



LABOUR MARKET FLEXIBILITY AND DEREGULATION IN AFRICA

A CASE OF THE MALAWI TELECOMMUNICATIONS SECTOR

A study report submitted to:

African Labour Research Network (ALRN)

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Acronyms

| | |
|---------------|--|
| COWUMA | Communications Workers Union |
| DPT | Department of Posts and Telecommunications |
| ECAM | Employer's Consultative Association of Malawi |
| EPL | Employment Protection Legislation |
| GoM | Government of Malawi |
| GDP | Gross Domestic Product |
| GNI | Gross National Income |
| HIS | Integrated Household Survey |
| ILO | International Labour Organisation |
| IMF | International Monetary Fund |
| MCTU | Malawi Congress of Trade Unions |
| MACRA | Malawi Communications Regulatory Authority |
| MDG | Millennium Development Goals |
| MP | Malawi Posts |
| MPTC | Malawi Posts and Telecommunications Corporation |
| MTL | Malawi Telecommunications Network |

Dedication

~To all the comrades who have fallen in the pursuit of justice and peace, we salute you~

Acknowledgment

Gratitude goes to the leadership, and staff of Malawi Congress of Trade Unions (MCTU) for all the support rendered throughout the study both at individual and institutional level. Many thanks should also go to all those who took time to participate in the study by providing information through the surveys and interviews. The research team is also commended for the job diligently done. I appreciate your efforts wholeheartedly.

1. INTRODUCTION

Labour market flexibility can be defined as the ability of a company to adjust to fluctuations in the economy and to the increase or decrease in consumers' demand for their services and products. A company's flexibility depends on several factors: work hours, cross-training, wages, location, and the adaptability of its labour force. The fewer regulations a company has governing its labor force, the greater its flexibility.

Standing et.al. (1996:67) identifies three forms of labour market flexibility: employment flexibility, wage flexibility and work-process flexibility. These are the areas of labour markets where flexibility is most noticeable. *Employment flexibility* refers to the ease with which employers are able to use shift work and general working hour systems as well as systems of recruitment and retrenchment in order to adjust to market demands. *Wage flexibility* on the other hand refers to the employers' ability to set wages unilaterally according to company needs and employee qualifications etc. The concept of *work-process flexibility*, or functional flexibility, is intended to designate the degree to which the production process can be modified easily and without cost according to changing demands at different stages of the process. Work-process flexibility involves the ease with which management can shift workers between tasks.

The government has attempted to regulate the labour market through labour legislation that provides a certain level of minimum standards at the workplace. Labour market flexibility would indicate the degree to which employers, for example, can deviate from these set standards.

The main purpose in this paper is to evaluate the effects of deregulation and flexibility of the labour market in Malawi on workers. This type of research could support policy formulation as regards the quest to reposition Malawi's Telecommunication sector towards increased productivity, higher wages, and growth. The paper is structured in five sections. The next section focuses on the background information in the context of flexibility in Malawi. Section 3 reviews employment regulations of the country i.e. what the law says about several aspects of employment protection legislations. Section 4 explores the empirical evidence of flexibility and deregulation and highlights the perceptions of both employers and worker about employment regulations. Finally, section 5 summarizes the study and concludes with the agenda going forward.

2. BACKGROUND INFORMATION IN THE CONTEXT OF FLEXIBILITY

2.1 General economic situation

Malawi is a sub-Saharan African country located south of the equator. It is bordered to the north and northeast by the United Republic of Tanzania; to the east, south, and southwest by the People's Republic of Mozambique; and to the west and northwest by the Republic of Zambia. The country is 901 kilometers long and 80 to 161 kilometers wide. The total area is approximately 118,484 square kilometers of which 94,276 square kilometers is land. The economy of Malawi is based primarily on agriculture, which accounts for 30 percent of the gross domestic product (GDP). The country's major exports are tobacco, tea, and sugar.

The African Economic Outlook (2013) reports that Real gross domestic product (GDP) growth for Malawi slowed to 4.3% in 2011 from 6.3% in 2010 on account of foreign exchange and fuel shortages, which disrupted activities in sectors such as manufacturing and trade. The shortage of foreign exchange in 2011 was caused by the decline in earnings from Malawi's major export commodity, tobacco, and suspension of donor budget support. Real GDP growth in 2012 was at 2.0%, substantially lower than the 4.3% growth target. The sharp slowdown in the economy in 2012 was mainly due to the contraction in agricultural and manufacturing output. The agriculture sector, which dominates economic activities, shrank by 3.0% in 2012 on account of erratic rains and the collapse in tobacco auction prices. Real GDP growth in 2013 and 2014 is expected to rebound to 5.5% and 6.1%, respectively, anchored on the recovery in agriculture, manufacturing and wholesale and trade. The rebound is premised on a revival in tobacco production, an easing of the foreign exchange constraint, improved availability of fuel and a continuation of prudent macroeconomic policies.

Malawi faced serious macroeconomic challenges in 2011 and 2012. These were the result of inappropriate policies, which led to a growing fiscal deficit, rising inflation and the depletion of international gross reserves in a context of an overvalued exchange rate. The government, which came to power in April 2012 under the leadership of President Joyce Banda following the death of Bingu Wa Mutharika, has instituted bold macroeconomic policy adjustment measures to address the imbalances. These measures include the devaluation of the Malawian kwacha (MKW) by 49%, with a move towards a flexible exchange rate regime, a tightening of monetary and fiscal policy and a removal of subsidies on fuel. The government has also re-engaged with the IMF, resulting in the resumption of direct budget support by donors. These reforms have started yielding results, as evidenced by the easing of fuel shortages and

improved access to foreign exchange by the business community. Economic recovery, however, is fragile and the exchange rate may take time to stabilise given the excess demand for foreign exchange.

