

ENHANCING EFFECTIVENESS AND EFFICIENCY OF TRADE UNIONS

Hivos is a Dutch development organization that seeks new solutions to persistent global issues. Hivos in collaboration with its partners is implementing a five year (2016-2020) Women@Work Campaign. The Women@Work Campaign anchors most of Hivos' substantive work on corporate accountability. Founded in 2012, the Women@Work Campaign aims to contribute to decent work for women who earn their living through global production chains, most notably: flowers, fruits and vegetables, grown for the export market. In Eastern Africa, the campaign involves partners in Kenya, Uganda, Tanzania Ethiopia, and Rwanda, enlisting both local and international partnerships (CSOs; Businesses; Governments, certification bodies, trade unions, the media and citizens), working together to improve workplace conditions for women. In 2016, the campaign was extended to Southern Africa focusing on Malawi, Zimbabwe and Zambia. This policy brief is based on the findings and recommendations of an in-depth assessment of the status of workers' representation by the trade union movement in Malawi with specific focus on the horticulture including the chilli sector.

This policy brief analyses the effectiveness and efficiency of trade unions in realizing their mandate, goals and objectives. The brief is based on a study conducted in August 2019 on worker representation in the agriculture sector. Based on the research findings the study makes a number of related policy recommendations on enhancing the effectiveness and efficiency of trade unions.

A trade union has been defined as, 'any combination of persons, the principal purposes of which are the representation and promotion of employees' interests and the regulation of relations between employees and employers, and includes a federation of trade unions but not an organization or association that is dominated by an employer or employers' organization' (Section 2 (1) of the Labour Relations Act, 1996). The effectiveness and efficiency of a trade union is key to the success of trade unions in realizing their mandate, goals and strategies. Effectiveness and efficiency are closely related to capacity of trade unions. The capacity areas include: internal organizational capacity (organisation's mandate and goals; strategic planning, learning and development, structures and procedures and resource mobilisation), capacity to relate and coordinate with other stakeholders and capacity to influence decisions and deliver on mandate. In order to strengthen trade unions, policies should focus on these key areas.

Legal Framework

Malawi has a comprehensive legal framework for the regulation of trade

Women@Work Campaign**Introduction**

unions. The Malawi Constitution provides that, in interpreting its provisions courts of law should have regard to current norms of public international law and comparable foreign case law (Section 11(2)(c)). Further, the Labour Relations Act (LRA) specifically mandates courts when interpreting the Act, to give effect to international labour standards of the International Labour Organization(ILO). Malawi has ratified various ILO conventions including, Convention 87 on the freedom of association and protection of the right to organize (1948) and Convention 98 on the right to organize and collective bargaining (1949).

The Malawi Constitution guarantees various collective and individual labour rights. Section 29 guarantees the right to work and to pursue a livelihood anywhere in Malawi. Section 31(1) provides that every person shall have the right to fair and safe labour practices and to fair remuneration. Section 31(2) provides that, all persons shall have the right to form and join trade unions or not to form or join trade unions. Section 31(4) guarantees the right to withdraw labour. Section 32 guarantees the right to freedom of association which shall include the freedom to form associations.

The Labour Relations Act (LRA) is the principal statute regulating trade unions and collective labour relations in Malawi. It entrenches the freedom of association and provides an enabling framework for collective bargaining. The Act further establishes the Tripartite Labour Advisory Council (TLAC) which is comprised of members representing trade unions, members representing employers' organisations and members appointed by the minister of labour to advise the Minister on all issues relating to labour and employment (Sections 55-62 of the LRA).

The current legal framework is however a challenge for informal sector trade unions, such as MUFIS, which have self-employed members with no employer as such and works with bodies such as city assemblies and district councils.

Key findings

The study highlights a number of issues which form the basis of the key policy recommendations made in this brief. These include the following:

1. Mandate, Goals and Objectives

Trade unions derive their mandate from the law, their constitutions and strategic plans. Most trade unions in Malawi are registered, have constitutions and strategic plans. This provides a strong basis and framework for the realization of the trade unions' goals and objectives. However, trade unions inadequate human and financial capacities, to effectively fulfill their mandate.

2. Structures of Trade Unions

Trade unions are, to a large extent, relevant in regulating relations between employees and employers using the existing structures. Although most of the structures only exist on paper and are dormant in practice, the structures have the potential to facilitate strong relations between employees and employers.

