

Chapter 4: Indigenous and Modern Disputes Resolution Procedures: A Comparative Analysis of the Lomwe and Workplace Disputes Resolution Processes in Malawi

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Introduction: The Concept and Significance of Resolution of Conflict

According to Fisher (1990), conflict is an incompatibility of goals or values between two or more parties in a relationship, combined with attempts to control each other and antagonistic feelings towards each other. It is contended that this difference might be real or perceived by the parties involved. In industrial relations, two extreme perspectives are dominant - consensus and conflict. The unitary perspective of industrial relations views the existence of consensus as a major societal norm and conflict as a social disequilibrium requiring immediate control. It views the relationship between employers and employees in a work organization as characterized by harmony, common objectives, common values, interests and a single centre of loyalty and authority (Burchill, 1997).

The Pluralist and Marxist perspectives view conflict as inevitable in modern organizations due to diversity and divergent interests between workers and employers (labour and capital). Pluralist theory sees the work place as a microcosm of society which is replete with diversity in social groups, social interests, values and beliefs that have the potential to generate conflict. Proponents of this view acknowledge diversity and often-conflicting interests among people in society and workplace (Fox, 1966). Workers' motive for higher wages, increased leisure, autonomy, enhanced fringe benefits and work flexibility, differ markedly with the employers' desire to make profits (Dzimbiri, 2008). The employer would want as much as possible to implement cost-cutting mechanisms, such as low wages and minimal incentive packages to ensure

higher profits for re-investment.

Conflict of interest between management, that pays and make decisions, and workers, who are being paid and must live by the decisions made by management, is an inevitable ingredient of the workplace (Summers, 1991). For Karl Marx, class conflict arises primarily from the disparity in the distribution of and access to economic power within the society. The principal disparity is between those who own capital and those who supply their labour. Marxists believe that the nature of society's social and political institutions is derived from this economic disparity and reinforces the position of the dominant established group. The argument is that conflict in whatever form is merely an expression of the underlying economic conflict within the society.

In spite of the prevalence of conflict in modern society, there is some degree of consensus or agreement between individuals and groups solicited through processes of negotiation and compromise. If societal conflict was left uncontrolled, the whole world would have long disintegrated. According to conflict theorists (Kornhauser *et al.*, 1954; Fisher, 2000) there are several sources of conflict including economic, value and power. Economic conflict involves competing motives to attain scarce resources. Each party wants to get the most that it can to maximize net gains. Union-management conflict, for example, is rooted in the incompatible goals of how to slice up the 'economic pie'. Value conflict involves incompatibility in ways of life, ideologies- the preferences, principles and practices that people believe in. Power conflict occurs when each party wishes to maintain or maximize the amount of influence that it exerts in the relationship and the social setting. Power conflict occurs between individuals, groups or nations. According to Fisher (2000), most conflicts are a combination of these sources - economic, value and power. An example of this is labour-management conflict which may be both economic, value difference and power oriented.

Fisher (2000) categorizes levels of conflict as ranging from interpersonal, role, inter-group, multi-party to international. Methods of resolving conflict are described as win-lose approach, the lose-lose strategy and the win-win approach. The win-lose approach involves careful strategy to outdo the other through a learned judge, majority

vote, competition, etc. The lose-lose strategy results in each party accepting a less satisfactory solution with a larger portion of its interests sacrificed. The win-win strategy attempts to maximise the goals of each party through collaborative problem solving. The conflict is seen as a problem to be solved than a war to be won.

1. Significance of conflict at the workplace and in society

Conflict plays both positive and negative roles in society. First, conflict is functional because it makes explicit the grounds for conflict and enhances group unity. It also brings into the open the subject of social control and a rapid solution to the problem. Some conflict theorists like Kornhauser (1954) argue that society would have been static if relationships were codified and anarchy would result if the fundamental relationships were sympathetic in character. For Cozer (1956:31) 'far from being dysfunctional, certain degree of conflict is essential for group formation and the persistence of group life'. Conflict, he argues, 'tends to be dysfunctional for a social structure in which there is insufficient toleration and institutionalisation of conflict' (Cozer, 1986: 31). Within the management-labour relations, Dubin (1954) asserts that conflict is inevitable but it is successfully transformed into resolutions through collective bargaining. On the contrary, the unitary perspective views conflict as pathological and caused by 'agitators and troublemakers, misunderstanding or personality clash' (Burchill, 1997:7). Conflict is to be removed at all costs in the same way a dentist has to extract a decaying tooth before it affects the others. Managers in this persuasion would rely on power, dismissal, disciplinary procedures or transfer of troublemakers to other sections.