Poverty in Malawi remains high, widespread and concentrated in rural areas with a Human Development Index of 0.400 (in 2011), placing it below the Sub-Saharan African average of 0.463. According to the 2012 Integrated Household Survey (IHS) report, Malawi's poverty level is estimated at 50.7% a marginal reduction from an estimated 52.4% in 2005. Incomes remain very low with GNI per capita of USD\$ 348 and a Gini Coefficient of 41.5 in 2010 reflecting acute income inequalities with large sections of society marginalized.

As in many developing countries, poverty reduction is a primary development goal in Malawi. The country is committed to the Millennium Development Goals (MDGs), which seek, among other things, to eradicate extreme poverty and hunger. Over the years, the Malawian government has pursued poverty reduction efforts through various strategies emphasizing economic growth, infrastructural development, and the provision of basic social services. These strategies have included: the Poverty Alleviation Program (1994); the Malawi Poverty Reduction Strategy (2002–2005); and, more recently, the Malawi Growth and Development Strategy (MGDS) (2006–2011 and 2011–2016). Despite these various policies and measures, poverty remains widespread in Malawi.

Despite equality in rights being guaranteed by the Constitution and legislation, women are still marginalized in Malawi. Malawi has a gender inequality indicator of 0.594 and an HDI rank of 120 out of 187.9 (African Economic outlook, 2013). While gender issues have become more mainstreamed in policies, challenges persist with regard to enforcement, monitoring, cultural bias, political will and inadequate budgetary allocations to gender actions.

In general, Malawi's progress in poverty reduction has been slow. The challenge ahead is to make growth more inclusive and resilient to shocks. The Employment Diagnostic Analysis on Malawi (2010:5) highlighted that poverty in Malawi is less the outcome of open unemployment than the inability of work to provide secure and decent levels of income, especially for those who work but remain below the poverty line. Addressing this will require an increasingly educated and skilled labour force prepared for the demands of the growing and changing economy.

2.2 Labour market situation

In their 2010 Employment Diagnostic Analysis on Malawi, Mussa & Durevall (2010) highlighted that unemployment is low in Malawi, but this does not mean that the employed have productive or full time jobs. In fact, it is enough for a person to have worked one hour last week to be classified as employed in surveys and population censuses. Underemployment and working poverty is common, particularly in the rural areas where the seasonality in labour demand is very pronounced. Studies of time use show that during most months, 15 to 25 percent of the men work less than 10 hours per week, and only during planting time, in December and January, does the share decline to less than 10 percent.

Wages are usually assumed to be determined by labour productivity, and in Malawi it is low in comparison to other countries in the region. Labour productivity in turn is related to educational levels, and they too are low in Malawi in comparison to neighboring countries. Thus, sector wage differences, at least partly, reflect differences in human capital; the educational levels are much higher in the well paid sectors. Yet, labour productivity does not only depend on education. At a national level, it depends on yields per worker and prices paid for crops and inputs. Hence availability of land and inputs also play a key role; land-labour ratios are small in Malawi and agricultural inputs are expensive. There is also evidence that availability of inputs in a wide sense, including roads, power, water, etc., determine labour productivity in manufacturing, pointing towards an important role for constraints to production as an explanation for low wages.

In general, minimum wages in Malawi are below the poverty line for a normal family. Another reason for the low minimum wage is the long interval between adjustments, during which price rises substantially reduce buying power (Chirwa, 1999:8). In many cases actual pay is even less than the minimum wage, since most workers are subsistence farmers, *mlimi*, or work in the informal sector.

2.3 Rationale for choice of sector

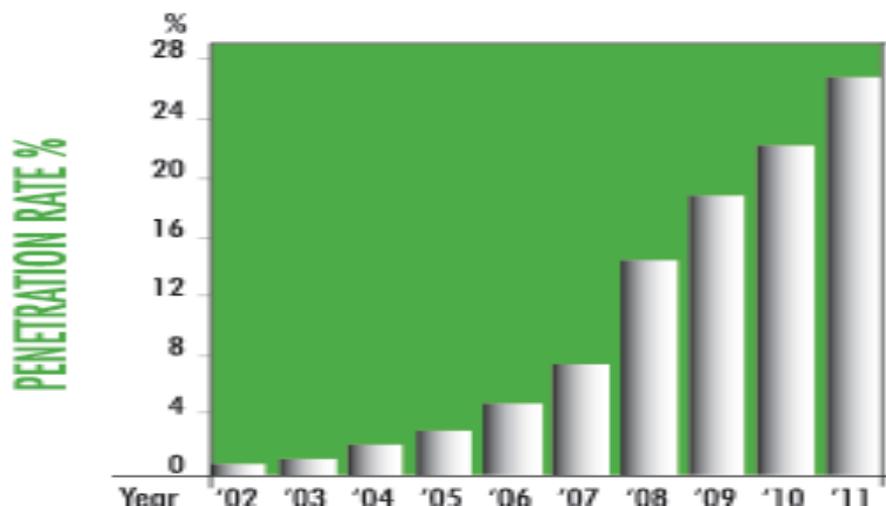
In accordance with its policy of economic liberalization and a move to market-based incentives Government has largely divested its interests in the telecommunications sector to

achieve its objective of playing no role in the competitive market, beyond that of neutral arbiter.