3. Processes and Procedure

Set procedures and processes are critical for the efficient running of trade unions. These regulate negotiation with employers; dispute resolution and recruitment, appointment of staff and election of leaders. Collective bargaining agreements are key in setting out these procedures especially in relation to negotiations and dispute resolution. Most trade unions strive to ensure that collective bargaining agreements (CBAs) are

implemented. However, implementation of collective bargaining agreements is in some instances, affected by financial constraints which undermine the effectiveness of trade unions.

Resource Mobilisation

Trade unions predominantly raise funds through membership subscriptions and minimally through partners' donations and investments. Reliance on funds from membership subscriptions is associated with a lot of hiccups especially where membership is low and deductions are not made from source by the employer. Resource mobilization is a big challenge in the informal sector than in the formal sector. Finding long lasting ways of generating own income can definitely strengthen trade unions and their independence.

Union membership is at less than 5% in Malawi's informal and formal economy. However, unions have the potential to mobilise although they face serious challenges. First, membership is attached to monetary contribution and some potential members do not wish to pay monthly union fees. Secondly, some employees are afraid to join trade unions for fear of repercussions from employers.

In general therefore, trade unions therefore face different challenges including limited skills, financial constraints and limited membership base. There is need to invest in capacity building in dispute resolution, increasing the membership base and widen the financial base.

Best Practices

Despite the many challenges, a number of trade unions remain relevant, effective and efficient. The study identified the following as some of the best practices and experiences that enhance efficiency of trade unions:

- MCTU¹ employs paralegals instead of lawyers to minimise costs.
- SPAWUM² undertakes union activities like elections at a minimum cost because they get subsidies (like transport) from their employer, while guarding against compromising the independence of the union.
- Apart from raising funds through union subscriptions, trade unions, such as TUM³ receives commissions from micro financial institutions and has sustainable investments in property. MCTU also sells promotional materials like cloths at a profit on occasions such as "labour day"
- Others have established and independent secretariat with expert staff as is the case with TUM and TOAWUM⁴

Best practices that enhance effectiveness include the following:

- The existence of Collective Bargaining Agreements (CBAs). Almost all the unions that have CBAs and regularly negotiate the implementation of CBAs are progressive and effective. For instance, SPAWUM, annually negotiates wage increment based on a CBA.

¹ Malawi Congress of Trade Unions

² Sugar Plantations and Allied Workers Union of Malawi

³ Teachers Union of Malawi

⁴ Tobacco and Allied Workers Union of Malawi

- Having a check off system with one's employer organization. Unions that are implementing check off systems like SPAWU and TUM are successfully collecting membership subscriptions and mitigating their financial challenges.
- Collaboration among the partners in labour is critical. MCTU accesses ILO training through its partnership with Government.
- Infrastructural and financial independence. Unions such as TOAWUM whose secretariats are not housed on employer premises and which do not receive any financial support from employers seem more independent than their counterparts.
- Having wide and relevant partnerships like international players and educational institutions is beneficial to trade unions. Most unions collaborate with other stakeholders locally. For example, SPAWUM benefits from its partnership with Khanya College of South Africa on capacity building.
- Planned visits to private employers' premises such as tea estates to engage employers and mobilise members as is done by TOAWUM.

Policy Recommendations

In order to enhance trade unions' organizational capacity and structure for improved effectiveness and efficiencies the policy makes the following recommendations:

1. For the informal sector, a legal framework is required for the sector to be recognised for purposes of collective bargaining with entities such as City Councils. Trade unions and social partners should lobby for a

review of City by-laws to recognize workers in the informal sector and facilitate collective bargaining for workers' rights. City Councils must review by laws to accommodate collective negotiations with the informal sector.

2. Trade unions should strengthen their capacity to realise their full potential based on well-established structures and processes by focusing on dealing with the gaps and challenges that negatively affect trade unions especially by investing in knowledge and skills development.
3. Government must develop deliberate policies to support the growth of trade unions and employers' organizations especially in resource mobilization, collective bargaining and dispute resolution.
4. Labour laws and policies must be made accessible to union leaders and ordinary members alike in local languages so that union leaders and members are aware of their rights and obligations.
5. Trade unions must engage in continuous awareness on the relevance of trade unions in regulating labour relations so as to change misconceptions of trade unions and to build strong relationships between employers and trade unions.
6. Trade unions' partnerships and coordination with the Ministry of Labour, ECAM⁵ and other stakeholders are important. Tripartite Social dialogue must therefore be strengthened by Government, trade union and employers.

⁵ Employers' Consultative Association of Malawi

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