

The Problem of Non-Compliance with Minimum Wage in the Public Service Organizations in Malawi versus Government as a Role Model Employer

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Abstract: *Since enactment of the Regulation of Minimum Wages and Conditions of Employment Act in 1964 and ratification of the International Labour Organisation Minimum Wage Fixing Machinery Convention in 1965 by Malawi Government, Malawi has adopted the policy of Minimum wage fixing and continued setting and enforcing various rates of minimum wages to protect vulnerable employees from being subjected to low wages in various workplaces. The enforcement of, and compliance with, the set minimum wage are, however, not effectively done and thus non-compliance remains an issue that needs continued debate in Malawi. This qualitative study, using interviews and documents analysis methods, seeks to ignite debate and discuss the country's status/position on minimum wage compliance in the public service organizations/institutions and to suggest practical solutions to address non-compliance problem with minimum wage. The key study finding is that government currently is non-compliant with current minimum wage of Mk687.70 (US\$0.94) per work day with respect to its employees working under public works programme across the country. The paper thus, recommends adoption of combined enforcement approaches with involvement of private partners and lobbying for negotiations with donors towards incorporation of compliance condition with minimum wage within their negotiated funding agreements by Government.*

Keywords: Non-compliance, Minimum wage, Public service organizations, Role model employer, and Minimum wage Convention

1. Introduction

Since enactment of the Regulation of Minimum Wages and Conditions of Employment Act (Cap 55:01) in 1964 and ratification of the International Labour Organisation (ILO) Minimum Wage Fixing Machinery Convention in 1965 by Malawi Government, Malawi has adopted the policy of Minimum wage (MW) fixing and continued setting and enforcing various rates of minimum wages to protect vulnerable employees from being subjected to low wages as a result of non-compliant problem in various workplace establishments, both in the public and private sectors to date [1]. The enforcement of, and compliance with, the set minimum wage rates are, however, not effectively done and thus non-compliance remains a problematic issue that needs continued debate in Malawi and in most other developing countries [2], [3], [4].

In Malawi, the current minimum wage rate of Mk687.70 per work day (equivalent to US\$0.94 at the average exchange rate of Mk734.15 = US\$1 as quoted by the Authorised Dealer Banks and published in the Malawi local Newspaper - The Nation - of 27th February, 2017) [5] is based on the Malawi Government Minimum Wage Gazette [6] of 4th September, 2015 that effected on 1st October, 2015. This wage rate is inclusive of employee's housing allowance. Section 54 of the 2000 Malawi Employment Act (EA) [7], mandates the Minister responsible for labour to set the minimum wage of any group of wage earners in consultation with organisations of workers and of employers relevant to the group of wage earners. The set minimum wage rate is being published in Government gazettes as Government notices for the public information and for the employment social partners to comply. This Employment Act applies both to the private sector and Government (the public sector) including any public authority or enterprise except members of the

country armed forces, prison and/or police service but excluding those in a civilian capacity [7], although compliance rate has been low in some public service organizations [8], [9].

In response, the country employment social partners advance arguments supporting the importance of minimum wage fixing and regulation claiming that such a policy is good to ensure that vulnerable employees mostly in the informal sector are protected from being subjected to low wages due to their less power to collectively bargain for higher wages on their own with their employers [10]. This support for a country minimum wage setting is being concretized further, that is, globally by the International Labour Organisation (ILO) as its legal status and objectives remain relevant to date [11]. The employment social partners have, however, observed that the problem of non-compliance with minimum wage in the Malawi public service organizations, for example, and the unfairness of having just one single minimum wage rate being applicable to all groups of wage earners in various working industries across the country, despite variations of works in groups, remain outstanding challenges to be studied and addressed. The earlier challenge, which is the subject matter in this paper, is however seen to be compromising Government's own efforts in its role of minimum wage regulation and enforcement thereby positioning the Malawi Government, as a role model employer, in an awkward position. Furthermore, this non-compliant problem is being complicated by the silence in debate, on MW, by the country employment social partners and thus the need for this research paper to ignite debate and research on this standing problem of non-compliance in the public sector organizations in Malawi.

Studies have established three schools of thought with respect to achieving effective enforcement and sustainable

compliance with minimum wages. There are studies that advocate that minimum wage compliance can be achieved through the understanding by workplace parties of the importance of minimum wages on the lives of the working vulnerable population [12-16]. This is persuasive compliance model according to Pires [12]. Secondly, there are those studies that advocate that effective compliance with minimum wages can be best achieved once the enforcement is done through labour inspections with levels of penalties in cases of non-compliance increased and by engaging services of “the outsider” enforcing agents [12, 17]. This is deterrence approach model. The advocates of this deterrence approach observe that compliance is a function of the probability of firms being visited by labour inspection services hence their argument. However, there are those studies that suggest a combination of both, the persuasive and deterrence models to be the most effective enforcement and sustainable compliance approach [12, 16]. An analysis from studies involving third school of thought indicates that neither of them has focused on the effectiveness of the combined approach (combination of persuasive and deterrence approaches) with particular reference to compliance with MW in a country public service organisations.

Furthermore, while we have studies that have reported on factors contributing to the problem of non-compliance with general minimum legal standards of employment, there have been no specific studies as of late that have specifically looked into non-compliance contributing factors with regard to minimum wage compliance [18, 19]. Secondly, it is also worth noting that, while we have studies that have reported on best approaches for effective compliance with minimum wages [20], neither of the studies have specifically focused on factors contributing to non-compliance behavioral problems with regard to vulnerable employees of the public service organizations. In addition, and with respect to Malawi, there has been total silence to the debate on minimum wage compliance by Government as role model employer despite the fact that ILO’s Global Wage Report of 2012/2013 found that “in current economic conditions, minimum wages remain a topic of debate on the policy agenda and in the public domain in both developed and developing countries”. All these are gaps that need to be focused for further research studies. It is against this background, that this paper seeks to ignite debate on minimum wage compliance by specifically discussing the non-compliance problem in the public service organizations with reference to Malawi by attempting to answer the following research questions: What is the status/position of minimum wage compliance by the Malawi Government as a role model employer? What could be an effective suggested approach to encourage Government to meet its role of model employer through addressing the non-compliant problem in order to ensure sustainable enforcement with the minimum wage law to all vulnerable groups of employees within the public service? These are key research questions to be answered in this paper. Nevertheless, the paper also discusses how non-compliance problem by government as employer can affect the Government in its enforcement role of minimum wage regulation in a country.

Lack of directive policy regulatory tools, definite compliance approaches and knowledge/skills on minimum wages and regulations, all with potential to contribute to the problem of non-compliance with minimum wage in the public service organizations, seems to be affecting negatively the Government employment representing authorities (GERAs) in the public employing institutions who can use such instruments and knowledge to explore long-term solutions to the existing problem of non-compliance. In this regard, this research paper will be of much significance for the GERAs in the way that they will be accessible to relevant information for them to be aware, of their county’s law requirements on minimum wage, of their roles to ensure that the enforcement mechanisms of minimum wage rates are adhered to for the minimum wage non-compliance problem to be addressed by government as a role model employer, and also for the GERAs to be guided and updated with how Malawi relates herself with the requirements of ILO in terms of her commitments towards the setting and enforcement of minimum wage rates for the benefits of the country venerable working population. In addition, the paper’s findings will be an opportunity for the employment social partners including the Government and donors to use as a reference source in their continued tripartite debates and negotiations on minimum wage setting and enforcement. Finally, the paper will also be significant for the donors as reference source on how they can engage and proceed in negotiations with aid recipient governments to ensure compliance with individual country’s minimum labour standards while making sure that their aids are effectively utilized.

The purpose of this qualitative research paper is to ignite debate and discuss the country’s status on minimum wage compliance with respect to vulnerable employees in the public service organizations/institutions as well as to suggest some implementable effective compliance approaches for adoption in order to address the problem of non-compliance with minimum wage rate for the protection and benefit of vulnerable employees employed and working in the public service organizations. These are employees who are usually subjected to low wage payments that are below prescribed minimum wage rates [21, 22, 23, 24]. The paper, to address this purpose, will collect data through interviews with selected Government employment representing authorities recruiting the public service vulnerable employees, on levels of wages; factors and/or reasons for low wages and on suggested ways for addressing the non-compliance problem. Data will be analyzed for discussion and interpretation. The GERAs from selected Local Authorities (Councils) are targeted because they are directly involved in the employment for, and implementation of the, Public Works Programmes (PWPs) where the problem of under-minimum wage payments is being experienced most as compared to other public service organisations.

The paper is structured as follows: literature review follows this introduction section. It first discusses Malawi public service organizations; Government as a role model employer; global minimum wage setting and compliance debate followed by a brief background to the Malawi minimum wage fixing, policies and

regulation/enforcement. Second, it discusses the policy framework for social protection programmes in general and public works programme in particular. The subsequent methodology section presents the method of data collection and analysis used for this research paper. The core section of the paper is the findings which analyses and discusses the status/position and suggested approaches to be pursued by government in order to address non-compliance problem within the public service organizations. Lastly, the paper concludes and draws some recommendations based on the study findings.

