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ILO AND MALAWI ON THE REGULAR SUPERVISION OF RATIFIED CONVENTIONS: PROBLEMS AND PROSPECTS

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Abstract

Malawi is experiencing some problems concerning her international reporting obligations on the application of her ratified International Labour Organisation (ILO) conventions. This paper discusses problems and prospects that Malawi is experiencing through ILO's regular supervision of her ratified conventions by analyzing various commentary/documentary reports about Malawi. A total of 52 ILO-Committee of Experts on the Application of Conventions and Recommendations reports, ILO-CEACR's observations (30) and direct requests (22), for Malawi were critically analyzed in addition to social partners' and Government's reports/responses. The paper finds that while Malawi is currently confronted with main problems such as incompatibility of the operating systems' requirements; absence of established appropriate models for publication of comparable information; and inadequate coordination with respect to production of convention application reports, there are, however, great prospects for the country to gain advanced knowledge, skills and institutional capacity to improve its country labour administration system services as required at national, regional and international levels. Based on this finding, the paper recommends for Malawi to continue committing her resources towards meeting all her obligations as an ILO member state with respect to the regular reporting activity on the country's ratified conventions.

Keywords: ILO/Malawi, ratified conventions, problems, prospects

1. Introduction

In this era of “globalization revolution”, it becomes an opportunity for any world country to be rated as high performer with respect to meeting obligations and commitments entered and signed between such a country and a particular world (international) body such as the United Nations (UN), World Bank, ILO etc. This is why every country seems to be struggling every time to improve its interactions and visibility through reporting mechanisms to world designated bodies. For labour/employment related matters, it is the ILO which is a world body designated with functions of receiving and examining reports from ILO member states (Samson & Landy, 1980; Servais, 1984; Kalua, 1985).

Article 22 of the ILO Constitution provides that every ILO member state is required to submit application reports to international labour office on measures that the country has taken to give effect to provisions of its ratified conventions. This provision obligates every ILO member state to be reporting at regular intervals or on request of the ILO Governing Body. It must, however, be noted that many ILO member states face different problems with regard to their obligation of reporting on applications of their ratified conventions. Problems experienced vary in nature and complexity from one country to the other depending on a country's economic performance and political system (ILO, 1977; Samson, 1979). The experienced problems have implications such as making member states to report irregularly; fail or delay to submit required reports or

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requested information. In addition, delays in taking up implementing actions by member states as particularly agreed by country's own tripartite structures and/or as recommended by ILO, is another implication arising from such problems.

The ILO-CEACR general report of 2015 reveals that inadequacy of, or lack of, human resources and technical capabilities (for Burkina Faso, Djibouti, and Comoros); general economic and technical difficulties (for Mali, Tanzania/Zanzibar, Burundi and Ghana); lack of knowledge and skills; shortages of managers and administrative staff of the labour administration services (for Fiji, Haiti, Madagascar and Rwanda); and wars and political systems (for DRC, Iraq, Afghanistan, Georgia, Somalia and Denmark), are some of the problems that negatively affect member states from fulfilling their regular reporting obligations.

Malawi is not spared from facing its own country associated problems with regard to her reporting activity on application of its ratified conventions. The knowledge on specific operational problems faced by a country is much significant for the country concerned to improve on its performance with respect to such reporting activity. Despite ILO's revelation on faced problems by some member states, no any specific investigation is reported on the problems faced by Malawi. It is against this background that this paper is set to explore some problems and prospects Malawi is experiencing regarding the ILO's regular supervision process on application of the country's ratified conventions. The paper reviews and analyses a number of ILO observations and direct requests made for Malawi in order to identify faced challenges.

2. Methodology

To identify problems experienced by Malawi in respect of ILO's regular supervision process on the application of country's ratified conventions; the paper critically reviewed and analyzed various documentary reports and publications regarding ILO regular supervision for Malawi on the application of ratified conventions. The documents included Government reports and responses as well as Malawi congress of trade unions (MCTU) and employers' consultative association of Malawi (ECAM) observations written and submitted to ILO with respect to application of Malawi's ratified conventions. ILO-CEACR's regular supervision comments for Malawi were also analyzed. These comments are in form of observations and direct requests. A total of 52 ILO-CEACR Observation and Direct request commentaries were analyzed of which 30 of them were observations and 22 were direct requests. These were ILO commentaries for Malawi from 1990 to 2018.

Most of these selected observations and direct requests are with respect to applications of Labour Inspection Conventions (C081 & C129) of 1947 and 1969 respectively; Tripartite Consultation (International Labour Standards) Convention (C144) of 1976; Labour administration convention (C150) of 1978. Note that the issue of ILO supervision which is a topical concern in this paper relates to the country labour administration and management functions. These two functions are mostly regulated by four ILO conventions namely: C150, C081, C129 and C144 hence the reason for selecting and analyzing ILO observations and direct requests with respect to these four conventions. Suffice to note, however, that observations and direct requests on other Malawi's ratified conventions were also basically looked into to complement findings from reports of the selected conventions' comments. In addition, the paper reviewed the Malawi labour administration system to put into perspectives, those structures that are mandated to undertake the reporting activity on application of the ILO ratified conventions.

