statutes were repealed by these 5 legislative Acts which preserved only relevant provisions from the repealed Acts. In addition, as observed by Banda (2008) and confirmed by Sikwese (2010), the Malawi's labor legislation has for the past decades been shaped by courts in the form of judge made laws on labor and employment matters which have also formed part of the country's labor laws for references.

On the other hand, India, also a former British colony is a member of ILO since 1919. As an ILO member state, India has ratified a total of 36 ILO conventions to date (Mamoria et al, 2017). Similarly, these ratifications have greatly helped in shaping the Indian industrial relations system with respect to developing the Indian labor legislative framework. This is because relevant provisions of ratified conventions have been adopted and incorporated into the country's labor legislation. Mamoria et al. (2017: 522) noted that "India's commitment to the ILO is reflected in its adherence to the institution of tripartism as a novel method of resolving labor management conflicts". They further indicated that the influence of ILO standards on the Indian labor legislation is more noticeable especially after 1947 when the Indian National Government assumed its office at the center. Apart from shaping the Indian labor legislation, ILO, through its tripartite activities, has also greatly influenced the Indian trade union movement.

The Indian industrial relations model, according to Zechariah (1991: 360), is characterized by strained union-management relations that lack cooperation, compromise and competition. Zachariah observed that “multiple rival unionisms” is an important feature and one of the greatest weaknesses of the Indian trade union movement. Indian industrial relations system is one of the heavily regulated industrial relations systems in the world. This is because of two reasons. First, Indian labor laws are considered to be very highly regulated and rigid as compared to those of other countries in the world. Second, the country has over 50 main labor legislative Acts and numerous other laws that regulate employers and employees in matters relating to industrial relations (Joseph, 2014; Poddar, 2014). A number of these Indian labor laws survived from British colonial times, while some have been enacted after India’s Independence.

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Both the central and state governments have enacted laws on labor relations and employment issues for the country as whole and for specific states respectively. It is therefore well-known that the current volume of Indian labor laws are thus a combination of India’s history during its colonial heritage; India’s experiments with socialism; important human rights and conventions/standards that have emerged from the

United Nations particularly those of ILO.

In summary, both Malawi and India, as former British colonies and ILO member states, have similar industrial relations systems that are regulated by labor laws which are a combination of the preserved provisions from the colonial labor legislative Acts of British origin and those provisions from relevant ILO labor standards (the conventions) that have been domesticated into the two countries’ labor legislative Acts. This similarity is the case despite the fact that Indian IR system is more developed than the Malawian IR system in addition to being regulated by far much greater number of labor legislative Acts as compared to Malawi with only 5 labor Acts.

### **Industrial Dispute Settlement Procedure in Malawi**

The legal framework of industrial dispute settlement procedure in Malawi is provided under part V of the Malawian Labor Relations Act No. 16 of 1996. This dispute settlement process/procedure is mainly for “collective labor disputes” as opposed to “individual labor disputes”. The Labor Relations Act prescribes stages through which the settlement of collective labor disputes must pass. Section 43 provides that the dispute settlement process must start with the reporting of an existing or imminent dispute to the Principal Secretary responsible for Labor, who must acknowledge the dispute notification in writing within 7 days. Therefore, reporting of the existence of a labor dispute between the concerned

parties is the first stage of dispute settlement. During this stage, the disputants have an obligation to continue bargaining in an attempt to resolve their dispute on their own with reference to their agreed collective agreement procedures. If a dispute still stands upon exhaustion of all their agreed collective bargaining agreements, the law mandates the Principal Secretary for Labor to conciliate the dispute. At this point, the dispute settlement procedure graduates into the next stage of the mandatory conciliation period. This is a period with a minimum of 21 days.

Section 44 prescribes a conciliation procedure for every reported dispute in accordance with section 43. This constitutes the second stage of mandatory conciliation period which must be concluded with a minimum of 21 days. During this stage, the Principal Secretary for Labor has three options. He may refer the dispute back for further conciliation attempts by the disputants in cases where their collective agreement procedures were not exhausted; he may endeavor to conciliate the parties himself/herself; or he may authorize any other person to do the conciliation on his/her behalf. The latter two options are possible because the law names the Principal Secretary for Labor to be the conciliator. In addition, the law allows any person authorized by the Principal Secretary to act as a conciliator. Furthermore, an authorized person by the Principal Secretary is also allowed by law to appoint another person to conciliate the dispute. This flexibility in law is aimed at ensuring that the process of dispute settlement should not be hampered in

cases where there could be so many similar disputes to be attended to, at the same time, by the same Principal Secretary or where the Principal Secretary may be tied up with other commitments. In addition, as noted by Ng'ong'ola (2002: 181), it was the expectation of law legislators to ensure that expertise outside the Ministry may develop through the authorization of independent conciliators.