2. Literature Review

2.1 Malawi Public Service Organizations

In Malawi, Public service is described as an organization or body comprised of four parts as follows: Civil service which is made up of all Government ministries and departments; Security organizations made up of Government institutions and agencies delivering military, police, intelligence and prison services; Local assemblies/authorities (the Councils) which are made up of the city municipalities, townships and district councils; and the Statutory bodies made up of all the various Government controlled companies and institutions [25]. This entails that all employees employed and working in each of all these Public service organizations or institutions are all Government employees in the Public service.

The Public service organizations/institutions are established by the Malawi republican constitution directly or indirectly. The constitution establishes directly various institutions such as the legislature, electoral commission, local government, police, defense forces, prisons, Reserve Bank of Malawi and civil service. Indirectly, the constitution establishes other various Government institutions through Acts of parliament. This is the case because the Malawi republican constitution under section 48 (1) vests all the legislative powers of the republic in Parliament whose primary function is to make laws that are written in various legislative Acts known as Acts of parliament. An Act of parliament can also provide for the establishment of some institutions that in this article are referred to as the institutions indirectly established by the republican constitution. Some of these public service institutions established by legislative Acts of parliament include: Local assemblies (the Councils) established by Local government Act of 1998; Anti-Corruption Bureau (ACB) established by the Corrupt practices Act; various statutory corporations such as Electricity supply corporation of Malawi (ESCOM), Electricity generation company Malawi Ltd (EGENCO), Malawi housing corporation (MHC), Malawi National Examinations Boards (MANEB), Water Boards etc established by the statutory corporation Act; and all the country public universities such as University of Malawi (UNIMA), Mzuzu University (MZUNI), Lilongwe University of Agriculture and Natural Resources (LUANAR) and Malawi University of Science and Technology (MUST) established by their respective legislative Acts.

All the Public service organisations including statutory corporations are Government controlled institutions and/or companies and thus they are mostly financed by government from the government consolidated fund. From the above detailed description in respect of the Public service organisations, it is therefore clear that Government is the employer of all the employees employed and working in each of the Government controlled institutions (the Public service organisations) whether directly or indirectly. The Public service organisations' employees are called public servants by virtue of serving the public service.

The regulation of employment relationship between the public service employees and Government is differently done. The Central government is a direct employer discharging the roles of employer to some public service organisations' employees whereas for some categories of employees in some public service organizations, the Central government delegates its role as employer to respective institutions which thereafter become employers of their certain employees' categories. For instance, in the main civil service stream and security organisations in Malawi, it is the Central government that is directly responsible as an employer of all those employees serving under each of such categories of institutions. For the statutory corporations (bodies), the Central government delegates its employing role to the appointed board members of each statutory corporation. Thus with regard to statutory corporations, two vivid levels of employing authority emerge. These are: the Board as the first employing level and the Government (Office of the President and Cabinet (OPC) department of statutory corporations) as the second but top and most powerful employing level.

Finally, in the local Councils, that is, the municipalities, townships and district Councils, there are two different sets of employees. One set (the main set) constitutes employees employed and controlled directly by the Central government whereas the other set (the subsidiary set) mostly categorized by Councils as the direct council employees' set constitutes employees employed and controlled by Councils as their legitimate employers who formulate their (direct employees) conditions of employment usually slightly different from those conditions of employment between the Central government and the Councils main set of employees.

The under payment of wages below the minimum wage rates is evident amongst the local Councils' direct employees across the country [26, 27], living them as vulnerable, thereby displaying Government's non-compliant behavior to its own set minimum wage rate. Scope of this non-compliance problem is discussed in the later sections of this research paper.

In addition, the Local Government Act of 1998 [28] mandates local Councils to administer, at district level, usually on behalf of the Central government, all the social protection programmes (including the Public Works Programme (PWP)) under the Malawi Social Action Funds (MASAF) as well as the Local Development Fund (LDF)

projects. These programmes and projects are designed as labour-intensive programmes/projects [29, 30, 31]. Hence a large number of the populace is employed to work on short term basis in these programmes and projects. The programmes/projects' employees comprise of another category of employees (in addition to Councils' direct employees) who are usually underpaid by Government, that is, they are paid below the government set minimum wage. Despite their short term nature of employment with local Councils (Local governments), PWP employees are also part of the public service employees because they have an existing employment relationship between them as benefiting employees and government-the Councils as their employers (see discussion on existence of employment relationship between PWP beneficiaries and Councils in this paper). It is in this regard that this paper discusses the issue of government's non-compliance with MW for the Councils' employees (beneficiaries) working under the PWPs.

2.2 Government as a Role Model Employer

The term "role model" is defined by Oxford English dictionary as a person who may be taken as an example to be copied. This definition shall be qualified and used for the purpose of this paper in which case the word – person- is implied to mean an "individual human being" or an "institutional entity or body or Government etc" of which the latter is the case in this paper. And thus, by extension, a "role model employer" should be an employer who may be taken as an example to be copied by other employers of which it shall be the Government in this paper.

The crucial question to be considered therefore is why Malawi Government should be described as a role model employer. The Malawi Government, like many other governments in the world, is described as a role model employer mainly because of two reasons. First, Malawi Government through its huge public service workforce is the biggest public employer (with the largest number of employees as compared to any other employer's workforce size) in the country followed by the church in the private sector and thus its influences and/or behaviours are paramount for the shaping of the country's employment relationship [4, 32]. Such behaviours can be easily copied by other employers in the private sector. Second, the Malawi Government plays a mandatory role of formulating, through parliament, labour laws which act as legal framework for regulating the country's labour and employment matters. In addition, the Government has a role to enforce its formulated laws i.e. to ensure that compliance with enacted labour laws is being observed by all employers and employees at all times within the country. In this regard, Government as an employer must be exemplary to all other employers with respect to compliance with its own set labour laws hence Government and indeed the Malawi Government, in this paper, is described as a role model employer.

2.3 Non-compliance versus Government as a Role Model Employer

The problem of non-compliance with minimum wage rate by government, to a certain extent, puts the Malawi government as a role model employer in an awkward position. In this paper the term "awkward position" is defined to mean either of the two things: being in an embarrassed state or being caught in a dilemma. Thus, why the Government in an awkward position; becomes a question of concern in this paper. The answer to this question lies in the fact that the regulation of the employment relationship is a Government's mandatory function in Malawi as is the case with many other countries worldwide [4, 20, 32, 33, 34, 35]. In this respect, the Malawi Government formulates legal employment framework and enforces such employment laws through its means of labour inspections, conciliations and mediations among others.

The Government's effectiveness in its employment regulatory role depends on its commitments to undertake such a role coupled with its own operational behaviors as a role model employer. And it has to take government to act as the employer of last resort if vulnerable employees are to access employment opportunities as well as to be protected from being subjected to wages below the country set MW. To support this assertion, Murgai and Ravallion as cited by Rani & Belser in Actrav [14] argued that minimum wage legislation in poor countries can only be made really effective if the government acts as the "employer of last resort" and commits to employ the entire excess supply of unskilled workers at the stipulated minimum wage rate. It is in this regard where the Malawi government, by not protecting its vulnerable employees under the PWP and the direct employees through payment of wages according to MW rate, has awkwardly positioned itself because of its non-complaint behaviours. The awkwardness, mainly arises as the government through its ministry of labour, attempts to deliver in its mandatory duties of enforcing minimum wage rate provisions during labour inspections for its country employed workforce who are victims of wage under-payments.

For instance Mhango [56], a Malawian pension law professor based in Swaziland while commenting on the implications of Malawi's failure with respect to compliance with its country pension law of 2011 that includes Government as employer to run contributory pension scheme for all its employees observed that:

To ensure compliance with the legislative [provisions] described ..., I would recommend that government moves with deliberate speed to ... without which it risks failure to meet the deadline in the Act. If the deadline is not met, the Administrator and [National Pension Fund] NPF issue could be politicized as Malawi heads towards general elections in 2014, and those individuals tasked with implementing the Pension Act [labour inspectors and other government officials] could lose focus as they may be caught up in the crossfire of political battles and interests.

This is one clear observed example that shows how Malawi government is putting itself in an awkward

position with regard to its non-compliant behaviour concerning the under-payment of minimum wages to some categories of its employees who are equally public employed servants, by public service definition, regarding Government as their employer. Unfortunately, Malawi is a member state of ILO, the global labour institution, which supports minimum wage setting and encourages world countries to comply with the same, globally. Thus the next key issue worth reviewing here is the global minimum wage setting and compliance to appreciate on why it is necessary for Malawi to comply with MWs.

2.4 Global Minimum Wage Setting and Compliance

Globally, the current and most notable minimum wage instrument for reference is the Minimum Wage Fixing Convention No. 131 of 1970 which requires ratifying states to establish a minimum wage fixing machinery capable of determining and periodically reviewing and adjusting minimum wage rates having the force of law. Among other conditional factors, this convention calls for the minimum wage to strike a balance between “the needs of workers and their families” and “economic factors” as well as for full consultation and participation of social partners [21].