Furthermore, to validate key findings in this paper, the authors administered a closed questionnaire to four respondents. Two respondents were drawn from the Ministry of labour headquarters in Lilongwe, the Labour Commissioner and head of industrial relations unit in the Ministry. Labour Commissioner, in the

Malawi Ministry of labour structure, is the technical overall in charge of the country labour and employment services. In this respect s/he is therefore a competent official identified to provide reliable responses to the administered questionnaire. The other two respondents were drawn from social partners. One was a trade union leader from MCTU and the other one was an employers' leader from ECAM. Note that MCTU is the mother body of trade unions in Malawi. Similarly, ECAM is an association body representing country employers.

3. A Review of Relevant Literature

3.1. International Labour Organisation

The International Labour Organization was established in 1919. It became a specialized agency of the UN in 1946. ILO has a unique feature which is "tripartite structure". This tripartite structure consists of representatives of governments, employers and workers. Since its establishment, ILO has been attempting to promote worldwide respect for freedom and dignity of the working population and to create conditions in which that freedom and dignity can be more fully and effectively enjoyed (ILO, 2014).

The ILO was established to seek promotion of social justice and internationally recognized human and labour rights (UN, 2000). ILO formulates international policies and programmes to help improve working and living conditions. International labour policies and standards are the recommendations, conventions and protocols which are usually adopted by ILO and ratified by several countries worldwide. Currently ILO has 187 member states. The other key function of ILO is to create, and supervise, international labour standards to serve as guidelines for national authorities to adopt and put them into action (ILO, 2006). The latter function constitutes subject for discussion in this paper.

3.1.1. ILO Structural Organs

There are three main structural organs of ILO. These are: the International Labour Conference; the Governing Body; and the International Labour Office. *International Labour Conference* is the General assembly. It is the supreme and policy making organ of ILO that acts as the legislative wing. It consists of four delegates from each member state, that is, one workers' delegate; one employers' delegate and two government's delegates. And with 187 ILO member states, it means there would be at least 748 delegates from across the World attending the international labour conference. The *Governing Body* is the executive council of ILO which is composed of 56 representatives of which 28 are government representatives; 14 are employers' representatives and 14 others are the workers' representatives. On the other hand, the *International Labour Office* is the permanent secretariat office of ILO headed by the Director General.

In terms of functions, the International Labour Conference elects the Governing Body. It adopts the Organization's work plans and budgets. It also adopts new international labour standards in form of conventions and recommendations and provides a forum for discussion of social and labour issues. The elected Governing Body appoints ILO Director General who also serves as secretary General during the ILO conferences. It draws up agenda items of each session of the labour conference. Through its CEACR, the Governing Body examines the implementation of its conventions and recommendations by member states through its regular supervision function. On the other hand, the International Labour office provides the secretarial services and functions for all conferences and other meetings. It is a permanent office responsible for day-to-day implementation of the administrative and other decisions of the conference and those of the Governing Body and its instituted committees.

3.1.2. ILO Conventions and Ratification

ILO (2014) defines a convention as a treaty which, when ratified by a country, creates binding international obligations on that concerned country. On the other hand, a Recommendation creates no such obligations but is essentially a guide to the national actions. By the year 2019, ILO had adopted 189 conventions and over 180 recommendations.

In terms of ratification, ILO member states are required to submit any convention adopted at the International Labour Conference to their national competent authority. This is done for enactment of relevant legislation or other actions, including ratification by member state. An adopted convention normally comes into force 12 months after being ratified by two member states. Ratification is a formal procedure, whereby a state accepts the convention as a legally binding instrument. Once it has ratified a convention, a country is subject to ILO's regular supervisory system responsible for ensuring that the ratified convention is applied.

3.1.3. Regular Supervision of the Conventions

The ILO regular supervisory system is very complex. Every ILO member state is obliged to report regularly on measures taken to implement the ratified Conventions. Member states (governments) are required to submit reports detailing steps they have taken in law and practice to apply any of their ratified conventions. The submission must be once for every three years for any ratified fundamental and/or governance convention. On the other hand, it must be once for every five years for any other ratified convention. No any member state is obliged to make such report submission for its ratified convention that has been shelved. Shelving a convention means that the shelved convention can no longer be supervised on a regular basis. Note, however, that in any of the three sets of conventions, reports on their application may, sometimes, be requested at shorter intervals. When reporting, Governments are required to submit copies of their reports to employers' and workers' organizations for commenting. The two organisations may also send comments or representations on application of conventions directly to the ILO.