One other information in this dispute settlement procedure worth noting is in cases where one of the disputants is the government or a public institutional body controlled by the government such as the statutory corporations like Electricity Supply Corporation of Malawi (ESCOM) among others. In this case, section 44 (2) allows the disputants to agree on the person to conciliate them. However, if it happens that the disputing parties fail to agree on the conciliator within 7 days from the date of dispute reporting, then either of the parties is allowed by law to apply to the Industrial Relations Court (IRC) to choose an independent arbitrator for them. Disputants have the right to agree to extend the conciliation period if they so wish.

In the event that the dispute is settled, a certificate of settlement is written by the conciliator, signed and served to either party in a dispute. The certificate's original copy should be filed with the office of the Principal Secretary for Labor. However, in the event that the dispute is not settled after the expiry of the minimum of 21 days conciliation period, then a certificate of unresolved dispute is written, signed and served to

either party in a dispute with its original filed with the office of the Principal Secretary for Labor. At this point, the dispute is declared unresolved dispute.

According to the Act, there are three conditions that would qualify a dispute to be unresolved. These are: if a minimum of 21 days mandatory conciliation period has elapsed from the dispute reporting date; if one of the parties fails to attend the conciliation proceedings without informing the other party and the conciliator; and, if the parties fail to reach an agreement on the dispute settlement. A combination of the first condition and any one of the other two conditions or both of them necessitates the dispute conciliator to declare the dispute unresolved. Thus, an unresolved dispute can be in existence but not yet as a necessity for either of the parties to a dispute to issue a strike/lockout notice, until the 21 days conciliation period expires. Section 45 provides direction for the unresolved disputes which constitute the third stage in the dispute settlement process. The declared unresolved labor dispute between the employees and employer must indeed be in existence. The dispute must be declared unresolved by the dispute conciliator in writing.

The section indicates that an unresolved dispute concerning an essential service; the interpretation of a statutory provision; a collective agreement or a contract of employment must be referred to the IRC, by either of the two parties or the Principal Secretary in case of essential services, for determination. On the other hand, an unresolved dispute

concerning other matters (including non-essential services) may also be referred to the IRC for determination by the two parties themselves, or either party may give notice of intention to take industrial action by way of a strike/lockout. This means that the existence of the declared unresolved dispute if not pending in a court of law for determination and if it does not concern workplace employees involved in the delivery of essential services calls for either party to the dispute to take an industrial action upon serving a notice to either party according to the law.

The Industrial Relations Court in this third stage, like in the first stage, has a role to play in respect of the unresolved labor dispute. It is mandated, upon receiving an application from either party to the unresolved dispute, to determine their dispute that involves interpretation or application of all or one of the following: any statutory provision; a collective agreement provision; a contract of employment. In addition, the court has a role to determine the parties' unresolved dispute that concerns essential services, in the same manner, upon receiving the application to do so from the Principal Secretary for labor. It must be noted that it is a law requirement for the Principal Secretary for labor or for either of the parties to the unresolved dispute involving the essential services and interpretation or application of some of the parties' employment issues respectively, to refer to IRC for determination. Hence such a requirement must be observed if particular parties' unresolved dispute calls for such a requirement.

Observance of the strike intention notice is the final stage to striking/locking out actions. Section 46 provides that no party to a collective dispute shall be entitled to resort to industrial action (strikes/lockouts) unless and until the conciliation procedure has been exhausted and that the dispute has been declared unresolved. The effect of this section is to support the enforcement mechanism aimed at ensuring that the observance of the 21 days mandatory conciliation period is complied with as well as to ensure that strikes/lockouts do not occur unnecessarily in cases of collective rights labor disputes and those disputes involving essential services which are supposed to be referred to court for determination.

**Section 46 provides that no party to a collective dispute shall be entitled to resort to industrial action (strikes/lockouts) unless and until the conciliation procedure has been exhausted and that the dispute has been declared unresolved.**

The section provides that once the unresolved dispute is not pending in a court of law for determination and if it does not concern workplace employees involved in the delivery of essential services, the law necessitates either party to a dispute intending to strike/lockout to serve a 7 day notice to the other party with a copy to the Principal Secretary for Labor. It is within the emphasis of the law that only after the expiry of the 7 days notice period, can the party with

strike/lockout intention, proceed with the action otherwise the strike/lockout action would still be illegal if done before the expiry of the 7 days served notice. Lastly, section 47(1) provides that an employer or employee carrying on or engaged in an essential service shall not strike/lockout in connection with any such essential service. The meaning of this section is that strikes/lockouts are prohibited in Malawi to be staged in all those workplaces whether public or private involved with the delivery of essential services.