Minimum wage is therefore a statutory prescribed wage rate as a remuneration floor. It establishes a floor to the wage structure for the intended purpose of protecting workers at the bottom of the wage distribution [16]. Currently, over 90 % of countries worldwide are maintaining various minimum wage regimes [16, 36] and the level of minimum wages varies, largely depending on the level of economic development which also varies from one country to another. This explains why there are low minimum wage rates in some countries as compared to other countries with high wage rate although such countries (those with low and/or high wage rates) could be from the same regional block. For instance, the world of work report of 2014 reported that African countries generally have the lowest levels of minimum wage, as compared to European countries which have the highest minimum wage levels.

Having indicated that most world countries are setting their minimum wages, the next issue would be to know why countries should be maintaining minimum wages and on whether there is any directional policy support to ensure that world countries continue setting their minimum wages. The answers to these pertinent questions lie within the ILO’s commitments with respect to the setting of minimum wages. According to ILO [36], minimum wages have received growing interest and support in recent years because of two important reasons:

First, wage inequality has been growing in many countries and working poverty (i.e., workers employed but living in poverty) is on the rise in most countries. Second, there has been an accumulation of recent empirical evidence which points to an overall neutral effect of minimum wages on employment, contradicting earlier theoretical predictions and some studies that claimed a negative impact on employment.

Furthermore, the ILO’s committee of experts on the application of conventions and recommendations (CEACR) published, in 2014, a general survey on minimum wage systems in which it was concluded by considering that:

The objectives set out in Convention No. 131 [the Minimum Wage Fixing Convention of 1970] remained just as relevant today as they were when they were adopted in 1970 despite the passage of true changes and developments affecting the world of work. Objectives, principles and methods set out in Convention No. 131 have not only resisted the economic, political and social transformations that the world has experienced since their adoption in 1970 but also match perfectly public policies by which States aim at reconciling the objectives of economic development and social justice.

These study findings are enough to indicate the need and significance for countries including Malawi to continue setting their minimum wages as well as for them to be guided globally in terms of policy support and direction. In this regard, Malawi should indeed be fixing and complying with MW in order to protect and improve living standards of her workers employed but still living in poverty.

Setting minimum wages is one thing and complying with the set minimum wages is another thing. This is why ILO [16] recognizes the implementation of minimum wage as another critical dimension of effective minimum wages and indicated that even if minimum wages are set properly, they are sometimes not properly implemented or enforced. This is true in most developing countries including Malawi where minimum wage rates are set and effected for compliance but non-compliance problem still remains a serious growing challenge. There are recent studies on implementation of minimum wages in developing countries that have documented large scale of non-compliance and indicate the possibility that better enforcement alone, without increasing the levels of minimum wages, could significantly improve wage conditions [16, 37, 38].

Despite the non-compliance problem with regard to minimum wage rates, minimum wage setting is still viewed as the only option to influence wage outcomes in situations where collective bargaining covers a small share of workers leaving the majority of workers to lack alternative methods of wage negotiation and determination [16, 36, 39].

A number of studies on compliance with minimum wages and other minimum legal standards of employment have been under-taken. For instance, Luce in Actrav [14] observed that compliance is easy once workers themselves have some power to help with the enforcement. In his study, Luce found out that American cities that had done thorough sensitization campaigns which helped workers and organisations to develop capacity to monitor and fight on wages issues as well as cities that had at least one “Outsider” involved enforcer (e.g. trade union inspector etc) had good compliance result rate as compared to those of other cities. Luce reported that there was almost no case where the city had done a good job of enforcement on its

own. In addition, Pires [12] reported that a balanced enforcement approach brought effective and sustainable compliance with minimum standards of employment in Brazil when supplemented with non deterrent enhanced labour inspection services including those of trade union inspectors and their participation. This suggests that sensitizations to empower social partners especially workers on how to comply with and use of external labour law enforcers can help bring about effective compliance. Furthermore, Belser and Sobeck [17] in ILO [14] suggest some measures to be taken which can dramatically increase the rate of compliance. These are: use of simple systems for easy communication between employees and employers as well as between civil societies; need for increased, labour inspection services because he found out that compliance is a function of the probability of firms being visited frequently by labour inspections services and, level of penalties in case of non-compliance cases; and also the need to have coherent complaint enforcement of policies. Belser and Sobeck agree with Lee and McCann [35] who argued that workers, who know what they are entitled to, are also more likely to be paid accordingly. Whereas, other researchers [16] found out that stronger enforcement and reduction in the relative level of minimum wages were necessary strategic solutions to bring about effective compliance in Chile.

Ran et al. [38] in their paper: "Minimum wage coverage and compliance in developing countries" concluded that non-compliance continues to remain a major challenge which requires a coherent enforcement strategy that should support provision of information and improved awareness among both employers and workers; effective labour inspection; sanctions in case of violations; and involvement of social partners and civil society organizations (CSOs) and/or Non-Governmental organizations (NGOs) to ensure that implementation machinery is effective. In agreement with Ran et al., Rani & Belser [40] studied and found out that the Indian national rural employment guarantee scheme (NREGS) with its contractual arrangements and enforcements mechanisms that involved the use of CSOs/NGOs and/or trade unions as key stakeholders among others, in addition to available state labour inspectors, to help check compliance with minimum wages emerged the best national programme to achieve effective and sustainable compliance with minimum wage rates.

All these reviewed studies on MW and compliance seem to direct the world towards use or adoption of a combination of various approaches in either way, as contrasted to use of single approach, in order to achieve effective compliance with minimum standards of employment in general and with MW in particular as for most approaches once applied individually are proving ineffective as evidenced in these several reviewed studies. Having looked at the global minimum wage fixing and regulation including a review on compliance, the next attention is to look at the same MW fixing and regulation but with focus to Malawi.

2.5 Minimum Wage Fixing and Regulation in Malawi

2.5.1 The Minimum Wage fixing Law

In 1964, Malawi enacted the Regulation of Minimum Wages and Conditions of Employment Act for the purpose of setting and regulating, among other things, the minimum wages of various wage earning employees in various industries. This Act was repealed and replaced by the current Employment Act (EA) No. 6 of 2000 which came into force on 1st September, 2000. Section 54 of the current Employment Act mandates the Minister responsible for labour to fix, in consultation with organizations of workers and of employers relevant to the group of wage earners, the minimum wages of any group of wage earners as to the appropriate level of minimum wage to be prescribed.

In prescribing the minimum wages, the law requires the Minister to consider a number of factors such as the following: the needs of workers and their families; the general level of wages; the cost of living; the cost of social security benefits; the relative living standards of other social groups as well as economic factors like the requirements of economic development, the levels of productivity and the wage effects on employment [7].

Furthermore, the law requires the Minister through such consultations to be reconsidering the levels of minimum wages at least once every three years (section 54 (4) of EA, 2000). The Minister is, however, mandated by the same law through the same process to modify the procedure for setting wages at any convenient time. The set minimum wage shall not be subjected to downward abatement but only to upward abatement provided the employer and employee agree to do so. Finally, the law points out that any employer who pays wages lower than the set minimum wage rate does commit a punishable offence that attracts a court fine of Mk50,000.00 and/or 10 years imprisonment.

In terms of application, the set minimum wage(s) are applicable to all employees from both the public and private sector organizations except the exempted employees. This is because section 2 of the Employment Act, which provides for fixing of minimum wages, defines all groups of employees to which the Act applies. These groups include all the private sector employees and those in the Government including any public authorities or enterprises except members of the country armed forces, prison or police service minus the ones in civilian capacities.

2.5.2 The Minimum Wage fixing Policy Strategies

Two distinct policy strategies have been used in Malawi. These are the locational and sectoral minimum wage fixing policy strategies. Locational strategy entails fixing of minimum wage rates according to locational or geographical areas of the country such as districts/townships, municipalities and cities whereas sectoral strategy entails fixing of minimum wage rates according to each sector of the various industries in the country.

The locational minimum wage fixing policy strategy in Malawi has been constituted of 3 different tier systems each being adopted and used at different times. For instance, for the years 1964 to 1993, Malawi adopted and mostly used a three-tier system of minimum wages comprising of separate minimum wage rates for cities, municipalities and districts. From 1994 to 2010, a two-tier system with separate minimum wage rates for rural (districts) and urban (cities and municipalities combined) was adopted and used whereas a single-tier system of only one statutory minimum wage rate for all the three different country locational areas of district, municipalities and cities as well as for all sectors was adopted and has been in use from 2011 to date.

The sectoral minimum wage fixing policy strategy was first used for some years within 1974 to 1988 during when there were five different sectoral minimum wages [8, 41]. It was completely replaced later by the locational policy strategy as it was found to be very costly on part of the Malawi Government as a developing nation among other reasons. The costs were viewed in terms of financing

several consultative meetings involving various sectors to propose sectoral draft wage rates and also in terms of enforcement related costs. Nevertheless, it is currently considered and agreed by all relevant social partners that the replaced sectoral minimum wage fixing policy strategy be re-adopted from anytime soon based on justification that Malawi, currently, has reached a developing stage with a number of developed sectors to the effect that having just one unified minimum wage rate for a country with different sectors is becoming problematic in terms of its (minimum wage) relevance to all sectors and thus portrays elements of unfairness and hence would defeat the whole purpose of advocating for labour productivity related wages as a nation (see table 1). Table 1 contains details of specific set and used minimum wage rates in Malawi kwacha with average comparisons to the United States dollar (US\$). Note that United States dollars have been determined at exchange rates based on official exchange rate (LCU per US\$, period average) from the World Bank data available online from: www.data.worldbank.org/indicator/PA.NUS.FCRF.