Governance conventions are ILO priority conventions, whereas fundamental conventions are ILO core conventions. These two sets of conventions are bound on every member state despite member state's status of such conventions being ratified or not ratified. There are four ILO governance conventions. These are: C081, C129, C144 and Employment Policy Convention (C122) of 1964.

On the other hand, there are eight fundamental conventions grouped into four subject categories. These four categories and conventions are (ILO, 2014):

- i. the category of *freedom of association and effective recognition of the right to collective bargaining* whose two conventions are:
 1. Freedom of Association and Protection of the Right to Organise Convention (C087) of 1948; and
 2. Right to Organise and Collective Bargaining Convention (C098) of 1949.
- ii. the category of *elimination of all forms of forced or compulsory labour* whose two conventions are:
 3. Forced Labour Convention (C029) of 1930; and
 4. Abolition of Forced Labour Convention (C105) of 1957.
- iii. *Effective abolition of child labour*, is the third convention category with two fundamental conventions which are:
 5. Minimum Age Convention (C138) of 1973; and
 6. Worst Forms of Child Labour Convention (C182) of 1999.

- iv. the last convention category is the *elimination of discrimination in respect of employment and occupation*, whose two fundamental conventions are:
 7. Equal Remuneration Convention (C100) of 1951; and
 8. Discrimination (Employment and Occupation) Convention (C111) of 1958.

3.1.4. *Committee of Experts on the Application of Conventions and Recommendations*

The ILO Committee of Experts on the Application of Conventions and Recommendations (ILO-CEACR) was set up in 1926 to examine the growing number of government reports on ratified Conventions. Currently, the Committee is composed of 20 eminent jurists appointed by the Governing Body for three year terms. The Experts come from different geographic regions and cultures. Most of them are lawyers by profession. The Committee's role is to provide an impartial and technical evaluation of the state of application of international labour standards in ILO member states.

When examining application of international labour standards, the Committee of Experts makes two kinds of comments (ILO, 2014):

4. *Observations* which contain comments on fundamental questions raised by application of a particular convention by a state. These observations are usually suggestions to governments on ways in which governments may overcome discrepancies between the provisions of ratified conventions and existing national laws and practices. They are published in the committee's annual report.
5. *Direct requests* which relate to more technical questions or requests for further information. They are not published in the report but are communicated directly to the Governments concerned. Direct requests are a communication means of CEACR to complement reports submitted by member states. They do not aim at assessing the information submitted by the state, but rather to clarify elements of conventions' implementation

CEACR annual report consists of three parts (ILO, 2014). The General report (Part I) includes comments about member states' respect for their constitutional obligations. The Observations (Part II) contains observations on application of international labour standards. The third part of the report is the General survey. This annual report is usually adopted in December each year and is submitted to the International Labour Conference the next following June for examination by the Tripartite Conference Committee on the Application of Standards (TCCAS).

TCCAS is a standing conference committee made up of government, employer, and worker delegates. It examines the report in a tripartite setting and selects from it a number of observations for discussion. The governments referred in these comments are invited to respond before TCCAS and also to provide information on the situation in question. Mostly, the conference committee draws up conclusions recommending that governments take specific steps to remedy a problem or to invite ILO missions or technical assistance. The discussions and conclusions of situations examined by the conference committee are published in its report.

3.1.5. *ILO Regular Supervisory Process: the Operating Time-frame*

The ILO regular supervision process follows established routine time frame, every year, for each regulatory activity. For 3 months, that is, from 1st June to 1st September, governments submit application reports to International labour office for processing. Respective employment social partners may file their comments, either as observations or representations, with respect to their governments' reports and send them directly to ILO. In November and December, the submitted governments' reports are examined along with their

respective social partners' comments by ILO-CEACR. During this time, CEACR makes comments on related information either as observations or direct requests. Direct requests are sent to governments and social partners in a concerned country for actions, whereas observations are published in CEACR's report. Actions by governments on received direct requests are worked on in March and April. During this period, the published observations are brought before TCCAS, which examines CEACR's observations report and discusses a selection of some few cases of interest. Finally, in June, the full international labour conference convenes. The conference receives and discusses TCCAS reports and thereafter adopts them in plenary by a two-thirds majority votes.

3.2. Labour Administration in Malawi

The term *Labour Administration* is defined by ILO Convention² to mean "all the public administration activities in the field of National Labour Policy". National Labour Policy comprises of four main components namely: the employment promotion; labour protection; industrial relations and labour policy research. The Public Labour Administration activities/services could be performed by a number of institutional bodies or departments within and sometimes outside Government Ministries or Departments of Labour. Such institutions collectively form what is known as Labour Administration system. Ministries or Departments of labour do perform the labour administration activities in collaboration with other Government ministries or departments with complements from the private social partners – the employees' and employers' organisations.