Messrs & Asfaw in their 2003(7) Telecommunications report for Malawi point out that Labour market flexibility and deregulation can easily be seen in the major changes which have taken place in the Telecommunications Sector in Malawi. In line with the recommendations of a management study, the Department of Posts & Telecommunications (DPT) (within the Ministry of Transport and Communications) was transformed into an autonomous parastatal - Malawi Posts and Telecommunications Corporation (MPTC) in April 1995. MPTC was responsible for postal and telecommunications services in Malawi. The Communications Act, which is the basis for a modern and functional legal and regulatory framework for the communications sector in the country, was enacted in 1998. The Act set up an independent regulatory authority – the Malawi Communications Regulatory Authority (MACRA) in 1999/2000, and consequently the telecommunications network was re-organised along commercial lines. A second operator in the telecom sector concentrating on Mobile services was given a license in 2000. The provisions of posts and telecommunications services were separated into two entities – Malawi Posts (MP) and Malawi Telecommunications Limited (MTL). MTL was formed on 1 April 2000 as a parastatal to provide high quality telecommunications services on commercial principles in Malawi.

Growth in Malawi's penetration rate

Graph 1.0



Source:

Telecommunications in Malawi report: 2013

The choice for this study to cover the telecommunications sector stems from the fact that economic growth in Malawi continues to underpin telecommunications sector growth and in response to significant investment by telecommunications operators, efficiency, quantity and quality of services is improving to meet the economic and social needs of the country. The graph above illustrates the growth of Malawi's telecommunications measured by the Penetration Rate.

It is from this background of vast changes in the playing field of the telecommunications sector as well as the presence of multinational corporatives in the sector such as Airtel and Telecom Networks which led to the choice of the sector. This study seeks to cover existing research gaps regarding flexibility and deregulation.

2.4 Methodology

The study employed various data collection methods including secondary data review, and primary data collection techniques. Qualitative data collection was conducted using questionnaires, group interviews and individual in-depth interviews.

a. Document Review

Key documents were collected from Malawi Communications Regulatory Authority (MACRA), Communications Workers Union, Electronic Media Worker's Union, National Library and other stakeholders in relation to the objectives of this study. Academic literature and comparative studies on flexibility and deregulation were reviewed for their insights into how to approach the subject under study.

b. Field Data Collection Methods

Four approaches were used in collecting Field data:

(i.) Workers Questionnaire

This questionnaire was randomly administered 32 individual workers in the telecommunications sector who were randomly sampled from institutions which are major players in Malawi's telecommunication sector, these are: Malawi Telecommunications Network, Access communications, Malawi postal corporations, Malawi Broadcasting Corporations (radio and television), Airtel and telecommunication Networks Malawi. 8

informal¹ telecommunication operators were also interviewed order to have representation from the informal sector. This brought the total number of respondents to 40. (22 were female and 18 were male).

(ii) Employer Questionnaire

This was administered to 7 employers from different telecommunication corporations. (4 were men and 3 were women).

(iii) Group interviews

Seven group interviews were held with 21 workers from different telecommunication corporations. Each group consisted of 3 participants. During these discussions the workers brainstormed and discussed several issues which were not captured in individual questionnaires.

(iv.) In-depth Interviews

Five interviews were conducted to top officials from MACRA, MCTU, COWUMA, Ministry of Labour and Electronic media Union. These interviews generated information on legislation in the telecommunication sector, trade union opinions and challenges affecting the telecommunication sector in line with labour market flexibility and deregulation.

(v.) Challenges Encountered During Data Collection

Despite the fact that the telecommunication sector is one of the fastest growing sectors in the country contributing about to the total GDP, there is very little literature on the issues affecting this industry especially on flexibility and deregulation. One of the reasons for this problem is that less research has been devoted to this sector.

Secondly, it was hard to interview workers from other stake holders like Airtel Malawi and Telecom Networks because the management was less keen on allowing the meetings because they thought we were negative social auditors who would bring about union issues which have been shunned in these corporations.

¹ Informal workers in the sector refer to those operating telephone bureaus or are employed to sell airtime in the streets

Workers from the informal sector have been witnessing a lot of research for the last 10 years. Much of these studies are academic (undergraduate dissertations) which are often not published and are inaccessible to public. Hence some respondents claim that they do not see the rewards of such studies. Therefore they have come to conclude that these researches and studies are useless, wastage of their time and no connection to their work. Hence many of them shun away the interviews.

3. EMPLOYMENT REGULATIONS

3.1 Employment protection

A good regulatory framework for any sector is a **sine qua non**² for its stability, predictability and growth. In Malawi, there are legislations that were enacted to protect the rights of workers and regulate labour relations.

Malawi Constitution of 1994

This acts as the base point for all employment practice because it addresses labour issues in several of its sections. For example, in Section 31 it affirms worker rights in relation to employment conditions and labour relations and the protection of children from economic exploitation is covered in Section 23.

The Employment Act of 2000 remains the comprehensive piece of legislation which governs most employment practice in Malawi. The Act encompasses legislation regarding forced labour, discrimination, infringement of fundamental rights, child labour, hours of work, weekly rest and its main objective is to establish, reinforce and regulate minimum standards of employment in order to “enhance industrial peace, accelerated economic growth and social protection.

Area of focus Definition

- **Child labour**

No person under the age of fourteen shall be employed or work in any public or private agricultural, industrial or non-industrial undertaking or any branch thereof.

²

An essential condition or prerequisite

Provisions are made for registering those under the age of 18 for non-hazardous work conditions.

- **Prohibition against forced labour**

No person shall be required to perform forced labour.

- **Anti-discrimination**

No person shall discriminate against any employee based on the grounds of race, colour, sex language, religion, political or other opinions, nationality, ethnic or social origin, disability, property, birth, marital or other status or family responsibilities in respect of recruitment training, promotion terms and conditions of employment, termination or other matters arising out of the employment relationship.