Table 1: Malawi minimum wage rates in Malawi kwacha and US\$ per work day by three locations - Cities, Municipalities and Districts. (Avge MW in US\$ = Avge MW in Mk ÷ ER (MK to US\$))

L	..1994	2000	2005	2007	2012	2014	2015..
C	3.55	55.00	96.50	129.30	317.00	551.00	687.70
M	3.55	55.00	96.50	129.30	317.00	551.00	687.70
D	3.00	42.00	73.50	105.45	317.00	551.00	687.70
K	3.37	50.67	88.83	121.35	317.00	551.00	687.70
\$	0.39	0.85	0.75	0.87	1.27	1.30	1.38
ER	8.74	59.54	118.42	139.96	249.11	424.90	499.61

Table notes: For location column (L), C represents Cities; M represents Municipalities; D represents Districts; K represents average minimum wage in Malawi kwacha; \$ represents average minimum wage in United States dollars; and ER represents exchange rate of Malawi kwachas to a United States dollar.

Source: Computed and Adapted from (Livingstone, 1995 and Malema, 2014: p. 14)

Table 1 indicates that Malawi has mostly been using locational minimum wage fixing policy strategy. The sectoral minimum wage fixing policy strategy was used for years between 1974 and 1988. And Malawi will from any year from 2015 adopt and replace the locational MW fixing policy with sectoral MW fixing policy which was proposed and agreed by social partners in 2015. However, the single-tier system of MW rate is still in use and will be used while the country prepares to re-introduce the proposed sectoral MW fixing policy strategy.

Synonymous to the sectoral minimum wage fixing policy was the National wages and salaries policy officially introduced in 1969 to selectively regulate some targeted social partners. Malema [4] describes and discusses this policy as “the ‘Low Wage policy’ whose objective was to attract investors who could in turn be relied upon to meet the Malawi congress party’s (MCP) financial needs”. This policy was reinforced, in 1971, by a supplementary policy, the Wage Restraint Policy, favored by Dr Hastings Kamuzu Banda – former president of Malawi 1964-1994, with strict wage restraint as its main objective. The Wage restraint policy according to Livingstone [8] and Klaveren

et al. [41] required employers wishing to make wage increases over 5 % yearly to first apply for approval to the Wages and Salaries Restraint Committee. According to Livingstone [8], five minimum wage rates were set for four different urban areas and for the rural areas.

As indicated above, Malawi has resolved to re-introduce the sectoral minimum wage policy that was replaced by locational MW policy in 1989 due to being costly. Apart from being costly (demerit) and being relevant to current developed industrious sectors justifying for its re-introduction (merit), what else can be discussed of this policy approach? First, with this policy strategy, Malawi did not achieve its MW wage setting objective as provided for by the 1970 ILO MW fixing convention because according to Livingstone [8], it was observed that although in the 1970s nominal wages of urban workers grew way above the minimum wage rates, this was not quite advantageous for workers because real wages fell as there was no way they could keep up with large price inflation. This means that Malawi was in compliance with MW rates but that compliance effective tool (the strategic policy of wage setting) did not respond to the convention’s

requirement that wages be adjusted to strike a balance between “the needs of workers and their families” and “economic factors”. Second, the policy was not aligned to the global MW law (despite Malawi’s ratification of the same law) that accommodates wage collective bargaining thus not in favour of the country’s majority employment social partners hence its short lived. This was orchestrated during Dr Kamuzu Banda’s dictatorial rule when collective bargaining was non-existent and that strikes were forbidden [32].

However, if MW rates had been adjusted according to requirements of MW law, they would be higher rates above the ones that existed that time to reflect the real wage values but ironically they would still be complied with because of the dictatorial leadership style that had a strong mechanism, but rather violent one, of enforcing minimum wages. For instance, it was the Malawi Congress Party (MCP) officials or the Malawi Young Pioneer (MYP) officials during that time, other than the Ministry of labour officers/inspectors, who were more influential in terms of enforcing or handling labour service issues [4, 32]. Nevertheless, Malawi thinks that this sectoral MW strategic policy will work to the advantages of the employment social partners this time around because Malawi is no longer a dictatorial state but a democratic state where we have more developed democratic labour legislative laws, that are responsive both, to international labour standards and to the needs of Malawian employment social partners, hence it is not expected to have such a policy faced with some of the regulatory challenges such as political influences as was the case before 1994.

2.5.3 The Law and Practice of fixing and regulating Minimum Wage rates

Has the practice of fixing and regulating minimum wage rates in Malawi been following the law? Definitely, the answer is not. In terms of adjusting minimum wage rates based on economic factors such as the levels of productivity (as stipulated by the law, EA, [7]), Malawi would have increased minimum wage rate to a higher wage rate by 2010 from Mk129.30 (urban) and Mk105.45 (rural) in 2007 before effecting another increase in 2011 as the country recorded much significant growth in GDP but that was not the case instead.

During the period of 2006 - 2010, Malawi registered a rapid growth in GDP [3]. During this period, the country GDP growth rate averaged 7.1 % against the target of 6 % [42, 43]. The increased growth in GDP meant that some new employment jobs were created in the country thereby creating demands for more labour that would have justified the need for upward adjustment of minimum wage rate based on the factor of increased productivity levels. Unfortunately no increase in minimum wages over such a period of positive growth was effected [3].

Secondly, if Malawi were to comply with the three-year period of effecting new minimum wage adjustments, the new minimum wage rates would have been effected in 2003, 3 years later from 2000 when minimum wage rates

of Mk55.00 (urban) and Mk42.00 (rural) were set and adopted (see table 1). Similarly, another wage increase would have been effected in 2010, 3 years later from wage rates of Mk 129.30 (urban) and Mk105.45 (rural) in 2007 before effecting another wage increase in 2011. However, there were no wage increases being set in years of 2003 and 2010 as per the three-year space period required by the law. In this respect, it has been practically agreed by the country employment social partners to be adjusting minimum wages annually contrary to the law requirement of every 3 years. These partners (the trade unions and employers’ organizations with government) observed that “from 1994 Malawi has not had a serious salary increase [minimum wages] despite the economic woes and low wages hence the social partners agreed to be holding minimum wage review meetings yearly as a means of continually reviewing the wages so that we are able to reach a break-even point” [10].

Furthermore, Malawi minimum wage rates are generally very low as compared to those of neighbouring countries such as Mozambique where minimum wage was equivalent to US\$55 per month in 2007 when it was equivalent to US\$26 per month in the same year in Malawi [3]. The Malawian minimum wage rates, shown in table 1, do not really reflect the needs of workers and their families, the cost of living and the relative living standards of other social groups as required by the EA of 2000. This entails that Malawi is still pursuing, to some extent, the policy of cheap labour, i.e. “low wage policy”, hopefully with a view that cheap labour would attract more foreign investors, that is, Foreign Direct Investment (FDI) into the country, the trade form that has been proved to be very potential and instrumental in driving developing countries towards achievement of economic development faster than they would do without FDI. Ironically, cheap labour, that is, low wages amongst the working vulnerable population has direct negative impact towards living standards of the working population and thus can retard economic growth in the country considering that economic growth has been argued and concluded to be a function of improved standard of living amongst the population and steady growth in the real GDP [42, 44].

From the above few instances, it is clear that, for Malawi on paper, MW fixing and regulation matches with the country prescribed laws and policies. This is because, as evidenced above, on one hand the country has good prescriptive MW fixing law and on the other hand the country is experiencing challenges with the implementation of the same law based on practice. The same is also the case with the enforcement and regulation of this MW law in which case a number of non-compliance with MW cases have been reported [45, 46], and where this non-compliant behaviour involves government as a role model employer, the challenge becomes more complicated.

2.6 Policy Framework for Social Protection Programmes

The policy framework within which the public works programme and other social protection programmes draw

their implementation background in Malawi are the MGDS II [43] and the revised Malawi national social support policy (MNSSP) of 2012 [47]. Malawi government developed the revised Malawi National Social Support Policy within the framework of MGDS II which was approved by cabinet in 2012. The implementation and/or operationalisation of this policy is through the National Social Support Programmes (2012-2016) that mainly comprise of six separate social support programmes such as the Public works programme (PWP), Social cash transfer (SCT), School meals programme (SMP), Village savings and loans (VSL) / Community mobilization and savings investment programme (COMSIP), Microfinance (MFI) and Fertilizer input subsidy programme (FISP).