In Malawi, the Ministry of Labour is responsible/mandated to formulate and implement Malawi National Labour Policy that forms all major components of Labour Administration system as defined by ILO's Labour Administration Convention (C150). The Ministry of Labour's mandates are stipulated in the laws of Malawi, in international conventions as well as in other legal instruments. The laws of Malawi include all Parliament passed labour legislative Acts. In addition, the international conventions that include all the 29 ratified ILO's conventions (table 1) on labour standards by Malawi government add further mandates for the Ministry. Similarly is the case with the Republican Constitution of 1994 which is Malawi supreme law of the land.

3.2.1 Administrative Offices/Agencies

The administrative structure of the Ministry of Labour from its headquarters in Lilongwe extends to the Regional and District labour offices. District labour offices are located at the "Bomas" (centres of district administrations) in each of 28 administrative district councils in Malawi. District labour offices are headed by District Labour Officers appointed by the Secretary for Labour to perform all the labour administration system services at a district level on behalf of the Ministry of Labour.

3.2.2 Tripartite Labour Advisory Council

Section 55 of the Malawi labour relations Act of 1996 provides for establishment of the Tripartite Labour Advisory Council (TLAC). The Council members are appointed by the Minister responsible for labour and employment matters. The Council consists of 12 members appointed for a 3 year term that may be renewable. The appointed members are from each of the three social partners as follows:

1. 4 appointed members from the government side with at least one being female;

² This ILO definition is contained in the International Labour Organisation (ILO) Convention (C150) – the Labour Administration Convention- and its associated Labour Administration Recommendation No. 158.

2. 4 appointed members (trade unions' nominees) from the most representative trade unions with at least one being female; and
3. 4 appointed members (employers' organisations' nominees) from the most representative employers' organizations with at least one being female.

TLAC is chaired by one of its members from the government side also appointed by the Minister to serve in that capacity as Council chairperson. Similarly, the Minister appoints another Ministry of labour official to serve as Secretary for the Council.

TLAC plays an advisory role to the Minister. The advisory role is grouped in two main categories. First, it advises on all issues relating to labour and employment that include the promotion of, collective bargaining; labour market; human resources development; and review of the operations and enforcement of the country labour and employment legislative Acts. Second, it advises on matters concerning activities of ILO. These ILO activities include the following:

1. Government replies to questionnaires concerning items on the agenda of the International Labour Conference (ILC) and Government comments on proposed texts to be discussed by the conference;
2. proposals to be made to competent authorities in connection with submission of Conventions and Recommendations as provided for under article 19 of the ILO Constitution;
3. periodic re-examination of the non ratified Conventions and Recommendations that Malawi has not yet adopted and considering all measures that might be taken to promote their implementation or ratification;
4. considering questions arising out of reports to be made to the International Labour Office as required by article 22 of ILO Constitution; and,
5. proposals for denunciation of any ratified Conventions.

3.2.3. Malawi Membership with ILO and Ratifications

Malawi joined ILO, as a member state, in 1965 after becoming independent in 1964. Since joining ILO, Malawi ratified a total of 29 conventions including fundamental and governance conventions by year 2019. Table 1 shows 29 ILO ratified conventions by Malawi. Eight are fundamental and three governance conventions. This means that Malawi has ratified all 8 ILO fundamental conventions and 3 out of 4 ILO governance conventions. Employment Policy Convention is the fourth ILO governance convention that is yet to be ratified by Malawi. Furthermore, the rest 18 are other ratified technical conventions. Note that ILO has a total of 177 technical conventions of which only 18 have been ratified by Malawi.

The table also shows a total of 24 conventions being in-force out of the 29 ratifications. The rest 5 were abrogated, that is, revoked or cancelled by the International Labour Conference sitting at its 107th Session of 2018. This means that these 5 cancelled conventions are no longer in force and that they cannot be supervised by ILO anymore. Furthermore, it is also clear from the table that most of Malawi ratifications were done in 1965 (17 conventions) and in 1999 (6 conventions). Note that 1965 was one year after Malawi became independent and 1999 was five years after Malawi became a multiparty democratic state.

Most of the ratified conventions have been domesticated in the country labour legislation. Note that ILO labour standards have a decisive impact on labour relations, occupational health and safety, social security and employment legislation in any ILO member state. As part of supervision by ILO on application of ratified conventions, it means that Malawi will from 2018 onwards be reporting on 24 ratified conventions that are in force. Malawi's reporting activity to ILO on application of ratified conventions is one of the country's labour administration functions. This justifies for a brief review on the Malawi labour

administration, in the first place in this paper, before turning into the following discussion on problems and prospects.