- **Equal pay**

Every employer shall pay employees equal remuneration for work of equal value without distinction or discrimination. The Act was amended in the Employment Amendment Bill of 2010. The Bill sought to principally amend section 35 of the Employment Act in order to clarify the circumstances in which severance allowance is payable and make clear the obligations of employers to make remuneration payments to certain groups of workers.

This amendment went hand-in-hand with the passing of the **Pension Act of 2010**. The Act confirmed the Government of Malawi's commitment to developing a Social Security system and sought to make provision of a pension mandatory for all workers besides those below a certain threshold (who are covered by the provision of a gratuity on termination of employment under the Employment Amendment Bill).

A number of other pieces of legislation are also important in defining the Corporate Social Responsibility of employers in Malawi including the **Worker's Compensation Act of 2000**. This Act makes provision for compensation for injuries suffered or diseases contracted by workers in the course of their employment or for death resulting from such injuries or diseases. It also provides for the establishment of a Workers' Compensation Fund.

To ensure that all employers carry out their responsibilities regarding the safeguarding of the health and wellbeing of all its employees, **the Occupational Safety, Health and Welfare Act of 1997** was passed. This piece of legislation covers the regulation of conditions of employment in workplaces to ensure that employees are not subject to a poor work environment. The regulation includes the inspection of certain machinery and distribution of

protective clothing for the prevention of accidents. However, whilst the Act governs the operations of occupational safety and health, there is no policy for its enforcement.

Gender equality in the work place is promoted through the **National Gender Policy of 2000, the National Gender Programme of 2004 and the recently enacted Gender Equality Act of 2013**. The Ministry of Gender, Child Development, and Community Development also actively promotes women's rights and participation in the economic sphere and in productive business enterprise.

To promote sound labour relations via the protection and promotion of freedom of association for employees, there is the **Labour Relations Act of 1996**. This also encourages, unionization, effective collective bargaining and the promotion of orderly and expeditious settlement, conducive to social justice and economic development.

Importantly, though there continues to be a general lack of funds for effective monitoring and evaluation of enforcement, labour policies are now highlighted in the second Malawi Growth and Development Strategy (MGDSII). The Ministry of Labour therefore remains a prominent utensil for promoting the development of the National Regulatory Framework in Malawi, although it is likely to require increased and more consistent funding in order to function at the required level.

A number of further supportive labour policies are in the process of being developed. These include the Policy on Child Labour, National Policy on HIV and AIDS in the Workplace, Technical, Vocational Education and Training Policy and a Labour Inspection Policy.

3.2 Reforms of Labour Market regulations

The last decade has not witnessed a lot of changes in employment regulations, however, those that have changed include;

a) Pension Act, 2010

A contributory national pension scheme was established for the purpose of ensuring that every employee in Malawi receives pension and supplementary benefits upon retirement. The objectives of the pension Act, 2010 were to foster agglomeration of national savings in support of economic growth and development of the country; promote the safety, soundness and prudent management of pension funds that provide retirement and death benefits to members and beneficiaries; to ensure that every

employer to which this act applies provides pension to every person employed by that employer; and to ensure that every employee in Malawi receives retirement and supplementary benefits as and when due.

The pension Act, 2010 has been criticized to be more towards rigidity than flexibility because of the conditions that have been attached to it. Subject to this Act, section 64 (1) states that benefits in respect of a member of a pension fund are payable out of the fund only if, on application, the trustee is satisfied that;

- ❖ The member had reached retirement age³;
- ❖ The member has retired on the basis of years of service or any other conditions under the fund rules as approved by the registrar;
- ❖ The member is retired on the advice of a qualified medical practitioner registered with the medical council of Malawi or a legally constituted medical board confirming that the employee is totally and permanently disabled from carrying out the functions of his office;
- ❖ The member is about to leave or has left Malawi permanently;
- ❖ The member has died;
- ❖ The member has permanently left the service of the employer, in which case, except as set out in this section, the benefits may only be paid out for transfer to another pension fund;
- ❖ The registrar has given permission.

b) Employment (Prohibition of Hazardous Work for Children) Order, 2012

This order has been towards flexibility in the way children can work. Children below the minimum legal age for work (14/15 years) should, of course, not be at work but in school. Older children (aged 15-17) on the other hand - who are above the minimum working age - should not be put at risk by working in hazardous, unhealthy and unsafe workplaces and conditions.

Malawi has ratified ILO's Worst Forms of Child Labour Recommendation, 1999 (No. 190), the non-binding guidelines that accompany Convention No. 182, gives some

³ Currently, the mandatory retirement age is at 65 for women and 70 for men

indication as to what work should be prohibited. Consideration is given to prohibiting children from:

- Work that exposes them to physical, emotional or sexual abuse;
- Work underground, under water, at dangerous heights or in confined spaces;
- Work with dangerous machinery, equipment and tools, or that involves the manual handling or transport of heavy loads;
- Work in an unhealthy environment, which may, for example, expose children to hazardous substances, agents or processes or to temperatures, noise levels, or vibrations damaging to their health;
- Work under particularly difficult conditions such as work for long hours or during the night or work that does not allow for the possibility of returning home each day.

c) Amendment of Labour Relations act 2013.

Earlier this year, the labour relations act was amended to increase number of court assessors from five to ten because they were few compared to the number of labour cases that were being brought to the industrial relations court.

4. FLEXIBILITY AND DEREGULATION- EMPIRICAL EVIDENCE

4.1 Perceptions of employers about employment regulations

We can rely on surveys of employers to gauge the stringency or flexibility of labor regulations (Freeman, 2001; in Pierre & Scarpetta: 2004). Business people presumably should know what aspects of labor laws actually affect business conditions as well as wages and employment. However, this approach is not without problems. The questions raised in the surveys concerning labor regulation are often fairly vague and subject to different interpretations. Managers respond very differently depending on whether their company faces good or bad times even if underlying labor laws have not changed.