Selection of beneficiaries for each of the six social support programmes currently uses the country unified beneficiary registry (UBR) data base available on <http://ubr.mnssp.org>. Data collection for this registry database was based on the country poverty ranking levels as reported by Mwamlima [48] which indicated 50.7 % of the Malawian population as poor. This study grouped poor Malawians into three categories as shown in figure 1. The figure shows 10 % out of 50.7 % as ultra poor Malawians who are incapacitated to the extent that they cannot provide labour in return for their income hence they are the ones to be considered with social cash transfer and school feeding programmes; 15.5 % as ultra poor Malawians but with labour capacity to provide in return for their income thereby entitling them to benefit from public works programmes among others; whereas about 25.2 % as moderately poor Malawians whose needs include employment opportunities, skill building trainings among others and hence are eligible to benefit from social protection programmes such as inputs subsidy, public works programmes, micro-finance, village savings loans etc. It is therefore clear from figure 1 that the majority poor Malawians, that is, 40.7 % (i.e. 25.2 % - moderately poor plus 15.5 % - ultra poor) are the ones who constitute as beneficiaries for the Public works programmes in Malawi, currently.

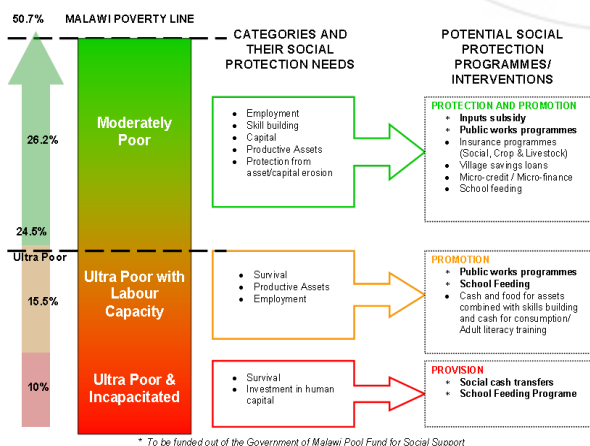


Figure 1: Poverty Ranking Categories in Malawi
 Source: Mwamlima, H. (2014). The Malawi National Social Support Programme. Presented at FAO Regional

Consultative Workshop. 25-26 November 2014, Cape Town, South Africa.

2.7 Public Works Programme

2.7.1 Existence of Employment Relationship and Minimum Wage non-compliance

The public works programme (PWP) was set up by the Malawi government way back in the early 2000s as one of the social protection measures to support the country's ongoing macroeconomic stabilization programmes. Charman in UNDP [49] wrote that:

The Malawi government's original strategic paper prepared for the World Bank placed PWP as a "highly suitable countercyclical intervention" for regional and self-targeting (Smith, 2001: 25). It was agreed and emphasized that "the bulk of subsequent PWP interventions, building upon the MASAF experiences, [were to use] a minimum wage as a self-targeting mechanism and required the beneficiaries to perform specific tasks such as road clearing on the basis of national task rates".

PWP involves labour-intensive public works and has been implemented through local development fund (LDF) and other partners in all the 35 local Councils in the country as a compulsory program. One of the primary objectives of the PWP is to increase income for poor households and reduce their food insecurity through the provision of employment opportunities in such PWP's labour intensive activities. This PWP, like the National Rural Employment Guarantee Scheme (NREGS) in India [40] is described as one of the employment guarantee schemes in Malawi. The key question that arises is whether an employment relationship exists between government as employer and PWP beneficiaries as employees which should justify the discussion of the problem of non-compliance with minimum wage by Government in this research paper.

Article 9 of ILO-R198 of 2006 [50] states that "for the purposes of the national policy of protection for workers in an employment relationship, the determination of the existence of such a relationship should be guided primarily by the facts relating to the performance of work and the remuneration of the worker, notwithstanding how the relationship is characterized in any contrary arrangement, contractual or otherwise, that may have been agreed between the parties". Two key concepts that matter in this clause article are the performance of work and remuneration for the worker. Contractual arrangements between government and PWP beneficiaries (the employees) requires beneficiaries to be paid Mk600.00 per work day, in return of their performed work, as wages. This is workers/employees' remuneration. The agreed conditions of work performance and wage payment by either party according to EA of 2000 Ss. 3 & 50 and article 9 of ILO Recommendation No. 198 of 2006, implies that Government is the employer and wage recipient, the beneficiary, is the employee hence the existence of the employment relationship which must be regulated by relevant country labour laws (set minimum labour standards including the minimum wage standard except in cases of exemptions). In this regard, PWP is a source of,

and qualifies to be an, employment opportunity for the poor Malawians.

Currently, the Government of Malawi has secured funding from the World Bank for the implementation of the MASAF IV project whose overall goal is to strengthen safety nets systems in Malawi and the project's specific objectives are: to increase incomes and food security of poor households and create productive community assets; to enhance livelihood support capacities of households through savings and investment promotion activities and to improve coverage of targeted benefits for the extreme poor through social cash transfers. It is within this MASAF IV project in which PWP is being executed.

In Malawi, as indicated earlier, the Government is the employer through the local government Councils for all created employment opportunities under the Public service works programme. This is where local Councils are mandated to employ and pay wages for their employed working population individuals. The programme employs over 200 poor persons from each village development committee area (VDC) who are below the poverty line. As such there are thousands and thousands of Malawian PWP employees employed and working at particular times in

Table 2: Employment Statistics for the Malawi Government Public Works Programme for 2012/2013 and 2015/2016 financial years

NR	2012/2013 employment year		2015/2016 employment year	
	No. of Beneficiaries-workers	Total wages (Mk)	No. of Beneficiaries-wkrs	Total wages (Mk)
NM	76,337	1,099,242,801.00	69,956	503,680,473.00
CM	201,449	2,900,859,456.00	153,644	1,016,750,560.00
EM	135,338	1,948,870,873.00	102,404	737,313,372.00
SM	189,528	2,729,190,039.00	123,987	892,762,322.00
T	602,652	8,678,163,169.00	449,991	3,150,506,727.00

Table notes: For country region column (NR), NM represents Northern Malawi; CM represents Central Malawi; EM represents Eastern Malawi; SM represents Southern Malawi; T represents Totals; and Mk in 3rd & 5th columns represents Malawi kwacha.

Source: Consolidated from GoM- 2012/13 and 2015/16 funding allocation to local authorities for Implementation of public works programme. Government documents – LDF – TST – Circulars: Malawi Fiscal Decentralisation Model – MASAF III & IV Projects.

Regarding wage rates and work duration, PWP employment scheme for the two years under discussion used Mk300 and Mk600 respectively as an individual employee's wage earning per work day. Each employee was employed to work for a maximum of 48 days in the year having worked for 4 months, that is, 12 days in each month. This means each individual employee was paid a total of Mk3, 600.00 (US\$14.45) and Mk7, 200.00 (US\$09.95) respectively per month after working for 12 days in a month of 8 hours a day. According to the programme design, the payment of wages is done after 12 days work by each community targeted beneficiaries in each month of each cycle. The 48 days duration was split into two cycles of 24 days each cycle and thus two cycles (first and second) to cover the whole 48 total working days. With these wage rates and work duration arrangements, the 2012/2013 PWP had increased daily wage rate from Mk200 to Mk300, to Mk600 for the

the year. As reported by Kalondolondo projects reports [9], there are underpayments of wages below the prescribed minimum wage rates to such employees working under public works programme. In this paper, 2012/2013 and 2015/2016 PWP employment data is used to show the problem of non-compliance with minimum wage rate in the public service works by the Government as a role model employer. The key questions are why the non-compliance behaviours by Government, and what implications could result from these non-compliance behaviours.

The labour intensive activities or interventions being undertaken under this PWP scheme include: afforestation activities; construction of village access roads; development of small scale irrigation facilities; land resource conservation such as storm drains and aquaculture activities [30]. For the programme coverage in the two years of 2012/2013 and 2015/2016, PWP employment scheme benefited a total of 602,652 and 449,991 household employees (the beneficiaries) respectively and used respective totals of Mk 8.7 billion (US\$34.8 million) and Mk3.2 billion (US\$4.4 million) towards payments of wages (see table 2).

2015/2016 PWP per work day and working days raised from 12 days to 48 days for the PWP. Whereas, for the timing of the PWP, the first work cycle of 24 days (12 days in each part) was to be ran between August and September for the earlier years of 2012 and 2015, and the second programme cycle was to ran between April and May for the later years of 2013 and 2016.

In terms of implementation arrangements, there are three levels involved: the community, local Councils and national levels. At community level, a sub-committee of the VDC is responsible for day to day supervision of the programme works, among other duties. At local Councils' level, a supervisory team comprising of the Director of public works (DPW); the District Forestry Officer (DFO); the District Agricultural Development Officer (DADO); the District Community Development Officer (DCDO) and the District Trade/Agri-business Officer (DT/AO), is

responsible to ensure proper supervision of the projects to ensure high quality infrastructure. This supervisory team focuses on adherence to technical standards and construction guidelines, and norms including consolidation of all requirements for identified savings groups. Finally, at national level, there is LDF Technical Supervisory Team (LDF-TST) which is responsible for coordinating the various activities concerning the programme implementation management. It must however, be noted that for the 2015/2016 PWP, beneficiaries were identified using the country newly developed UBR database unlike before 2015 when beneficiary identification was done by communities at community level.