In summary, the Malawi Labor Relations Act of 1996 provides for the industrial dispute (strike/lockout) settlement process procedure that has 7 days between reporting and acknowledging receipt of the report; 21 days from the date of acknowledgement of the report to the end of conciliation process period; and 7 days from the end of the conciliation process period to a strike/lockout. This gives a minimum total of 35 days before a strike/lockout, which can be legally supported by law, takes into effect. The term *minimum* fits here because, more than 35 days before the strike/lockout action takes place is allowed by law in cases where the parties agree to extend their conciliation period beyond the prescribed 21 days conciliation period.

### **Industrial Dispute Settlement Procedure in India**

The legal framework of industrial dispute settlement procedure in India is provided under chapter V of the Indian Industrial Disputes Act (IDA) No. 14 of 1947. Section 22 of IDA provides that

either the employees or employer operating in a public utility service establishment shall be required to go on strike or lockout respectively provided: either of them gives to each other notice of strike/lockout within 6 weeks before striking/locking; or 14 days expire after giving such notice; or after the expiry of the date of strike/lockout specified in any such notice; or there is no pendency of any conciliation proceedings before a conciliation officer; and after expiry of 7 days from the conclusion of such conciliation proceedings, if any.

Note that the Act does not prohibit employees from going on strike/lockout but that it requires them to fulfill some prescribed conditions before going on strike/lockout. For instance, the conditions of “6 weeks before striking or locking” and “within 14 days of notice giving” in section 22 are significantly incorporated to prohibit workers and employers from staging strikes and lockouts respectively without giving a minimum of 14 days notice to the employer or employee, a copy of which must also be served on the conciliation officer. In this case, the law intends to give some time for either of the disputing parties to consider the demands of the workers or of the employer who may be appearing to be more serious to stage a strike or a lockout in furtherance of their demands. The law also imposes statutory obligation on the conciliation officer to commence conciliation proceedings immediately so that the strife between the workers and employer shall not result in stoppage of work and production.

Furthermore, the section also prohibits the workers from going on strike or employer from staging a lockout before the expiry of the date mentioned in the strike or lockout notice. This follows that such a strike/lockout notice date can only be fixed after the period of 14 days during which workers/employers cannot go on strike/lockout. It is therefore obvious that the phrase “within 6 weeks before striking or locking” is incorporated to determine the effectiveness of the notice given by the workers or employers. In other words the notice of strike/lockout given by workers/employers in accordance with section 22 will be effective only for a period of 6 weeks, beyond which, another fresh notice would be required.

In order to avoid the possible situation of fresh notice provision, the Act provided that the workers/employers cannot go on strike/lockout “without giving to the employer or employees notice of strike or lockout within 6 weeks before striking or locking”. This strictly means that the workers or employers cannot go on strike or lockout after the expiry of 6 weeks because they will have done that outside the given notice period thereby indicating the staging of a strike or lockout without giving to either party the required notice. Thus, the effect of the notice is confined to a period of 6 weeks requiring the notice of “within 6 weeks before striking or locking”. In addition, the section provides that workers/employers cannot go on strike/lockout during the period of pendency of any conciliation proceedings before the conciliation officer and 7 days after conclusion of such proceedings.

Section 23 provides for general prohibition of strikes and lockouts in all industrial establishments. The section stipulates that there shall be no employee who is employed in any industrial establishment to go on strike or no any employer of any such employee(s) to declare a lockout:

1. during the pendency of conciliation proceedings before a mandated Board and 7 days after the conclusion of such proceedings;
2. the pendency of proceedings before a Labor Court, Tribunal or National Tribunal and two months after the conclusion of such proceedings;
3. the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings; or
4. during any period in which a settlement or award is in operation in respect of any of the matters covered by the settlement or award.

A critical understanding of each of these two sections - 22 and 23- reveals three notable application differences between these two sections. First, section 22 specifically deals with public utility services which make conditions more restrictive for them, whereas section 23 applies to all other establishments including the public utility service establishments. Second, the provision of notice under section 22 is mandatory, whereas it is not the case under section 23. Finally, unlike section 22, proceedings before a conciliation officer in the case of other industrial establishments other than

public utility services will not bar the declaration of a strike/lockout.