4. Problems and Prospects

4.1. Problem of incompatibility of the operating systems' requirements

ILO conducts 100 % supervision over a member state. It requires and receives reports from a member state. It examines the reports and makes observations and direct requests. Furthermore, ILO adopts reports and recommends for any ILO technical assistance to a country member state. The assistance could be in form of financing the member state's labour and employment surveys, projects and/or capacity building/training programmes. The assistance is aimed at addressing any application challenge(s) that might have been observed in ILO's published reports.

On the other hand, the Malawi central government (Ministry of labour headquarters in particular), does not conduct 100 % supervision over its local government (district field) offices located across the country. It examines the reports and consolidates country reports for publication, that is, for public use. The Ministry also plays advisory role and makes recommendations for field offices to improve in service delivery. However, the Ministry currently does not handle or make any recommendations with respect to finances of its district field offices. This is because of decentralization policy that has resulted into local government offices to be financed directly by government treasury through the National Local Government Finance Committee under the Ministry of Local Government. This is less than 100 % supervision and it is what makes the operational requirements of the ILO (with respect to provisions of labour inspection conventions) and of the Malawi Ministry of labour to be incompatible.

The decentralized country supervision arrangement would not have created any problem if Malawi was without any signed obligation to fulfill with regard to ratified ILO conventions on labour inspection. In this current set-up, however, the incompatibility becomes a problem on its own. It is a problem that leaves Malawi as an ILO member state in a "dilemma". This dilemma can be best explained with reference to administrative provisions of the two ratified Labour Inspection Conventions. The conventions require³ that any member state shall have established central inspectorate authority with full control in respect of every inspection service activities in a country be it financing, staffing etc. This provision must be complied with, in its entirety by Malawi without any contradiction or whatsoever if Malawi is to fulfill her membership obligation with ILO. ILO in its CEACR observation report adopted in 2014 and published by its 104th ILC session of 2015 noted and observed this incompatibility problem. It stated that:

The [ILO-CEACR] Committee recalled from its previous observations that the budgeting and funding of labour inspection in the country [Malawi] is decentralized in such a manner that each office is allocated funds directly by the Treasury according to the latter's [Treasury] priorities. Consequently, offices with motorcycles or motor vehicles cover fuel and maintenance, while the Ministry only receives reports on the activities performed. Based on this information, the Committee observed that the very notion of a central labour inspection authority seems to have become devoid of all substance, as the Ministry's only residual role consists of receiving activity reports from labour inspection offices, without any power to determine the needs of the labour

³ Both labour inspection conventions: C081 and C129 ratified by Malawi, under articles 4 (1) and 7 (1) respectively, provide that labour inspection shall be placed under the supervision and control of a central authority.

inspection services in terms of financial and material resources with a view to their proper operation.

With this development, ILO expressed its concern and thus recommended for Malawi Government to:

adopt all the necessary measures to secure an inspection system operating under the supervision and control of a central authority that is provided with adequate human resources in terms of both numbers and skills and the material conditions necessary for the exercise of its functions in relation to labour inspections and to keep the ILO informed of any developments in law and in practice in this respect” (ILO-CEACR report, 2014).

Note that the observed problem has potential to make Malawi fail or delay to provide ILO-CEACR with requested information in addition to making the country become non-compliant in terms of meeting her signed obligation with respect to application of ratified labour inspection conventions. This finding is very significant for the Ministry of labour devolution committee to use as a reference point in their ongoing discussions with respect to devolution of functions under the Ministry of labour.

The problem of incompatibility remains a question that is likely to draw further debate amongst the Malawi government policy makers (the country leadership as whole) including all relevant governance stakeholders within the country. This is because, on the one hand, the government’s current status quo is in full tandem, that is, in correct direction towards full implementation of its adopted decentralization policy. On the other hand, such government status quo is making Malawi to be somewhat non-compliant with respect to prescriptions and/or requirements of the concerned ratified labour inspection conventions.

It is within the hope of the authors of this paper that such an eminent debate would escalate and continue towards positive or consensus resolutions with the ILO’s reported observation and/or request. In addition, the authors, are of the view that it would be necessary for the Malawi government to invite ILO technical mission to consider some possibilities of further reviewing such a development considering that once sorted out, it would provide as good practical lessons to other ILO member states that may be having some similar eminent problems. This line of thinking agrees with Romano (1996: 26) who observed that “knowing why states fail to comply is helpful for [ILO in] creating standards that are less likely to be violated”.