3. Problem Statement

Malawi as an ILO member state ratified the ILO MW fixing machinery convention in 1965; ratified ILO's following MW fixing Convention No. 131 of 1970 and subsequently domesticated provisions of the said conventions in the Malawi Employment Act of 2000, the law that provides for the setting and enforcement of minimum wages in Malawi. To this effect, Malawi has a mandatory obligation as a state to enforce the compliance with minimum wage law, both in the public and private sector workplace establishments. However, the Malawi Government, as a role model employer, does not comply with its own set MW rate for its employees working in the local Councils under PWP, despite their non exemption status, thereby putting itself as government employer in an awkward position as it finds itself in a dilemma when attempting to enforce the same law through its government enforcement offices to the private sector. This is a problem that needs debate and researching to find out the underlying causing challenges and policy solutions.

4. Methodology

Based on earlier studies, the topic of compliance with minimum standards of employment, and with set minimum wage rates, in particular, heavily depends on the views and opinions of labour and employment experts (both, the practitioners including policy makers and academicians i.e. labour economists, labour lawyers and industrial relations experts). Their practical and knowledge expertise influences by providing insightful opinions to be text analysed for proper generation of practical solutions to a problem, in this case non-compliance problem, within the requirements of labour laws. Therefore, talking with these labour/employment experts directly is necessary to understand issues surrounding the non-compliance behaviours by government as a role model employer, with set minimum wage rates, and to brainstorm on possible effective compliance approaches to be adopted. A qualitative research strategy is thus required for in-depth probing [51, 52] of such issues.

This research study purposefully sampled government employment representing authorities (GERAs), drawn from selected local councils, as respondents who provided primary data, because they are the government's employing representatives entrusted with complete responsibilities of employing individuals to work as direct

and PWP employees in the district councils. This is in line with Creswell [52] who observed that the idea behind qualitative research is to purposefully select participants that will best help the researcher understand the problem and the research question. In addition, and as required by qualitative researchers to collect data, from multiple sources, themselves through examining documents or interviewing participants [51, 52, 53, 54, 55], I collected primary data through face-to-face personal interviews and focus group interviews using unstructured open-ended questionnaires. Key participants (the informants) believed to be knowledgeable in issues of labour and employment, were also judgementally sampled as respondents in this study. These included the labour practitioners, labour economists and/or industrial relations experts. Finally, supplementary data were collected from secondary sources using documents which included public documents such as Malawi local Newspapers, government reports, gazetted labour laws and ILO ratified conventions by Malawi government etc as well as private documents such as published research journal articles including various ILO publications on minimum wage compliance and social protection.

In terms of size of study respondents, a total of 11 respondents were interviewed. The choice of small number of respondents was consistent with the need to conduct in-depth interviews suitable for qualitative research [51, 52, 53, 55]. 6 respondents were the government employment representing authorities of whom 2 were the Human Resources officers (HRO), 2 Directors of public works (DPW) and 2 Directors of Finance (DOF) drawn from the two selected Councils. 2 respondents were labour practitioners (labour inspectors) one from each of the two Councils. Whereas the rest 3 respondents were Assistant labour commissioner from the Ministry of labour headquarters, Labour law expert from the University of Malawi – Chancellor College and a Malawian labour economist (industrial relations expert) based in Geneva working for the International Labour Organisation. Data collection from the 6 GERAs was being triangulated using focus group interviews that lasted for 45-60 minutes. Questions on the unstructured questionnaire covered three areas: work categories and their daily wages; factors/reasons believed to be causes of under-payments of minimum wages in the councils; and factors that would constitute as actionable approaches/strategies to address the problem of non-compliance with minimum wages by government.

Furthermore the research paper reviewed both theoretical and empirical literature as part of study methodology. Theoretical and empirical literature was reviewed to conceptualize, compare and generalize study findings. This was possible because qualitative research, according to Flick [51] allows researcher to use insights and information coming from the existing literature as context knowledge used to understand differences in one's study before and after its initial discovery process. As such the reviewed literature in this study answers some questions such as: what is already known about issues of compliance and minimum wage; which minimum wage laws both national and international are mostly used to conceptualize

research studies on compliance with minimum standards of employment, and with minimum wage rates in particular; as well as questions on what has not yet been studied in respect of this study problem.

Data analysis was done manually. Qualitative data collected i.e. factors, opinions and/or views, statements of reasons and of explanations were organized and grouped into themes from which interpretation was done by the researcher through text analysis. Tables were used to summarize quantitative data included in this study to support qualitatively discussed findings.

5. Findings and Discussion of Results

This research paper set out to ignite debate on compliance with a particular focus on compliance with minimum wage rates involving the Malawi government employees working under the public works programme. The paper aimed at examining and discussing compliance status and position, of government as employer, with set minimum wage rate, and to suggest some possible actions and behaviours that government would explore to address its non-compliance problem with minimum wages for its public works programme employees. Globally, the paper builds on the continued debate on effective and sustainable

compliance with minimum wages whereas at national level, the study builds on developments of MW law and policies with reference to emerging debate on country employment social partners' proposal towards the sectoral MW, and on respondents' views to explore on effective actions and/or approaches to be adopted by government to address its non-compliance problem.

In relation to government compliance status, the key finding is that government is currently non-compliant with current minimum wage of Mk687.70 per work day with regard to its employees working under public works programme across the country. The study reveals that government pays Mk600.00 per work day as shown in table 2, the wage that represents 12.8 % underpayment of wages, that is, each PWP employee is being paid Mk87.70 less than what was required to be paid according to current legal minimum wage of Mk687.70 per work day [6]. For the preceding years since 1995 to 2015, the paper finds out that government was only compliant with set MW for its public works programme employees from between 1995-2004 and in 2013 whereas between 2007-2012 and 2014-2015, like in 2016 to date, government remained non-compliant (see table 3).

Table 3: Government compliance status with set Minimum Wage rates from 1995-2017 With respect to employees under Public works programme

Variable description	1995 - 2004	2007-2012	2013	2014-2015	2016 -2017
PWP wage rate per w/day	200.00	300.00	320.00	485.00	600.00
MW rate per work day	55.00	317.00	317.00	551.00	687.70
% of under/over payments	263.6 %	5.4 %	0.9 %	12.0 %	12.8 %
Compliance status	compliance – over payment	non-compliance - underpayment	compliance – over payment	non-compliance - underpayment	non-compliance - underpayment

Source: Computed from GoM- 2012/13 and 2015/16 funding allocations to local authorities for Implementation of public works programme. Government documents-LDF-TST- Circulars: Malawi Fiscal Decentralisation Model – MASAF III & IV Projects.

The finding of government being non-compliant, positions government as a role model employer in an awkward position because being a role model employer, Government is supposed to be exemplary by being in compliance with all its set minimum standards of employment including MW at all times. This compliant behaviour, if practiced by government, would help set a good and conducive compliant environment which in turn would encourage other employers from the private sector to follow suit by complying with government set minimum wages. One negative implication that would arise as a result of this government's non-compliant behaviour, would be for the government's law implementers and enforcers, the labour inspectors for example, to find themselves in a dilemma while executing their enforcement roles to the private sector workplace parties as observed by Mhango [56].

In terms of government's stand on whether it would be possible for the government to change its non-compliant behaviour anytime soon and comply as required by the country MW law, all interviewed government employment representing authorities (GERAs) were non-committal to state on whether government was ready to comply or to

remain non-compliant. However, some GERAs while expressing their opinions stated that government was not going to comply soon because it does not have additional money to top up its PWP employees' wages from the current Mk600.00 to Mk687.70 per work day as required by MW law. They further stated that the whole funding for the PWP including the payable wages comes from the World Bank through MASAF-IV project and that the donor (the World Bank) upon request to increase funding for wages, told Malawi government that it was unable to do so due to limited funding available for Malawi social safety nets interventions among other reasons. Instead the donor, while knowing the need to respect and observe ILO labour standards [11] and for Malawi as an ILO member state to comply with her set minimum wages, suggested for the Malawi government to be topping employees' wages from its own national funding which unfortunately Malawi government, claims, does not have funds for such purposes, that is, according to GERAs' responses. This therefore clearly shows that government's current position is to remain non-compliant up until funding would be available to increase PWP wages to at least the level of minimum wage.

Furthermore, in terms of appreciating reasons thought to be the contributing factors for the under-minimum payments of wages below the required minimum wage rate to those employees working for the PWP in Malawi, focus group discussion with GERAs reveals that the payment of wages below Government minimum wage, under PWP, could be due to donor influence or pressure; absence or non labour law coverage for this category of workers; inadequate labour law enforcement; no distinction between skilled labour and unskilled labour wage per day; inadequate technical guidance and supervision coupled with lack of information to both the workers and government as employer about the minimum wage rates; and due to the programme employment contractual arrangements that do not provide workers with an opportunity to bargain for increased wages.