Note that there is no provision in the IDA which defines the legality or illegality of a strike/lockout. However, section 24 (1) lays down conditions, which, if contravened, would make the strike/lockout illegal. This means that definitions of legality or illegality of strikes and lockouts would be implied by operation of law. Further, it entails that strikes and lockouts in India are legal when they are commenced and declared in compliance with the relevant provisions of the Act, that is, sections 22 and 23 along with other Act relevant provisions.

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In addition, section 24 (3) provides that a lockout declared in consequence of an illegal strike or a strike declared in consequence of an illegal lockout shall not be deemed to be illegal. Section 26 prescribes penalties for illegal strikes and lockouts among others but does not state anything regarding payment of wages and/or salaries by employers to striking workers.

Further restrictions to stage strikes/lockouts are provided under section 10 of the Act which stipulates that where an industrial dispute has been referred to a board, labor court, industrial or na-

tional tribunal, the appropriate government may by order prohibit the continuance of a strike/lockout in connection with such dispute which may be in existence on the date of the reference or which has been referred to arbitration and a notification has been issued under such section 10.

In summary, the Indian Industrial Disputes Act of 1947 provides for the industrial dispute (strike/lockout) settlement procedure that has a total of 42 days within which strikes/lockouts must be notified and staged. A maximum of 14 days from date of 42 day given notice is required to be observed after which strike or lockout can be declared in public utility service establishments. This Indian industrial dispute procedure puts in restrictive time frames and conditions for initiating and staging strikes/lockouts within the given period of 42 days (six weeks). Finally, the Act contains a definite listing schedule of defined services, or service establishments, to constitute as public utility/essential services in India.

### **Comparative Analysis**

The analysis of the two countries' industrial dispute procedures shows that both the Malawian and Indian legal industrial dispute procedures allow the right to strike and lockout by employees and employers respectively. Despite the fact that strikes/lockouts are allowed to be staged in both countries, their actions are, however, heavily restricted/regulated by both legal dispute procedures. Such heavy restrictions have made trade unions

and workers themselves to argue that restricting actions of strikes/lockouts in such manners is just as good as prohibiting strikes/lockouts.

Further, the two procedural laws are silent on the payment of wages/salaries for striking workers. Suffice to note that the Indian 2<sup>nd</sup> National Commission on Labor (NCL) suggested for inserting into the law/Act provisions to ensure that if a strike is illegal by failing to comply with statutory provisions, based on reasonable justification (proof beyond reasonable doubt), wages should be deducted. The suggested amendment has, however, not yet been effected to date.

Both procedures define strike as a concerted action resulting in cessation (stoppage) of work by employees in an industry. Strike has the potential to enforce employees' demands even in cases where such work cessation could be for a short period of time. It is an employees' pursued weapon to pressurize their employer(s) or government to meet their demands. Similarly, the two procedures define lockout as the employer's temporary action to close down the workplace with a purpose to restrain employees to work. Lockout has the potential to force employees to withdraw their demands leveled against their employer(s). Both strike and lockout are recognized as legitimate weapons for respective workplace parties to deal with their grievances while seeking enforcement of their labor rights and interests. However, one critical question which arises with regard to the legitimacy of the strike/lockout as provided in these two countries' indus-

trial dispute procedures is whether it is a fundamental right that must not be subjected to strict control by statutes. Due to limited space, authors have not debated/discussed this critical question in this paper, apart from highlighting or citing some interesting views from literature that would inform further debate/research about this question.

**The fact that strike/lockout is treated as an action of last resort implies that it is not a fundamental right but just as a civil right.**

To begin with, the authors are of the view that had the right to strike/lockout been a fundamental right, it would not have been subjected to heavy restrictions as is the case currently and that its selective application would have been completely avoided. This is because every fundamental right, unlike a civil right, is equated to as human right that must be unconditionally exercised. Mamoria et al (2017) observed that strike as an enforcement weapon must only be used as an action of last resort when all avenues have failed. In line with this observation, Mahatma Gandhi (Leader of the Indian freedom fighters of the 20<sup>th</sup> century) recognized the workers' right to strike but had similarly warned that such a strike should be conducted when all other methods have failed. Note that no action to safeguard human right in this world can be treated as one of last resort. The fact that strike/lockout is treated as an action of last resort implies that it is not a fundamental right but just as a civil right.