4.2. Absence of established appropriate models for information publication that is comparable at international level

Malawi faces another problem with respect to absence of any established appropriate models or tools for information publication. The country authority in one of its reports filed and submitted to ILO for examination and assistance indicated that apart from lack of vehicles and materials for the smooth operation of country labour administration, there is also a weak system for the compilation of statistics and thus requested ILO to assist in establishing appropriate models for the publication of information that is comparable at the international level. This problem of absence or weak models for the compilation of comparable information has potential to delay the production of raw data by field offices and analysis and consolidation of the same by the responsible supervising authorities at the Ministry headquarters. This delay, in turn, will make no any available consolidated and analyzed information readily available for both the public consumption as well as for use while filing compliance reports to ILO for examination and observation.

Consequently, the Ministry’s designated officials to prepare conventions application reports have to jump up and down in the process of organizing relevant required information by ILO. Negative results are

obvious in this case. It is either failing to submit to ILO the requested information or to delay and postpone the whole reporting process. This is being reflected in a number of convention direct requests made by ILO to Malawi, being analyzed for purpose of this paper, in which case ILO-CEACR committee, has consistently wrote regret statements for the failure to submit all its required reports or failure to submit reports with adequate information within the reporting cycle.

4.3. *Inadequate internal Coordination with respect to Production of Convention Application Reports*

Inadequate coordination amongst key operating structures and social partners has been found as another problem for Malawi to effectively deliver in its work of reporting to ILO on the application of ratified conventions. This problem results into production of some insufficient and/or disputable country convention application reports at certain times. A detailed analysis, of ILO observations and direct requests made to Malawi, reveals, to some extent, that this problem is caused as a result of inadequate and/or ineffective operating capacities, structures and systems under the coordination of the country Ministry of labour.

The insufficient country application reports, that Malawi submits to ILO, could be inadequate, thus insufficient, if they do not contain, the requested and required information; supporting information in form of attachments such as certified government documents with evidence of undertaken activities; and also if they do not respond to the requested information by ILO's CEACR committee. With the insufficient reports, ILO usually becomes compelled to repeat its previous requests made as outstanding and asks the country to rework and resubmit its reports together with those of the next reporting cycle. For instance, ILO-CEACR's observation report adopted in 2011 and published by its 101st ILC session of 2012 noted and observed that:

The Committee notes that the Government's report contains vague information on the application of the Convention. The report indicates in particular that a total of 1,169 labour inspections have been carried out and 1,413 visits have also been made to various workplaces. It is also indicated that approximately 40 inspectors and 46 assistant labour inspectors are distributed in every one of the 28 districts of Malawi. While taking due note of this information, the Committee notes that the Government does not reply to the Committee's previous comments. It must therefore repeat its previous observation which read as follows ... (ILO-CEACR's observation of 2011).

On the other hand, the disputable country application reports could arise once the country social partners have submitted their parallel, and usually opposing, reports to ILO in form of direct commenting or as representations. A case in point is when the MCTU on 5th April 2005 made observations and filed their representation to ILO. In their representation, MCTU alleges contrary to the Government's statement in its earlier report that the labour inspectorate had been reinforced. MCTU, instead, argued that:

The inspectorate has done nothing whatsoever about the many breaches of the law by employers. One enterprise allegedly dismissed 280 employees without any consultation of workers' representatives, and another got rid of a worker two years before he was due to retire. In 2000, more than 50 employees were dismissed after a union was formed in the enterprise where they were employed, and in another enterprise two workers who had received MCTU training were laid off.

With cases of government's reports being disputed by social partners, ILO requires the concerned country to respond to raised concerns before the tripartite conference committee on the application of conventions. As a result with the 2005 disputed government reports, Malawi-Ministry of labour officials were tasked to respond to the issues raised by MCTU. In responding to the issues, the government officials counter argued

that, in as far as government was concerned, “*it knows nothing of the instances of violation cited, and that if any worker feels that his/her rights have been violated, he or she is free to lodge a complaint at the district labour office, the industrial relations court or at any other court of law*”.

Further analysis of the country workers’ and employers’ organizations comments, that is, representations⁴, filed and sent directly to ILO, reveals that the Malawi labour administration to some extent also suffers from the problem of inadequate operating capacities as well as ineffective operating systems. The inadequate and ineffective capacities include: inadequate human resource personnel; institutional infrastructure both physical (office equipments) and software (systems); and inactive tripartite labour advisory structures.

For instance, the absence of a functional labour inspectorate unit in the Ministry is one example of inadequacy under institutional infrastructure. Workers’ organizations also argue that the state-Ministry of labour is failing to prioritize the activities of TLAC hence the council fails to function as prescribed by the law. The implication of these country incapacities with respect to ILO supervisory function is huge. For instance, a call for resubmission of reports because of insufficient reports as well as a call for responses to disputable reports leads into loss of time, resources and professionalism on part of the government.