In responding to what would be government's appropriate actions to be undertaken in order to address the non-compliance problem, respondents brought forward mixed responses which were categorized into three major groups: the GERAs' group; the labour practitioners' group and the experts' opinions group. Their suggestions are as follows. First, GERAs suggested that Government should have or should engage donors (in this case, the World Bank) in negotiations to ensure that PWP wages are raised to meet the country minimum wage rate; and that government labour experts (policy makers and inspectors) should be engaged, right from the programme inception stage, to ensure that the programme meets required minimum labour standards, and that at district level, district labour offices should be given the task of enforcing implementation of required minimum wage standards to promote adequate labour law enforcement. Second, labour practitioners suggested that Government, should be re-budgeting (budget adjustments) within the donor's funded amount to increase wages to required MW on the expense of administrative costs; should extend labour inspection mandate to CSOs/NGOs such as the trade unions and employers' organizations to supplement the minimum wage enforcement work; and redefine the PWP employment contractual arrangements i.e. inclusion of a consideration maximum working time to be task work for 4 - 6 hrs per day for the programme's current wage of Mk600.00 a day, and/or to replace the programme's remuneration terminology from "wages" to "allowances or honoraria". Third, other experts – the industrial relations experts, labour economists, labour lawyers etc suggested that Government, should be topping up on donor's money to ensure that its country minimum wage rates are met; should consider implementing the programme as part of training to make people active since PWP activities are intended to be safety net measures/interventions; and/or that government should attempt to amend the existing law to exempt public employees working under PWP in Malawi from being covered by MW law.

This said, however, the key questions are whether each of these suggestions or a combination of some would really help government change its non-compliant behaviors with respect to minimum wage compliance for the PWP employees. The next paragraphs of this section discuss merits and demerits of the suggestions within the context

of both national and international labour standards and thereafter some concluding recommendations are drawn. The suggestions are reorganized and discussed under five thematic areas of enforcement of minimum wage rates through labour inspections; negotiations between the donor and receiving government; Government's attempt to amend existing MW law by exempting PWP employees; employment opportunity versus training opportunity; and public works programme re-budgeting and re-defining contractual arrangements.

2.8 Enforcement of Minimum Wage rates through Labour inspections

The interviewed GERAs believe that the non-compliance problem is a result of inadequate labour law enforcement and hence they suggested that government labour experts (policy makers and inspectors) should be engaged, right from the programme inception stage, to ensure that the programme meets required minimum labour standards, and that at district level, district labour offices should be given the task of enforcing implementation of required minimum wage standards to promote adequate labour law enforcement. This is enforcement through labour inspections using mandated government offices. It means strengthening, and using, the already available government institutions such as labour officers with mandate to enforce minimum standards of employment without involvement of CSOs/NGOs such as trade unions and employers' organisations. However, this approach alone has proved ineffective in most developing countries including Malawi where it has been argued that effective enforcement, in case of labour laws, requires certain types of participation from employers and workers among others [16, 20]. This is because studies have already established that, while labour inspection is a key organ of enforcement, its capacity is limited by insufficient resources in many developing countries. In addition, and for Malawi, the approach is likely to face several other challenges such as inadequate capacity of human resources on part of government; compromised or insufficient inspection intensity and conflict of interests as observed by Mhango [56] whenever such inspections have involved government institutional workplaces like PWP and others. This is because, practically, the enforcement of labour standards through labour inspections in workplaces where government has interests is not as easy as one would expect even if it means a country with adequate coverage of labour laws. For instance, the Malawi labour inspectors currently observe a standing ministerial directive (as an internal policy and operational guideline) which guides them not to extend their inspection visits into public institutions' workplaces such as ESCOM, ADMARC, local Councils etc. This therefore clearly means that the government alone cannot ensure that minimum wages are being paid to all especially with respect to government controlled workplaces.

Nevertheless if this suggestion can be blended with labour practitioners' opinion to extend labour inspection mandate to CSOs/NGOs such as the trade unions and employers' organizations to supplement the minimum wage enforcement work, an effective compliance strategy can be

worked out for Malawi. The complementarity of government's effort has effectively worked in some parts of the world such as India [40] where CSOs have been used to complement the enforcement of MW within the programme of NERGS, a programme similar to PWP in Malawi and also in Brazil. The strength with this approach, of using CSOs, lies within the use of an outsider who is more effective in terms of inspecting workplaces where they are no conflicting interests. In addition, the outsiders e.g. trade union inspectors can act as whistle blowers to ILO since they have mandate to report directly to ILO through the ILO tripartite mechanism of supervising the enforcement of international labour standards [11].

The combined approach together, would bring an "outsider" enforcing stakeholder which according to advocates for deterrence enforcement approach hold that effective compliance with minimum wages can be best achieved once the enforcement is done through labour inspections with levels of penalties in cases of non-compliance increased and by engaging services of "the outsider" enforcing agents [12, 17]. In addition, the India's NREGS was reported a performer in respect of achieving compliance with minimum wages for the NREGS employees because of the programme's wage enforcement mechanism that provided a space that allows non-governmental local groups to be participants in the implementation and outreach work and not just watchdogs [14, 20]. The role of civil society in NERGS was very important to ensure that the rights of the workers are met. For example, CSOs' social audit committees, in particular, played a very important role in ensuring that correct wages were paid for the work done [14, 40]. It must however be pointed out that the "Outsider", in case of Malawi, cannot be left alone, as required by policy and law but to complement government. As such it becomes clear that it is the combined approach that can likely bring about in Malawi. Finally, all the reviewed studies on MW and compliance seem to direct the world towards use or adoption of a combination of various approaches in either way, as contrasted to use of single approach, in order to achieve effective compliance with minimum standards of employment in general and with MW in particular as for most approaches once applied individually are proved less effective.

2.9 Negotiations between the Donor and Receiving Government

Study respondents who believe that government's non-compliance with MW is a result of donor influence or pressure suggested the need for Government to engage donors (in this case, the World Bank) in prior negotiations to ensure that PWP wages are raised to meet the country minimum wage rate. Negotiations were suggested to be in two dimensions. Negotiations in terms of either the donor or the receiving government to increase programme funding to cater for increased wages as well as negotiations in terms of MW wage compliance condition to be attached as part of contractual funding agreements and on which party to be responsible for the enforcement of the attached condition. On the other hand, labour

lawyers and economists suggested that Government should be topping up on donor's money to ensure that its country minimum wage rates are met. It must, however, be pointed out that Malawi is non-compliant with MW not because it does not want to respect its own national labour laws or the international labour standards, the MW fixing convention, but because it does not have funds to top up PWP wages up to the MW rate as per the world Bank and/or labour experts' suggestion. Similarly, the request to donor – World Bank, to increase PWP funding to cater for the country MW rates, has proved futile not because the Bank is interested to see Malawi remain non-compliant with MW with respect to PWP employees but because the Bank too has limited funding available for Malawi social safety nets interventions. Secondly, the Bank considers as outside its mandate [49] to ensure that its beneficiary country complies with such MW laws. This creates a gap within the negotiated agreements between the Bank and Malawi as recipient country and it is this situation/gap that I find it potential for aiding Malawi to remain non-compliant and this is where the experts' suggested negotiations could be relevant provided such negotiations are driven by relevant negotiators from both sides. This situation can be well related to scenarios where we have some prominent world human rights affiliated donors who support developing countries with budgetary support allocations only on conditions that the recipient countries comply with all or with some targeted human rights provisions protecting their citizens. Equally Malawi would be forced to put in place all possible mechanisms to ensure that PWP meets requirement of MW rates if a condition to do it would be negotiated and attached to their negotiated funding agreements to be enforced by the donor, in this case the World Bank that funds Malawi's PWP activities. This can easily be worked out if it is also within the Bank's initiative to encourage Malawi to comply with her own set minimum standards of employment. Finally, the Bank would likely be positive towards such negotiating condition because it equally observes and supports the international labour standards [11].

2.10 Government's attempt to amend existing MW Law by exempting PWP employees

The need for government's attempt to amend the existing law to exempt public employees working under PWP in Malawi from being covered by minimum wage law was suggested as a possible direction for government to address its non-compliant problem. However, four issues seem to be necessary for consideration with this suggestion and these are: legal environment for exemption; justified reasons or purpose for exemption; employment social partners' support; and implication after exemption. Of these four issues, the second seems to be the most problematic factor for consideration. In terms of legal environment for exemption, both the national [7] and international [21] provide room for a member state to exempt certain category of employees from being covered under the MW provision and other laws. Similarly, employment social partners at a round table discussion would easily agree to exempt the PWP employees from being covered by MW law because that borders on matters of good presentations and approach by government, and

with respect to after exemption implication, it is obvious that government would be bailed out of the burden and likely pressure from the social partners and the world, ILO for example, due to its non-compliant behaviours after being exempted to comply with MW for its employees under PWP. However, the second issue – the reasons or purpose – is the most crucial and worth for detailed discussion. First, while the legal environment is permissive for exemption, but the purpose, that is, the spirit for exemption has to be looked with caution. In the first place, the exemption would imply that Government as employer should be free from paying PWP employees according to MW rates. This means, Government can either pay less or more than the MW, but still not committing any offence. Now the current existing non-compliance problem that positions government as employer in an awkward position is because of under payment of wages below MW, which is the case because (according to interviews with GERAs) government has no funds to raise the wage to, or above the MW. Consequently, it is obvious that once exemption can be effected, government would as a matter of fact continue paying below the MW, but now as a compliant employer. With this done, what does it mean in terms of the overall objective for fixing MW as spelt out in the ILO-C131 [21] and indeed in terms of protection of vulnerable employees from being subjected to low wages? The answer to this question is that exemption based on the discussed reason or purpose, would be in contradiction with ILO – C131 [21] aim of requiring ratifying states to establish a minimum wage fixing machinery capable of determining and periodically reviewing and adjusting minimum wage rates having the force of law. Above all, this would defeat the whole idea of protecting vulnerable employees from being victims of low wages. And because PWP constitute quiet a relatively significant percentage of temporary employee workforce in a country (i.e. 602,652 and 449,991 beneficiary employees out of a country's total unemployed workforce for 2012/2013 and 2015/2016 respectively) (see table 2), then living standards of the majority rural employed population is affected to the effect that a country's economic growth, the national GDP, would be negatively affected in the long-run [42, 44]. This is not any country's expected outcome. Based on this discussion and would-be implications, the suggestion for exemption of PWP employees from MW law coverage may not therefore be a viable and economically sustainable long-term solution for adoption by the Malawi government in order to address its non-compliant problem with MW rate for its employed beneficiaries under PWP.