The Indian constitution does not consider the right to strike as a fundamental right (Mamoria et al, 2017: 155). Likewise, the Malawian republican constitution under section 31 (4) explicitly entrenches the right to withdraw labor which is the right to strike but with appropriate state measures, the rules and regulations to be followed.

Finally, debate on whether the right to strike should be prohibited has been exhaustively undertaken in the world with a bold conclusion that it should not, but just be regulated. For instance, Hameed (1971: 158) observed that, "with the enormous political influence of organized labor in various countries, it might be a political suicide for a government to take away the right to strike. On the other hand, [government] cannot, however, allow a strike to procrastinate indefinitely as it will reduce production of goods and services and jeopardize the economic freedom of the consumers". This shows the possibility of how the right to strike/lockout shall remain a controlled right, thus not fundamental.

In terms of contrasting, some issues of interest worth highlighting from each industrial dispute procedure become imminent. For instance, three issues are evident within the Malawian LRA. First, the dispute procedure, that is, the Act does not prohibit government public civil servants from staging strikes (section 44 (2)) except those delivering essential services. Second, the strike/lockout notice is open ended, that is, the law does not explicitly state on what should happen in the cases where the party intending to

strike/lockout has issued a notice according to the law but has failed to effect the strike/lockout action following the expiry of the notice date. Third, despite the Act defining the term essential services, the Act does not contain a definite listing schedule of defined services to constitute as essential services in Malawi.

On the other hand, four issues are evident within the Indian IDA. First, the dispute procedure, that is, the Act strictly prohibits government public civil servants from staging strikes. Second, the strike/lockout notice is close ended, that is, the law explicitly states that beyond the expiry of 42 days notice, any standing strike/lockout notices shall be declared dissolved or revoked calling for fresh notices if respective parties so wish to undertake their planned strike/lockout. Third, public utility services are defined by provision of a listing schedule of the services. Fourth, strikes/lockouts in public utility services are not prohibited in India. They are, however, heavily restricted as compared to strikes/lockouts in any other general industrial establishments.

The prohibition of industrial actions (strikes/lockouts) in essential services in Malawi has however been criticized by law experts and academicians. For example, Ng'ong'ola (2002: 181) argued that this is a contradiction of section 31(4) of the [Malawi] constitution under which the state is required "to take measures to ensure the right to withdraw labor". A sweeping prohibition of the right to industrial action in essential services would also be a retrogressive legal development. A restricted right to strike or lock-

out in essential services was recognized even under the old country legal framework. [Therefore] a measure out/down step with the prevailing constitutional and political culture and labor relations practices would also be extremely difficult to enforce.

The authors noted that the current problem in Malawi where workers in the health sector frequently stage strikes despite their knowledge that strikes are prohibited in their sector that delivers essential services, confirm Ng'ong'ola's argument that "... labor practices would also be extremely difficult to enforce" because of such prohibition. In this regard, it is in the view of the authors that Malawi should find it necessary to look at how other countries such as India where strikes in essential services are allowed, manage such industrial disputes (strikes) involving essential services through the use of additional restrictions rather than just a prohibition.

The definition of, or inclusion of, scheduled list of services that constitute public utility services and/or essential services in the Indian labor law may serve as lessons for the Malawi labor administrators. The absence of a defined list of scheduled services or establishments that deliver services that should constitute essential services in Malawi is a problem in itself. This implies that a determination of what constitutes essential services or not has been left to be done as court judges' own discretionary task during the exercise of their role of interpreting laws. This may lead to the problem of subjectivity within the inter-

pretation of the law as different judges are bound to differ in their interpretations of what may constitute essential services based on their own education background, understanding of the law and prevailing circumstances at hand.

Malawi's granting of the right to strike to every employee in the country including government public civil servants in its industrial dispute procedure was to ensure that its provisions of her enacted LRA are in agreement with those of the two ILO conventions, No. 98 and No. 87 which Malawi ratified in 1965 and 1999 respectively. On the other hand, the fact that the Indian IDA prohibits government public civil servants to stage strikes explains why the Indian government is yet to ratify the two ILO conventions since ratifying them would mean granting of certain rights that are prohibited under her statutory rules to public serving employees.

The country's legal industrial dispute procedure has implication on the nature of strikes staged in a particular country. In Malawi, for more than a decade now, it has been very common for workers to go on strikes without following procedures both in public and private sectors but still end up getting paid their normal wages/salaries during days of strikes. Two reasons account for this workers' behavior.