2. Conflict and Conflict Resolution at the Workplace

The relationship between the employers and the employee is both a source of unity, as

well as of conflict. It is the source of unity because each of them depends on the other for their survival. The employer creates the factory and own capital, finance and other resources except the worker. The employer depends on the hardworking spirit of the worker to produce goods and services for sale. The employee depends on the employer for his pay. For the continued happiness of everyone, productivity must proceed uninterrupted.

Conflict is latent because of the differing interests and perspectives. The employer wants a hardworking employee, lower labour costs including lower wages and fringe benefits. The employer would wish to re-invest profits while employees want good bonuses out of the profit. They also want leisure time or rest periods, reduced working hours of work, salary advances, loans, education loans and different types of leave entitlements and above all, higher wages which are a cost to the employer. They want to participate in decision making process that has direct or indirect bearing on their lives. Yet the employer wants to have the prerogative to manage.

While these potential sources of conflict can be looked at from an individual employee point of view, there are also collective conflicts that relate to employees as organized groups. For example, where employees are organized into trade unions, friction is also most likely; where the employer is anti-union, delays in providing feedback or implementation of agreed upon deals, refuses to sign a recognition agreement or has victimized a union leader in one way or the other, could be a potential source of conflict. Both individual and collective conflict at the workplace have to be resolved or managed to ensure that partnership between the employer and the employee continue to yield mutual benefits to all.

There are both written and unwritten procedures for resolving collective and individual conflict at the workplace. Unlike in the family context where most rules and procedures are unwritten, there is a legal framework provided by the state for resolving disputes. First, there are established grievance procedures that employees will follow and ensure they exhaust. There may be a discussion with the immediate supervisor with opportunity to go to the supervisor's boss should it fail in the first place. If the

organization has a trade union, the shop steward will handle the matter with management to the point where the grievance has been resolved. In the unlikely event that it has not been resolved, then the employer and employees might agree to involve a third party who could be a labor officer or a prominent personality with expertise in the area of conflict. This might be in the form of conciliation, mediation or arbitration. The legal framework provided in the labour law is very clear on trade disputes settlement and arbitration. The process can go as far as the industrial relations court. Some individual employees lodge their complaint with the ombudsman beside the industrial relations court. Where matters remain unresolved, workers have the right to withdraw their labour, hence the strike. The latter is legally expected to be the last resort after all procedures have been followed and the dispute remains unresolved. One typical characteristic of the conflict resolution mechanism at the workplace is the predominance of formal procedures.

3. The Lomwe Traditional Conflict and Conflict Resolution Mechanism

The Lomwe tribe, prevalent in Mulanje, Phalombe, Thyolo and some part of Zomba and Chradzulu districts of Malawi, has its origins in Mozambique. There are several sub-groups such as Amihavani, Atakwani, Ameeto, Amanyawa, to name but a few. The Lomwe are a matrilineal society with descent traced through the mother. The man stays at the home of the wife and builds a house there. There are several things in a marriage set-up which can cause conflict. First, inter-personal conflict is inevitable between the man and the woman considering that each of them was brought up in a different family background. Their moral, economic and social upbringing, and most significantly, personality characteristics, can be a potential source of conflict. More importantly, as most of the marriages during the pre-colonial and colonial and part of post-colonial period used to be arranged by parents (and even where they made their own arrangement), the absence of a dating period is a potential source of future conflict as each did not have time to understand the other well. Lack of skill to build a house,

mere laziness and unwillingness to work in the garden, make a hoe handle and other manly chores, were potential sources of conflict.

The experience of the author is that some of the sources of conflict emerging from the woman include poor cooking, poor home hygiene, inability to wash clothes or her body, bear children, and adultery or infidelity. Unwillingness to follow rules and regulations created by the man- as head of the family was also another source of conflict. Disagreement over how to use the money obtained from the sale of agricultural produce was another source of conflict. The way each partner treated family members of the other was another. All these are important sources of heated misunderstanding which have the potential to involve other third parties and whole sections of clans linked with the marriage. Bitter verbal exchanges, insults and even blows could be exchanged between a married couple when such conflicts reach high pitch.