2.11 Employment opportunity versus Training opportunity

Qualitative data collected from amongst responding industrial relations experts indicate that government must consider shifting the design focus of implementing PWP as an employment opportunity to be a training opportunity if it has to exclude itself from the burden/blame of being non-compliant with minimum wage. This is because, according to their argument, any training opportunity engagement between two parties (the training provider/sponsor and the beneficiary) has no any employment relationship between two involved parties

hence the question of compliance with MW does not arise. However, the question of concern would be whether or not PWP would be implemented as training opportunity in context of PWP targeted beneficiaries.

Literature review indicates that the Malawi government implements PWP as an employment opportunity for the vulnerable poor Malawians [49, 57] as the existence of employment relationship between PWP parties, the Government and beneficiaries, is clearly evident and well supported by ILO-R198 [50]. Any debate for Malawi government to change this focus, need first to understand government's aim to implement PWP as an employment opportunity before embarking on whether the programme would be implemented as a training opportunity or not.

Originally the Malawi government started PWP as one of the social protection measures to support the country's on-going macroeconomic stabilization programmes [57]. At that time, Government was requiring PWP beneficiaries to use their earnings Mk200 to procure government subsidized fertilizers. Later on government started popularizing the programme as a source of employment for the poor unemployed Malawians although this was not accompanied by any government documented policy shift. As such, it can be argued that although the Malawi government is currently implementing PWP as an employment opportunity, the programme, on policy framework, is still being implemented as originally designed. Since there is no programme clash in terms of policy issue, that is, whether as an employment or training opportunity, then the Programme can be popularized to be implemented as a training opportunity for beneficiaries to receive stipends/allowances and not "wages". This should be done with the logic that if participants receive work experience, mentoring and training, they are more likely to find employment outside the PWP. Above all, the current use of PWP as an employment opportunity does not really give government an opportunity to deal with the causes of unemployment and poverty apart from the programme, just offering temporary relief to the unemployed. Searching for global comparison, South Africa implements its Expanded Public Works Programme (EPWP) since 2004 as one of Government's initiatives aimed at alleviating poverty through the provision of training and short- to medium-term labour-intensive work opportunities to poor, unskilled and unemployed South Africans [58]. It must be noted that even if EPWP's aim includes the provision of work opportunities, it does not qualify the programme to be an employment opportunity for the beneficiaries, according to Skosana et al. [59]. Similarly, Malawi can also borrow a leaf from South Africa to implement PWP mainly as a training opportunity despite the fact that EPWP in south Africa involves some social sector activities, which provide specialized social services to vulnerable and poor communities through programmes such as early childhood development, school nutrition, mass literacy (reading and writing), victim empowerment, anti-substance abuse, home and community based care [58, 59]. These are the programme activities with training potential for the beneficiaries which are not the case within the Malawi PWP but that can also be taken on board by Malawi without any envisaged policy conflict.

2.12 Public Works Programme: Rebudgeting and Re-defining Contractual arrangements

The suggestions of re-budgeting PWP budget lines and re-defining the PWP contractual arrangements would sound practical to help government comply with MW. It must be noted here that over 80 % of the total annual funding for PWP is allocated for wages, 5 % is for administrative costs and the rest is for other programme associated costs such as costs for procuring work materials that include slashers and wheelbarrows. Therefore pursuing for re-budgeting option, that is, re-aligning fund allocations within the programme funded amount, implies that either percentage for administrative cost or for work materials procuring costs should be reduced by the quantity that would increase the programme wage bill from 80 % up to a level that would be enough to raise wages to the minimum wage rate. This option is practical and it only requires government's commitment to pursue such an approach that may likely face strong resistance from some government programme policy makers and implementers who may view at such changes as translating to their reduced benefits through loss of supervision and monitoring allowances which are constituted within the 5 % administrative costs. However the likely resistance would be addressed by putting a mechanism that would ensure the procured work materials as capital assets that once procured, they can be well maintained and managed to be used for more than two years thereby cutting the annual allocations for work material procurements. This calls for total accountability and transparent in the process of procuring and managing the PWP work materials. On the other hand, respondents for re-defining the programme contractual arrangements hold two distinct views as follows: first, they argue that restricting the programme working hours to a maximum of 7 hours per work day would mean qualifying the MK600.00 wage per day to be proportionately equal to MK687.70 minimum wage per 8 hour working day. Or they would be allocated with sizable and manageable task works to be performed in less than 4 – 6 hours by each employee per day. Second, they argue for the replacement of the programme's remuneration terminology from "wages" to "allowances or honoraria" etc. so that the connotation and question of employment and compliance with MW should not arise since wage is one of the two major factors that together define the existence of an employment relationship between two parties according to ILO-R198 [50] of 2006. This means redefining PWP from being an employment opportunity to being something else. However, the controversial question that would arise here is whether government would be ready to redefine PWP not as an employment opportunity as is the case now. For political reasons Malawi government may not be willing (this is however subject for further debate and political research) to support this programme redefining option (according to respondents) as the government is using this PWP as part of "campaign tool" for potential Malawian voters in the name of employment creation for the poor unemployed Malawians.

6. Conclusions and Policy Recommendations

This research paper has established that government is currently non-compliant with current minimum wage of Mk687.70 per work day with regard to its employees working under public works programme across the country in which case it has been revealed that government pays Mk600.00 per work day, the wage that represents 12.8 % underpayment of wages for each PWP employee compared to the required current legal minimum wage of Mk687.70 per work day [6]. Furthermore the study has established that government would not comply soon due to financial constraints to top up its PWP employees' wages from the current Mk600.00 to Mk687.70 per work. Finally, the study has reported some possible solutions to be adopted by government in order to address its non-compliant behaviour which include Government to engage donors, the World Bank, in negotiations to ensure that PWP wages are raised to meet the country minimum wage rate; government to engage labour experts (policy makers and inspectors) right from the programme inception stage to ensure that the programme meets required minimum labour standards, and that at district level, district labour offices to be given the task of enforcing implementation of the required minimum wage standards to promote adequate labour law enforcement among other suggestions. Collectively, the reviewed studies on MW and compliance seem to direct the world towards use or adoption of a combination of various approaches in either way, as contrasted to the use of single approach, in order to achieve effective compliance with minimum standards of employment in general and with MW in particular as for most approaches once applied individually are proving ineffective as evidenced in the several reviewed studies.

Finally, the study, based on the findings, has discussed and recommended, on one hand, the need for the Malawi government to be lobbying for negotiations with donors towards incorporation of compliance condition with minimum wage within their negotiated funding agreements. This would be an opportunity for critical issues on employment matters to be ironed out before their negative implications surface. Second, the paper recommends government to consider adopting a combined enforcement approach and/or focus readjustment and redefinition of the PWP contractual arrangements. This would enable government to consider several programme rearrangement options such as restricting daily working hours to less than 6 hours per work day; or replacement of the contractual key terminology of 'wage' payment with 'honoraria, or allowance or stipend' payment whichever may be suitably considered; or to change PWP focus from being an employment provision to be a training provision opportunity. All these options have been discussed as practical policy solutions that are potential to bail government as role model employer from its current image status of being non-compliant with MW for its employees under the PWP.

However, on the other hand, the study has recommended government not to think of addressing the existing non-compliant problem by way of amending the country minimum wage law with an aim to exempt PWP

beneficiary employees because such an option would be in sharp contrast with the underlying key objectives of the ILO – C131 to set and enforce minimum wages by its member states in the world.

7. Suggested Areas for Further Research

This research study has revealed some questions that cannot be addressed in this paper hence they can constitute areas for further studies. These are the questions such as the need to conduct a research to address the question of whether the Malawi government policy makers at leadership level would be interested or not to change the PWP focus from the current one as an employment opportunity to be a training opportunity; the need to further test the feasibility of each of the drawn policy recommendations using some econometrics analysis research tools; as well as the need to conduct an assessment of the implications of the continued non-compliant behaviour by the Malawi government in relation to the government as a role model employer and indeed as an ILO member state.

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