4.4. Some Prospects

Advanced English dictionary defines the term “prospect” as the possibility of future success or as a search for something desirable. In this paper and in line with this dictionary definition, prospects are defined as any possible opportunities or benefits bound to be derived out of participating in a certain process (i.e. in this case, participation in the ILO regular supervisory process). These benefits include both current and future expected benefits. They are prospects perceived to be derived by Malawi as an ILO member state out of her involvement in the ILO regular supervisory system. The prospects are as follows:

First, the ILO supervisory system involves fully the non-state actors, that is, the two employment social partners who are the employees’ and employers’ organizations. Malawi to meet requirements of submitting convention application reports and responses to ILO which are fully supported (indisputable) by her employment social partners implies a good coordination with its employment social partners. Such good coordination has to be enhanced at all times. In this regard, Malawi will therefore be the primary beneficiary in her effort to cultivate good working relationships with her country non-state actors.

Second, the ILO supervisory system is enhanced because its supervision process takes place alongside ILO efforts to provide technical assistance to member states (Romano, 1996). This offers direct benefits to countries and improves their capacity to participate in the work of ILO. Malawi through her involvements in the ILO regular supervision process identifies and reports to ILO her capacity challenges which include all those problems discussed above. Therefore ILO using its supervisory system component of technical assistance is bound to support Malawi in her attempt to address the facing challenges. In this case Malawi stands to benefit from such ILO technical assistance which would be in form of capacity building of its labour administration systems that include human resources, institutional infrastructure and many others.

⁴ Note that in the ILO terminology context, the term “representations” means any problems, complaints and queries filed to ILO by workers’ and employers’ organizations against their government/state with respect to application of ratified conventions (ILO, 2014: 106).

Third, the ILO supervisory system uses standardized instruments and tools for reporting by member states. For example, ILO supervision report forms⁵ 22.150 and 22.81 are standardized reporting check lists for labour administration and labour inspection (general) conventions respectively. It requires every ILO member state to produce its required convention application reports on each state's ratified convention using such standardized instruments. For this requirement, Malawi, by extension, has to use the same tools or equally devise her own similar tools to generate the required information locally from all involved stakeholders. This would be another great prospect for Malawi to have its own developed standardized instruments and tools for data collection on issues of labour and employment which in turn would help Malawi in generating required information for reporting that is globally comparable.

In other words, Malawi would adopt some ILO's regular supervision strategies to develop its own effective country supervision system on the implementation (from district level through to national level), compliance and application of country's labour laws by domestic social employment partners. The overall result will be production of data from field offices that is required for analysis at the Ministry of labour headquarters which in turn will find it easy to use the information for compiling regular reports with required information for submission to ILO. Consequently, there would be an availability of updated labour market information including internationally comparable labour and employment statistics in the country which is vital for the country social-economic growth.

Fourth, despite problems affecting the Malawi labour administration system, the Ministry of labour has adopted and signed service charter (the performance contract) with the country top government leadership which would help achieve its desired effectiveness of its service delivery to the general public including the international community (MoL, 2016). Realizing that her current increasing international reporting obligations and commitments are bound to overwhelm its operations (service delivery) beyond expectation of its planned service delivery, the Ministry is further coming up with some reform programmes.

Two of such reform programmes are: establishment of a Labour Market Information System and transforming labour inspections programmes. The first would focus to develop a robust database, modernise data collection instruments and systems for analysis as well as to improve infrastructure at district level for data capturing and management. The second would focus to improve quality and coverage of labour inspections thereby ensuring that workplaces adhere to labour laws and standards and therefore protect workers from labour infringements. This could be done through strengthening capacity of district labour offices through training and providing means of mobility.

For instance, the creation of a special unit for labour inspections or the strengthening of the existing ones at the Ministry of labour as envisaged by Ministry authorities and recommended by ILO, is one strategy within labour inspection reform programme which would be a great prospect/opportunity for Malawi. This would enable the Ministry to play a more important role in the setting of annual targets, monitoring of performance by both field and headquarters and evaluating labour inspections qualitatively. Above all the Ministry hopes to make other relevant reforms to make her performance regarding her reporting role to ILO more effective and in tandem with its current prevailing economy on the ground.

Finally, the ILO supervisory system does not only focus on obligations of reporting by ratified member states but also most importantly checks the incorporation of provisions from ratified conventions into domestic legal system of a member state and their implementation in practice (Pham, 2015: 143). There is

⁵ Note that a code of an ILO supervision report form such as 22.81 represents two features which are: 81 is the ILO convention number (No.) for Labour inspection (general) and 22 is the number for ILO constitution article 22 that provides for reporting mandate on ratified conventions by member states.

no doubt that Malawi as a developing country with its underdeveloped industrial relations system, is envisaged to continue improving or developing its industrial relations legislation in the next few decades to come. Any such possible new developments of labour legislation would need to be aligned with those of the global village. Therefore, the current country's effort to improve in its reporting commitments to ILO on her ratified conventions would thus provide as an opportunity for Malawi to keep updated with the growing trends of some new emerging international labour standards as a result of the changing forms of employment relationships. These new forms of employment relationships would trigger some revisions or new enactments of labour laws at the national level through the process of domestication. In this case, Malawi would also benefit by being assisted to ratify some non-ratified conventions that Malawi may need to ratify and domesticate.