There is an elaborate process of conflict resolution in the Lomwe society but the intensity of formality varies from conflict to conflict. First, minor quarrels over unwashed clothes or undone chores are resolved through a process of dialogue between the spouses. However, a word of caution is in order here. Depending on personality characteristics of the parties, even a minor conflict can lead into serious outbursts. In some cases it is not uncommon to hear of men beating wives on what others would see as very trivial issues. In general, however, a minor conflict is resolved between the two through discussion at night in the comfort of a bedroom when children are asleep. Others would sleep and wake up the other party for a discussion over a misunderstanding. There is a Lomwe saying that *Ukwati ndi anthu awiri, wachitatu ndi wosokoneza*- meaning marriage is for the two people and the third party is simply a confusionist.

In situations where the same behaviour which brought conflict is repeated over and over again by the man or woman, and dialogue has failed to cure the situation, a third party is called in. Naturally, the pattern is that the victim goes to the offender's uncle to narrate his or her story and ask the uncle to intervene. In the first place, the uncle comes alone to listen to the problem from both parties and he tries to give advice

on the matter. He visits and briefs the uncle of the plaintiff about the matter, including how he has mediated over it. This is for information only. The timing of the visit to either party matters a great deal. One cannot go to communicate a grievance to an uncle or the man's uncle cannot go to the woman's uncle during the day or afternoon. He has to go very early in the morning around three or four. The timing factor is a sign of seriousness and formal requirement. Should the problem persist, the uncle who settled the matter is also called. He listens to both parties and if he feels that the issue requires his 'colleague' to be present, he will arrange that both parties visit the couple.

During the hearing, the parties are allowed to narrate their side of the story. The two uncles ask questions to both the man and the woman probing enough to detect a wrong doer. One typical feature of this conflict resolution process is that each party will be asking thorny questions to his or her relative. That is, the woman's uncle will be asking questions to her niece while the man's uncle asks the man. Questions include: What did you do after that? Why? Did you tell your wife? Why not? What then do you expect her to think? The aim of the two parties is always to ensure that the matter is defused and the couple is reconciled. The two uncles will allow the warring parties to express their minds freely with no intimidation. The idea is to build the family and not to disintegrate it.

Where it is clear that the man or the woman is on the wrong, it would be his uncle who warns her never to repeat such behaviour in future. All that time the other uncle shall remain quiet. The silent policy is that the advocate of the culprit should be the one to raise a serious warning. Under normal situations, when the matter is resolved, the woman prepares a meal for the uncles to eat. This signifies the end of conflict and the coming of peace in the family. However, should this same conflict continues, and uncles have tried in vain to settle the matter, they would ask the plaintiff to take the matter to the village headman. This is where the matter shall be handled by the village headman through his "counselor", a carefully selected elder with wisdom and good standing in the village. This stage is characterized by a wider audience consisting family members and friends of both the man and woman.

At the appointed day, relatives of both parties gather at the village headman's

ground for a hearing. The ‘counselor’ welcomes all parties and advises them about the rules to be observed- such as: avoid making noise and that each side should pay a little money before the case starts. Then the counselor asks the plaintiff to narrate his or her concern. After he or she has given a narrative of how it started, what has been happening, and why he has reached this far, the counselor interrogates him/her to clarify certain grey areas. Then the other spouse is asked to comment or state his side of the story- ‘you have heard what your husband/wife has said. Do you have anything to say? Then the husband or wife takes his/her turn-to present his/her views on the issue. All this time, the counselor and the village head are curiously listening to every detail. The counselor asks questions to ensure certain areas are clarified. After all have stated their sides, the counselor asks each uncle one after the other to explain whatever they know about the matter. Uncles are also subjected to questioning regarding steps they took or did not take and why. The plaintiff is asked what her/his position is. The defendant is asked for his view regarding the position of the plaintiff. In the process, areas of agreements and disagreements are noted.

Differences might ensue and each party is asked to discuss in their groups and come back to present their view. This is the time when relatives of each party sit together and brainstorm for a review of the decision made by their relative. They might decide to uphold it or persuade him/her to change. Relatives of the defendant might decide collectively to plead for forgiveness. When time for reporting back comes, it is the neutral party who present the decision made from either side to the big plenary. Should there be agreement the matter ends there. The couple are advised how to live and maintain their marriage in a cordial manner. Should there be stiff disagreements, the village Head intervenes sharply to provide direction. He/she makes his/her judgment known on who is on the wrong, why and what needs to be done. The man or woman can be fined in the form of money, goat and chicken to appease the plaintiff. He/she can also be severely reprimanded depending on the matter. The decision of the village Head is rarely challenged at that stage. In very exceptional circumstances, parties might want to end their marriage. In that case, the village Head would find out if the man has built a house for the woman. If not, the man is told to build a house first.