The study has found out that “flexibility” is often perceived by employers as a key to ‘modernisation’ and prosperity. For employers, labour market flexibility means the level of control it has in bringing about workplace changes speedily and at relatively little cost. (Standing et al, 1996:80) gives an example of a gain that is seen by employers from flexibility: employers may want to retrench workers speedily (without consultation with unions) and without cost (without paying severance pay). Unions on the other hand want employment, work, income security and a greater control at the workplace.

The effects of Employment Protection Legislations (EPL) on firms’ behavior are likely to be mediated by several factors. Rigid regulations would not constrain a firm performance and job creation if workers fully valued the benefits of employment protection and were willing to trade them off for greater effort or a lower monetary compensation⁴. But if the costs associated with stringent EPL are too high to be fully transferred into lower wages or higher productivity, or if workers’ organization resist wage reductions, then they may lead to lower job creation and possibly lower investment in new technologies, this was perceived to be a very big constraint to employers businesses.

All in all, this paper suggests that labor laws have an impact on firms’ performance. Medium-sized firms - those that often have the greatest potential for expansion and creating more jobs – are the most severely affected as are innovating firms that require adjustment in the

⁴Labor protection provisions can be justified on the grounds that workers are risk averse and that they do not have the possibility to privately insure themselves against labor market uncertainty or prefer to trade off lower earnings for better working conditions.

workforce to match the requirements of new technologies. Training and temporary employment are used to circumvent the costs associated with strict labor regulations for regular contracts, but again not all firms can take advantage of these strategies since some still see these strategies as being costly to the firm and their job creation potential.

4.2 Perceptions of workers about employment regulations

From the research, there were varied perceptions from workers regarding employment regulations. There was less knowledge about the specific employment regulations that exist in the telecommunication sector or those regulations that have changed in Malawi within the last decade. However the employment regulations which most respondents had knowledge about include:

- 1. Pension Act, 2010.**

Under this legislation, every employer in Malawi other than those specifically exempted by the Minister in certain circumstances will be obliged to make provision for pension for its employees. This act was championed by the government with limited input from the tripartite social partners (employers and trade unions) as such the general views which were expressed by respondents were that this legislation was enacted with the motive to source funds for government's activities. It is rigid in nature as it restricts people from accessing their pension funds at any desired time.

- 2. Companies Act 1984**

This Act contains provisions concerning the registration of companies (Section 14) and Company Names (Section 19), in Malawi. This was enacted in order to simplify the formation and registration of companies. Previously, it took time to register companies.

- 3.** There also has been deregulation when it comes to entry into the telecommunications sector. The government has encouraged opening up of small and medium enterprises which have mostly been characterized by informal working conditions which are towards flexibility. The motive for this was to create more job opportunities for a lot of people who are unemployed.

4.3 Situation of workers in the telecommunication sector

Malawi has laws and regulations governing the employment relationship between workers and firms. These have been written in labor codes, current legislations and norms set by collective agreements. Within these rules and regulations, those focusing on the hiring and firing of workers are often referred to as "employment protection" legislations (EPL). They govern unfair dismissals, restrictions on lay-offs for economic reasons, compulsory severance payments, minimum notice periods and administrative authorizations, and terms and lengths of fixed-term contracts and the operation of temporary work.

❖ **Employing workers**

When employment protection legislation is less stringent than legislation for regular workers, firms may be encouraged to hire more workers on a temporary basis to increase workforce flexibility. Malawi is one of the countries around the world that have liberalized temporary contracts in the past decade – expanding the list of jobs allowed under temporary contracts and lengthening their maximum duration. Evidence from the survey suggests that the asymmetric liberalization of temporary contracts, while leaving in place strict regulations for regular contracts, has led to significant shifts of labor demand in favor of temporary employment. Most workers reported that employers make greater use of temporary workers to increase flexibility of the workforce. Liberalizing temporary contracts, while leaving in place strict regulations on regular contracts tends to reinforce the inequality in the labor market (OECD, 2004 in Pierre & Scarpetta: 30). Firms will have stronger incentives to hire more workers at the entry level and employ them for a limited period, without giving them a regular position thereafter. This increases job turnover but not necessarily overall employment or productivity, because the additional hires will be accompanied by additional layoffs at the end of the temporary contracts, and there will be little or no development of internal human capital.

The telecommunication sector in Malawi has experienced considerable growth however this has not directly translated into more job creation and fair recruitment opportunities for all. The study found that due high rates of unemployment, people are forced to take up jobs that do not match their qualifications simply to be employed and earn something. The closing down of some companies and retrenchments due to company losses incurred as a result of the devaluation of the Kwacha and high inflation rates has also contributed to stifling of

employment opportunities. More workers are now being employed on part time basis since companies are trying to cut costs.

❖ **Hours of work**

The hours of work in the telecommunication sector are flexible with others starting at 7:30 am or 8:00 am, with lunch break at 12:00 noon till 1:30 and knocking off at 5:00 pm and all totaling to 8 or 9 hours per day.

Table 1

| Hours of work | Number of respondents | Percentage |
|----------------------|------------------------------|-------------------|
| >8 | 22 | 55% |
| =8 | 14 | 35% |
| <8 | 4 | 10% |

Table 1 above shows that from a total of 40 workers who were interviewed, 55 percent reported that they work over time on most days due to work overload as their institutions are underemployed, 35 percent indicated that they work exactly eight hours while 10 percent indicated that they work less than 8 works due to less workload on some days. The unfortunate trend is that most employers do not provide payment for those who work overtime.