First, the law is silent on the payment of wages to illegal strikers. This enables illegal strikers to get paid their wages/salaries, through courts, once denied the same by their employers. For instance, in the case of *University of Malawi*

*Workers' Trade Union (UWTU) v. Council of the University of Malawi (UNIMA)* (Miscellaneous civil cause No. 1 of 2015), workers (teachers) had gone on strike without exhausting and following all the strike procedures as laid down in the Act and consequently, their employer declared that their strike was illegal and thus withheld their salaries for the days they were on strike. The court held that the workers should be paid their withheld salaries on condition of proved illegality of the administrative action by the employer. The court to arrive at its decision based on the fact of law that any imposed disciplinary action to an employee premised on the employer's illegally administrative decision is in itself an illegal action that any court can dismiss with its entirety.

Second, the law gives freedom for public civil servants to go on strike if they so wish. Had it been that the law was restricting public servants to strike as is the case in India, most of the strikes by public servants would be avoidable in Malawi.

In terms of complexity, a critical reading and analysis of the provisions of industrial dispute procedures of the two countries show that both are equally rigorous and complex. The complexity/rigor for the Indian procedure is evident where the law, after providing the mandatory 42 days strike/lockout notice, goes ahead imposing several other mandatory restrictions within the notice period. In essence, for workers or employers not to go for strike or lockout beyond the 42 days notice means that they would only have 28 live days (42 – 14 days) at their disposal to go on strike or lockout.

And with other mandatory restrictions such as no allowance to stage strikes or lockouts with the pendency of the conciliation proceedings among others, it entails making the whole procedure to be very rigorous and complicated.

In the case of the Malawian procedure, the complexity/rigor is explained mostly in terms of the mandatory minimum of at least 35 days to elapse before a legal strike or lockout can take into effect. This is a relatively longer mandatory minimum period as compared to that of 14 days for India. As a result, it is felt as enough to complicate the dispute procedure since it also has several requirements to be fulfilled within each of its three component period stages.

**The complexity is reasonable, necessary and suitable for developing countries and thus must be preserved to ensure that the law framers' intention to use strikes/lockouts only as actions of last resort is strictly preserved.**

The authors, through this comparative analysis, have also noted the prevailing common intention in both jurisdictions, which is to allow their employment disputing parties to conduct their actions as a way of exercising their right to strike/lockout only as actions of last resort. Considering the severe impacts of strikes on countries' economies, the authors, recommend that the complexity is reasonable, necessary and suitable for developing countries and thus must be preserved to ensure that the law framers'

intention to use strikes/lockouts only as actions of last resort is strictly preserved. This recommendation is in agreement with some other social employment stakeholders including governments and development partners who understand the serious implications of strikes on the country's economy.

Finally, the authors further contend that any attempt to simplify the procedure as wanted by trade unionists would be a total defeat to the explained common intention thereby allowing the possible increase in occurrence of the "destructive" strikes which are said to have potential in crippling the country's economy. In fact, the Indian National Commission on Labor recommended that the strike notice should be accompanied by an 'open' ballot with two-third workers voting in support of the strike to be staged, the recommendation that is welcomed by trade unions though insisting for a secret ballot instead.

### **Conclusion**

This comparative analysis set to outline industrial relations systems of Malawi and India with an attempt to summarize and compare their respective legal industrial dispute procedures and show whether they are complex and have some implications on the management of industrial disputes in these two developing countries. Comparative studies on the countries' industrial relations systems are significant to generate knowledge on IR systems of the studied countries for the benefit and information of foreign investors in their capacity as employers and for lesson sharing between respective governments' policy makers.

The paper finds/reports that both countries' industrial dispute procedures are equally rigorous and complex to the extent that they have implication on the nature of staged strikes, which usually turn into illegal strikes. The complexity of the dispute procedures remains a challenge to be exhausted by workers before they can go on a strike. Considering the severe impacts of strikes on countries' economies, the authors have recommended that the complexity is reasonable, necessary and suitable for developing countries and thus must be preserved to ensure that the law framers' intention to use strikes/lockouts only as actions of last resort is strictly upheld.

Finally, the paper recommends that it may be necessary for Malawi to look at how India handles strikes involving public utility/essential services through the use of additional restrictions rather than just a prohibition and to consider developing scheduled list of essential services to constitute all services deemed as essential services in Malawi as is the case in India. On the other hand, Malawi's small size of labor legislation may also be of interest for Indian labor and employment policy makers although, administratively, Malawi and India are quite different in the sense that Malawi has no "autonomous" states like in India.

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