A date can be set when property is distributed in the presence of the village Head and others. At other times, the village Head would refer the matter to the group village Headman who can annul the marriage. But the Group Village Headman might wish to refer the matter to the Traditional Authority (TA) to do that. However, moments of this nature are rare and far apart.

4. Similarities and Differences of Traditional and Workplace Methods

It is evident that the traditional Lomwe society and that of the contemporary industrial organization have inherent conflicts due to differences in perspective, goals, values, expectations and misunderstanding. It is also clear that at the beginning of the resolution process, both contexts lay emphasis on discussion between the disputing parties in an attempt to reach amicable resolve without any interference from anyone. In all, third party intervention comes in when the two have failed to reach an agreement on their own. In the Lomwe culture, the third parties are advocates who are relatives of the disputing parties unlike in the industrial context where the third party is neutral detached and ‘foreigners’. These can be Ministry of Labour officials or a tribunal created by the law. The legalistic approach dominates contemporary industrial relations landscape to the extent that decisions made by relatives as in the case of the Lomwe culture would risk being declared null and void on account of the likelihood of bias. This is probably so because the industrial setting focuses on a win-lose strategy contrary to a win-win strategy the Lomwe conflict resolution strategy wishes to achieve.

This brings in another feature. There is a focus on mending relationships in the Lomwe approach in contrast to the industrial relations conflict resolution strategy. The latter is interested in identifying who is wrong and the remedy associated with the wrong committed. While fines and compensations are highly pronounced in industrial relations conflict resolution, mere forgiveness is enough in the traditional Lomwe society. Continued cordial relationships are emphasized more because of community

members that live close to each other and have inter-marriages. The two clans or sorority groups are friends and it is everyone's prayer that they all reconcile and live together happily again. That is the more reason why relatives of the disputing parties come in their numbers to witness the conflict resolution process. That is also why when there is need to make a thorny decision, each group leaves the plenary and meets as a family group to deliberate and come up with a group decision. The participation of every relative present is a very important process which provides a sense of ownership of the decision made. More importantly, it is an attempt to avoid a radical decision which might put the reputation of the other clan and their relationship at stake.

This is so because whatever the decision made, the relationship of each member of the family with the relations of the other party will be affected permanently. Since they may be drinking from the same well, live in the same village, have to interact frequently for festivities as well as funeral and initiation ceremonies, to name a few, they cannot afford to create hostility among themselves. There are no written rules, regulations and procedures for marriage relationships and conflict management in the Lomwe tradition.

On the contrary, only the employer and employee' representatives and the official third party are present in the industrial relations conflict resolution process. There is a sense of detachment of community values or friendship groupings at the conflict resolution scene. Established procedures, relevant labour laws and hard evidence matter most during the process of conflict resolution. There is little consideration of the need for parties to continue to work together amicably in the organization. What matters is the issue at hand and the priority is on ensuring justice and fair play according to established rules of the game (national constitution, labour laws, terms and conditions of employment).

5. Lessons from the Indigenous Lomwe Approach?

There are some of the notable lessons that traditional conflict resolution mechanism

can benefit modern industrial relations conflict resolutions process. First, the two parties - employer and employee - could view themselves as a family or a team. The views held by the unitary perspective of industrial relations make sense. Seeing the workplace composed of two sides that have common interests- in this case- industrial peace and harmony for the continuation of the employment relationship is a crucial starting point. If employers realize that although their concern is to maximize profits, they cannot do so without workers producing goods and services happily, they will appreciate the need for compromise and understanding. If employees know that although they want good conditions of employment and fair wages, they cannot achieve them without higher productivity and higher sales; they would also be willing to moderate their demands and therefore meet the employer midway as quickly as possible. Thus, the belief that each party depends on the other is or would be a starting point for creating a conducive atmosphere for amicable resolution of a misunderstanding between employers and employees (like the two families in a marriage conflict among the Lomwe).

The second lesson worth mentioning is the group decision making process that takes place in the Lomwe setting when a critical decision is to be made. At the workplace, decisions are made by a few representatives of management and those of the employees- though they still consult their principals in the process of the conflict resolution when they adjourn. The major problem, though, is that each party is looking for the weak spots or technicality in order to outdo the other. There is a tendency to practice 'hide and seek' (Dzimbiri, 2008). Consequently, harmony does not take precedence. If harmony between parties was taken as a priority by each side, group decision would be the norm. This is where each group would brain storm and come up with a group decision. More often than not, militant leaders of trade unions rush to threaten a strike thereby creating a sense of 'anger' in the employer who becomes even more adamant to listen any further. Then a vicious circle of misunderstanding and hardening of hearts comes up.