“The official working hours are 8 but sometimes, I am forced to work extra hours with no pay because my boss wants the work to be completed before I knock off.”

❖ **Termination of workers**

Some companies do not follow specific rules when termination of workers is concerned. No prior consultations or warnings are usually given. For example, a number of workers lost their jobs in the merger between Malawi Broadcasting Corporation radio and television to form one entity as their jobs were said to have become redundant. For those that have contracts, their contacts can be terminated anyhow according to the employer’s wishes, this trend is mostly experienced by workers in the informal telecommunications sector such as those working in telephone bureaus.

However, with extensive awareness campaigns of worker's rights by trade unions, issues of unfair dismissals have reduced considerably as employees are able to seek redress when they feel that they have suffered injustice.

A revision of Malawi's labour laws to include a clause on protecting workers against redundancies would be helpful. A leaf can be borrowed from Ghana's labour law which protects workers from unlawful termination of contracts and redundancies. In the case of the latter for instance, the law requires that an employer must inform both the Chief Labour Officer and the Trades Union Congress three months prior to such a decision with reasons for any termination and indicate measures taken to minimize the adverse effects on workers to be affected.

❖ **Minimum wage**

It is difficult to see the formal pattern of general wage developments in the telecommunications sector in Malawi as different companies have different policies regarding salary developments for their employees, however respondents who are formally employed pointed out that they generally have automatic annual salary increments while as their counterparts in the informal telecom sector do not share the same sentiments. The minimum wage is determined by the employer and most employers are careful not to pay below the government set minimum wage which is currently at K317⁵ per day (approx. US\$ 0.90). The minimum wage has completely failed to keep pace with the sky rocketing inflation⁶ which means that large portions of those in the workforce earn less than minimum living levels.

Table 2

National negotiated Minimum wage movements

| Year | Urban rate/day | Rural rate/day |
|-------------|-----------------------|-----------------------|
| 2004 | MK87.50 | MK66.50 |
| 2007 | MK129 | MK119 |
| 2008 | MK178 | MK178 |
| 2012 | MK317 | MK317 |

⁵ At the time of the study in July, exchange rate was at 1 USD=MK 350

⁶ At the time of the study, (July,2013) inflation was at 25.2

| | | |
|------|--------|-------|
| 2013 | MK 317 | Mk317 |
|------|--------|-------|

❖ **Mandated benefits**

These benefits are mostly enjoyed by those workers employed in the formal sector. Most companies provide for maternity leave, annual leave grants and compensation for injuries at work, however, workers expressed concern that they have to wait for a very long time for them to get compensated when they have been injured. It was also noted that benefits vary according to the position which one has. The above benefits easily apply to workers with high positions while as those in low positions, the benefits are limited to support during funerals only.

❖ **Unionization and Collective Bargaining**

There is a large literature examining the effects of unions on productivity with results largely remaining inconclusive. According to economic theory, unions may exert both positive and negative effects on productivity outcomes. The monopoly model of union behavior postulates that unions use their industrial muscle to extract higher wages and by so doing cause misallocation of resources, and hamper productivity growth. The alternative view suggests that dissatisfied workers may remain in the company and via unions voice their grievances to management enabling the company to overcome inefficient work practices and thereby result in improving productivity levels.

Table 3

| Name of Employer | Union visibility |
|--|-------------------------|
| Malawi Telecommunications Limited | Union exists |
| Access communications | Exists |
| Malawi Postal Corporations | Exists |
| Malawi broadcasting corporation-radio | Exists |
| Malawi broadcasting corporation-television | Exists |
| Airtel Malawi | Exists |
| Telecommunication Network | Does not Exist |

There is good visibility of unions in the telecommunication sector especially in national cooperatives as compared to multinational cooperatives such as Airtel which until August 2013 were shunning establishment of unions in their workplaces. The telecommunication

sector in Malawi is represented by two unions namely Communication Workers Union of Malawi and Electronic Media Union which share 90 percent union representation from the 7 employers interviewed in the study.

The study found that most respondents in the telecommunication sector feel that the unions are not very strong as most times management looks at unions as being threats hence hinder their establishment at work places.

In other cases, the unions have limited bargaining powers. Most workers were of the view that:

“The power of union leaders is dependent on the level of knowledge about labour laws which the leaders have. Most leaders are not well trained in collective bargaining and negotiation skills hence are easily intimidated and threatened by employers”.

The study also found that labour market flexibility and deregulation has contributed to the weakening of trade unions as it has led to high labour turn overs such that people do not get settled into unions as they are constantly changing jobs.

4.4 What explains the observed Flexibility and Deregulation on the Labour market?

Despite the many regulations which have been established in order to protect both workers and employers in Malawi, enforcement of the regulations has proven to be a challenge. The enterprises established to foster job creation are rarely monitored to see if they are providing decent work which covers employment protection legislations for the employees. Respondents expressed some of the following thoughts:

“In some cases, the companies do not adhere to the existing regulations such that the conditions of service for the workers are very poor, most are subjected to hazardous conditions of work as occupational safety and health rules are not followed”.

“There’s high flexibility because as a company we want to cut costs. We prefer to outsource or hire temporary staff because we make more profits that way”

“Government does not enforce or monitor if regulations are being followed in most companies. New companies get established in the country and they have their own conditions

from the countries where they are coming from which are not usually favorable to local people”.

These can be seen as a major force underlying the observed flexibility and deregulation on the Malawi telecommunications labour market.