In summary, it must be emphasized that all the discussed prospects would be realized by Malawi government as they are totally in line with the ILO's objectives within its core function of regular supervision which, among others, has been reported to be effective over the past decades (Romano, 1996). All discussed possible prospects would be realized despite the fact that the ILO regular supervisory system itself is reported (Romano, 1996) to be facing some challenges as well such as continual non-compliance with environmental obligations by relatively few member states, the behaviour that might offset the efforts of the majority of the complying states.

5. Conclusion

This research paper sought to explore problems experienced by Malawi and her possible prospects with respect to ILO's regular supervision process on the application of the ratified conventions by the Malawi government. Various ILO commentary and government documentary reports and publications regarding the ILO regular supervision for Malawi on the application of the ratified conventions have been analyzed. The analyzed government documents and ILO comments included Government reports and responses together with MCTU and ECAM observations written and submitted to ILO as well as ILO-CEACR's regular supervision comments for Malawi regarding the application of Malawi's ratified conventions.

The paper concludes that Malawi is currently confronted with some major problems such as incompatibility of the operating systems' requirements; absence of established appropriate models for publication of comparable information; and inadequate coordination with respect to production of convention application reports.

The findings such as the incompatibility problem would, however, be very significant for the Ministry of labour devolution committee to use it as a reference point in their ongoing discussions with respect to devolution of functions under the Ministry of labour. In addition, the paper highlights some prospects for the country to gain from the supervisory system which include advanced knowledge, skills and institutional capacity to improve its country labour administration system services as required at national, regional and international levels as well as the prospect for Malawi to improve or develop further its global responsive labour legislation with technical support from ILO.

Based on this finding, the paper recommends for Malawi to continue committing her resources towards meeting all her obligations as an ILO member state with respect to regular reporting activity on the country's ratified conventions.

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Table 1: ILO Conventions Ratified by Malawi From 1964 to 2019

Type of Convention	S/No.	Name of Convention	Convention Number	Ratification Year	Status
Fundamental Conventions (8/8)	1	Right to Organise and Collective Bargaining of 1949	C098	1965	in force
	2	Equal Remuneration of 1951	C100	1965	in force
	3	Discrimination (Employment and Occupation) of 1958	C111	1965	in force
	4	Forced Labour of 1930	C029	1999	in force
	5	Freedom of Association and Protection of the Right to Organise of 1948	C087	1999	in force
	6	Abolition of Forced Labour of 1957	C105	1999	in force
	7	Minimum Age of 1973	C138	1999	in force
	8	Worst Forms of Child Labour of 1999	C182	1999	in force
Governance Conventions (3/4)	9	Labour Inspection (General) of 1947	C081	1965	in force
	10	Labour Inspection (Agriculture) of 1969	C129	1971	in force
	11	Tripartite Consultation (International Labour Standards) of 1976.	C144	1986	in force
Technical Conventions (18/177)	12	Right of Association (Agriculture) of 1921	C011	1965	in force
	13	Workmen's Compensation (Agriculture) of 1921	C012	1965	in force
	14	Equality of Treatment (Accident Compensation) of 1925	C019	1965	in force
	15	Minimum Wage Fixing Machinery of 1928	C026	1965	in force
	16	Underground Work (Women) of 1935	C045	1965	in force
	17	Contracts of Employment (Indigenous Workers) of 1939	C064	1965	Abrogated
	18	Penal Sanctions (Indigenous Workers) of 1939	C065	1965	Abrogated
	19	Contracts of Employment (Indigenous Workers) of 1947	C086	1965	Abrogated
	20	Night Work (Women) (Revised) of 1948	C089	1965	in force
	21	Migration for Employment (Revised) of 1949	C097	1965	in force
	22	Minimum Wage Fixing Machinery (Agriculture) of 1951	C099	1965	in force
	23	Abolition of Penal Sanctions (Indigenous Workers) of 1955	C104	1965	Abrogated
	24	Indigenous and Tribal Populations of 1957	C107	1965	in force
	25	Recruiting of Indigenous Workers Convention of 1936	C050	1966	Abrogated
	26	Nursing Personnel, Termination of Employment of 1977	C149	1986	in force
	27	Termination of Employment of 1982	C158	1986	in force
	28	Vocational Rehabilitation and Employment (Disabled Persons) Convention of 1983	C159	1986	in force
	29	Labour Administration of 1978	C150	1999	in force

Source: Authors' own compilation using data extracted from ILO online Normlex information system.