An arrogant chief executive or managing director working on little information simply won't listen and before discussion has been initiated, he threatens a dismissal.

This has the tendency to create animosity among workers who harden their hearts further and as a group would rise up in arms to punish the employer. Such approaches have been counterproductive leading to costly strikes to both the employer and employees, customers, and the general public.

The third lesson is the appeal to shared community values such as good neighborliness, harmony, forgiveness, supportive relationships, etc. in the Lomwe as opposed to legalistic norms and foreign norms of judgment (borrowed from international laws and conventions). It is clear that indigenous value systems reside side by side with foreign values as embedded in the terms and conditions of employment, labour laws and contract of employment. If employers and employees in most of Africa worked within the framework of their traditional family values and systems of conflict resolution, there would be little confrontation and bitter strikes in most industries and public services. This is evidenced by the absence of strikes and serious disciplinary cases in family-run businesses and companies.

7. Conclusion

The chapter has compared indigenous approaches with modern approaches to conflict resolution by examining family conflict resolution among the Lomwe and disputes resolution mechanisms among employer and employees in modern work organizations in Malawi. It draws similarities and differences, and assesses the extent to which indigenous methods provide additional parameters for the management of conflict in modern society. There are some degrees of similarities in the approaches, especially the concept of voluntary discussion by the disputing parties and the entry of third parties thereafter. What is different though is the type of the third parties and the degree of formality involved. While third parties are independent officials with no relationship to employers or employees, in the Lomwe conflict process, they are people related to the disputing parties. Furthermore, there are stages in the traditional Lomwe system whereby relatives of the disputing parties get involved in the dispute resolution

process as opposed to the formal workplace resolution process. Finally, in the Lomwe tradition, there is emphasis on mutual dependency and continued cordial relationships between the disputing parties on one hand and relatives of both parties, on the other. The win-win approach is highly pronounced in the Lomwe conflict resolution procedure than is the case in the formal employment relationships which tend to adopt more of a win-lose approach. The spirit of mutual dependency and emphasis on continued cordial relations between parties, the win-win approach to conflict resolution and a group approach to dispute resolution commonly adopted in the Lomwe conflict processes could go a long way in providing a long lasting and productive conflict resolution mechanism at the workplace than it is the case now.

References

- Brock-Utne, B. (2001) Indigenious conflict resolution in Africa. *Paper presented to the weekend seminar on indigenious solutions to conflicts held at the University of Oslo*, Institute for Educational Research 23-24 February.
- Burchill, F. (1997) *Labour Relations*. London: Macmillan.
- Coser, L. A. (1956) *The Functions of Social Conflict*. London: Routledge and Kogen Paul.
- Dahrendorf, R. (1959) *Class and Class Conflict in Industrial Society*. London: Routledge and Kogan Paul.
- Dubin, R. (1954) 'Constructive Aspects of Industrial Conflict', in Kornhauser, A., Dubin, R. and Ross, A.M. (1954) (eds.) *Industrial Conflict*. New York: McGraw-Hill.
- Dubin, R. and Ross, A.M. (eds.) (1954). *Industrial Conflict*. New York: McGraw-Hill.
- Dzimbiri, L. B. (2008) *Industrial Relations in a Developing Society: The Case of Colonial, Independent One-party and Multiparty Malawi* Gottingen: Cuvillier Verlag.
- Edosa, D.C., Aulachew, S. B., Nmara, R.E., Babel, M.S. & Gupta, A.D (2007)

- ‘Indigenous Systems of Conflict Resolution in Oromia, Ethiopia’, in Van Kappen, B. & Giorodano, M(eds.) *Community-based Water Law and Water Resource Management Reform in Developing Countries*, Butterworth pp.146-156.
- Fisher , R.(2000) Sources of Conflict and Methods of Conflict Resolution. International Peace and Conflict. School of International Service. American University
- Fisher, R.(1990) *The Social Psychology of inter-group and International Conflict Resolution*. New York. Spring Verlag
- Kornhauser, A., Dubin, R. and Ross, A.M. (1954) (eds.) *Industrial Conflict*. New York: McGraw-Hill.
- Regan, A. (ud) *Traditional Leaders and Conflict Resolution in Bougainville: Reforming the Present by Rewriting the Past?* Occasional Paper
- Summers, C. (1991) ‘Patterns of Dispute Resolution: Lessons From Four Continents’. *Comparative Labour Law Journal* 12, 165-177
- Wassara,S.S.(2007) ‘Traditional Mechanisms of Conflict Resolution in Southern Sudan’. *Berghof Foundation for Peace Support*