5. CONCLUSION

Labour market flexibility and deregulation continues to have an adverse effect on workers, resulting in further segmentation of the labour market and work place. This can be best ascribed as the growing polarity between those in full time employment on the one hand and those employed in atypical forms of work and the informal economy on the other. The most obvious difference between these segments of workers is in wages and conditions of service, with full time workers having better pay and working conditions in contrast to their counterparts employed under extremely flexible conditions.

The study has found that there has been high labour market flexibility and deregulation in Malawi's telecommunication sector and this flexibility can be explained by both changes to the employment law and failure or inability to enforce the existing regulations. Weakness in union structures has also contributed to continued exploitation of workers especially those in the informal sector as collective bargaining agreements are not signed and employees find themselves in precarious work with bad working conditions.

5.1 Agenda Going Forward

Torres (1998) said, "As workers who are continually engaged in battles at both the shop floor, on the political arenas and in the international markets, we sometimes from our trenches lose sight of the bigger challenges confronting us. This is when we need to step back a little and devote our attention to more strategic issues, which allow our collective energies to be fully deployed".

Trade unions in Malawi's telecommunications sector especially those in the formal sector have fought for the inclusion of union representatives in meeting where Labour Market Flexibility and deregulation policies are discussed, often times, unions have strongly expressed their views on what can be done to protect workers. For example workers from Access communications Malawi were able to bargain for better working conditions as well as salary increments through their union. It is from such background that the following recommendations are made in order to address the challenge of growing flexibility and deregulation in the labour market:

- ❖ There's need to strengthen union structures through training of leaders, organizing and mobilizing more members to join unions. Opportunities for trade union advocacy and engagement is there in many organizations only if unionists are proactive in discharging their duties, they should not wait to work on when there are conflicts but should strive to sensitize both parties on importance of working in harmony and following labour laws.
- ❖ Trade unions should emphasize to employers that their workforce is the most important resource which an organization can have; as such they have to develop policies which ensure that the welfare of employees is well taken of. This will motivate employees to be more productive.
- ❖ Unions should lobby parliament to introduce laws against some deregulation acts which companies employ in their pursuit of maximizing profits, for example, some companies are paying casual laborers wages below the minimum of K317, this should be punishable by law.
- ❖ Trade unionists should be lobbied to unite in the fight against discrimination and exploitation which has increased because of deregulation. For example, exploitation has occurred in instances where people have been employed on a temporary basis for over twelve months, this violates section 26 (1) of the Employment Act, 2002 which states that;

26.--(1) in a contract of employment in respect of a skilled worker⁷, the parties may agree on the duration of the probationary period:

Provided that the period shall not, in any event, exceed twelve months.

- ❖ Trade unions should hold talks with employers on the need to pursue policies that help retain employees. This could be done by highlighting to employers that's high labour turn-over is a cost to an organization, in over to avoid this, companies should have incentives that make employees stay for example making house or vehicle loans accessible to employees. This will hold employees and reduce the mobility of labour.

⁷ For purposes of this section, "skilled worker" means an employee in an undertaking who has special ability to do something which ability is gained through acquisition, programmed or otherwise, of knowledge, attitude and behavior.

- ❖ Unions should continue engaging stakeholders and share with them their objectives so that they should not see trade unions as threats but as partners in the promotion of worker's rights and development of the country.
- ❖ The national minimum wage currently is at K317 per day however, many workers especially in the informal sector earn below the minimum wage. In this regard, sector minimum wages should be considered.

6. References

- Bank of Ghana-Research Department. (2007): *Issues on wages and labour market competitiveness in Ghana*. Ghana.
- Chirwa, E. (1999). *Structural adjustment programs and the labour market in Malawi*. Working paper, Zomba: Chancellor College.
- Employment Act, 2002. Zomba: Malawi Government.
- Employment (Prohibition of Hazardous Work for Children) Order, 2012. Zomba: Malawi Government.
- ILO. (2011). International Programme on the Elimination of Child Labour (IPEC), *Children in hazardous work: What we know, what we need to do*. Geneva: Switzerland.
- Messrs, M. and Asfaw, F. 2003. *Tecommunication project II report*. Lilongwe: Malawi Pension Act, 2010. Zomba: Malawi Government.
- Mussa, R. & Duravall, D. (2010). *Employment Diagnostic Analysis on Malawi*. ISBN Number: 978-92-2-123739-6. Publication Date: June 2010.
- Pierre G. & Scarpetta S. (2004). *Employment Regulations through the Eyes of Employers: Do They Matter and How Do Firms Respond to Them?* Washington: IZA discussion paper number 1424.
- Standing, G. et al (1996), *Restructuring the South African Labour Market: The South African Challenge*. Geneva: International Labour Organisation
- Torres, L. (1998). *Labour Markets in Southern Africa-Fafo-report*: Norway.
- Africa Economic Outlook 2013- Malawi Overview.
<http://www.africaneconomicoutlook.org/en/countries/southern-africa/malawi/>.
Accessed 18 June 2013.
- National Statistical office, (2012). *Malawi Third Integrated Household Survey (IHS3) 2010-2011. Basic Information Document*.
<http://siteresources.worldbank.org/INTLSMS/Resources/3358986-1233781970982/5800988-1271185595871/IHS3.BID.FINAL.pdf>. Accessed 20 June 2013.
- Telecommunications Network report 2013. *Telecommunications in Malawi*.
<http://www.tnminvestor.com/telecomsinmalawi.aspx>. Accessed 20 June 2013.

APPENDICES

Appendix 1: Interview guide

For the purpose of this study:

1. **Labour market flexibility** is looked at in terms of labour regulations/institutions such as: employment protection legislations (EPLs), minimum wages and mandated benefits and Unions effect.
2. **Deregulation** refers to dismantling of legal and governmental restrictions on the operation of certain businesses or sectors of the economy.
3. **Decent work** refers to productive work in which rights are protected, which generates an adequate income with adequate social protection

Appendix 2: INTERVIEW TRANSCRIPTS

Questions for Individual workers

1. How would you describe the state of the labour market in terms of:
 - i. Employment growth
 - ii. Composition of employment (formal/informal)
 - iii. Unemployment
 - iv. Underemployment
 - v. Unions and collective bargaining
 - vi. General wage developments
 - vii. Working conditions
2. What specific changes have occurred in employment regulations over the last decade? (list them)
 - i. What was the nature of the changes (towards flexibility or rigidity?)
 - ii. Who initiated the changes? (Government, employers, unions, international organizations?)
 - iii. What has been the motivation for the changes?

- iv. Is there effective enforcement of the existing regulations?

Flexibility and deregulation

1. What is the situation of workers in this sector regarding
 - i. Employing workers
 - ii. Hours of work
 - iii. Termination of workers
 - iv. Minimum wage
 - v. Mandated benefits
 - vi. Unionization and collective bargaining
2. How does LMF&D affect workers?
3. How does LMF&D affect trade union work?
4. What is the effect of LMF&D on attainment of decent work?
5. What strategies have trade unions employed in dealing with LMF&D and what have been the effects?
6. What strategies can trade unions employ in influencing pro-poor and pro-worker policies?
7. What opportunities are there for trade union advocacy and engagement in this organization?
8. What should unions do to address the challenge of growing flexibility and deregulation of the labour market?

Focus group discussion questions

1. How does LMF&D affect workers?
2. How does LMF&D affect trade union work?
3. What is the effect of LMF&D on attainment of decent work?
4. What strategies have trade unions employed in dealing with LMF&D and what have been the effects?
5. What strategies can trade unions employ in influencing pro-poor and pro-worker policies?
6. What opportunities are there for trade union advocacy and engagement in the organization?
7. What should unions do to address the challenge of growing flexibility and deregulation of the labour market?

Questions for employers

1. How would you describe the state of the labour market in terms of:
 - i. Employment growth
 - ii. Composition of employment (formal/informal)
 - iii. Unemployment
 - iv. Underemployment
 - v. Unions and collective bargaining
 - vi. General wage developments
 - vii. Working conditions
2. What specific changes have occurred in employment regulations over the last decade?
 - i. What was the nature of the changes (towards flexibility or rigidity?)
 - ii. Who initiated the changes? (Government, employers, unions, international organizations?)
 - iii. What has been the motivation for the changes?
 - iv. Is there effective enforcement of the existing regulations?
3. What constitutes the most important constraint on your business?

Flexibility and deregulation

9. What explains the observed flexibility and deregulation of the labour market?
10. How does LMF&D affect workers and trade union work?
11. What is the effect of LMF&D on attainment of decent work?
12. What strategies have trade unions employed in dealing with LMF&D and what have been the effects?
13. What strategies can trade unions employ in influencing pro-poor and pro-worker policies?
14. What opportunities are there for trade union advocacy and engagement in the telecommunication sector and nationwide?
15. What should unions do to address the challenge of growing flexibility and deregulation of the labour market?

Appendix 3: LIST OF KEY INFORMANTS

| NO | NAME | ORGANISATION/POSITION | DATE |
|----|-----------------------|--|--------------|
| 1 | Mrs. Jessie Ching'oma | Malawi Congress of Trade Unions- <i>Trade Union Educator</i> | 25 July 2013 |
| 2 | Mrs. Grace Nyirenda | Malawi Congress of Trade Unions- <i>Deputy Secretary General</i> | 25 July 2013 |
| 3 | Mr. Francis Kwenda | Ministry of Labour- <i>Principal Labour Officer</i> | 26 July 2013 |
| 4 | Mr. D. Luka | National Assembly- <i>Member of Parliament</i> <i>Member legal affairs committee</i> | 26 July 2013 |
| 5 | Mr. B. Phumisa | Malawi Communications Regulatory Authority- <i>Communications officer</i> | 18 July 2013 |
| 6 | Mr. D. Sandram | Malawi Institute of Journalism- <i>Chief Broadcaster</i> | 19 July 2013 |
| | Mr. D. Deleza | COWUMA- <i>Vice General Secretary</i> | 19 July 2013 |
| 7 | Mr. G. Kalulu | Seventh day Radio- <i>Employer</i> | 17 July 2013 |
| 8 | Mr. L. Zawanda | Telecommunications Network- <i>Employer</i> | 18 July 2013 |
| 9 | Mrs. Marrie Kambeja | Electronic Media- <i>General Secretary</i> | 24 July 2013 |
| 10 | Mr. Emmanuel Katema | COWUMA- <i>Organiser</i> | 24 July 2013 |
| 11 | Mrs. V. Matowe | Malawi Telecommunications Network- <i>Employer</i> | 24 July 2013 |
| 12 | Mrs. F. Chagwira | Access Communications- <i>Employer</i> | 29 July 2013 |
| 13 | Mrs. L. Ntawanga | Malawi Posts- <i>Employer</i> | 29 July 2013 |
| 14 | Mrs. D. Nyale | MBC TV- <i>Employer</i> | 25 July 2013 |
| 15 | Mr. R. Kasawala | MBC Radio- <i>Employer</i> | 24 July 2013 |
| 16 | Mr. H. Haukeya | Joy Radio- <i>Employer</i> | 17 July 2013 |
| 17 | Mr. A. Chokhotho | Matindi Radio- <i>Employer</i> | 16 July 2013 |
| 18 | Mr. M. Mughogho | Capital Radio- <i>Employer</i> | 24 July 2013 |