



**Trade Unions
in Botswana**
Country Report
2003

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Country Report

2003

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Foreword

Since its beginnings in 1925 the Friedrich Ebert Foundation is committed to the concepts and basic values of social democracy and the labour movement. Ever since we started our international programmes in the early 1960ies we had a special focus on strengthening of our trade union partners all over the world.

In Botswana the Friedrich Ebert Foundation engaged from the very beginning of the project in September 1973 in the promotion of the labour movement. We supported the Botswana Federation of Trade Unions and its affiliates since it was founded in April 1977.

However, after so many decades of working with trade unions on the national as well as the international level we had to realise that there is still a huge lack of systematic analysis and information on the socio-political and legal environment, the structures and the specific working conditions for trade unions in a given country. This is true even within the country and more so on the regional and global level.

Therefore Friedrich Ebert Foundation has embarked on an endeavour to compile comprehensive Trade Union Country Reports all over Africa. These reports shall serve as handout information within the respective countries as well as be an input to a comprehensive continental report to be distributed to our international partners.

The “Botswana Trade Union Country Report 2003” presented here is the first issue of this project in Botswana. The report covers the areas of “Socio-Economic and Political Environment”, “Legal Framework and Practice of Labour Relations”, “Trade Union Profile” and “Problems and Prospects”.

I would like to thank Ronald Baipidi (President of Botswana Federation of Trade Unions), Sesupo Mosweu (Law Lecturer, University of Botswana) as well as Lawrence Kefitilwe, Project Coordinator of the Friedrich Ebert Foundation office in Botswana for the valuable contributions they made during writing of this report.



Dr. Marc Meinardus
Resident Representative

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Executive Summary

The Botswana economy remains a largely monocultural economy, depending mainly on the exploitation and export of diamonds. Diamonds account on average of 71% of export earning. Unemployment rate remains on average above 15%.

Botswana has achieved a marked improvement in the quality of educational facilities provided to its citizens, but the pace of educational change has lagged behind the pace of national development. Business and practical courses should counter-balance the academic focus of the present curriculum so that the perceived education system should create job creators and not job seekers.

While the current legislation still provides a tight legal structure for intrusive government control, there appears to be a move, slowly but surely, towards acceptance of trade unions by employers in the different sectors of our economy. Most notable is the fact that dismissals that are motivated by trade union participation are getting fewer and far between and there is a move towards giving trade unions more recognition than that provided for under the law.

The Botswana Federation of Trade Unions BFTU is, in the process of restructuring its secretariat. In this regard, it seeks to create a lean and competent structure that will provide an efficient and effective professional service to the movement in the country. BFTU is at the same time in co-operation with the Friedrich Ebert Foundation restructuring its affiliates in according to various sectors. This will help affiliates to build strong and viable trade unions.

Many employers have the tendency to promote or elevate an employee whom they see as a potential threat in terms of advancing the course of labour towards the levels that they deem undesirable so that he/she can be disqualified by law from membership of the trade union. However, the future of the trade union movement appears to be set to change for the better in the not so distant future. This is mainly due to the impending labour law reforms which may commence being operational in the coming year (2004).

1 Socio-Economic and Political Environment

1.1 Economic and Labour Market Development

The Botswana economy remains a largely monocultural economy, depending mainly on the exploitation and export of diamonds. Diamonds account on average of 71% of export earning followed by copper nickel. Unemployment rate remains on average above 15%. To achieve more economic development away from the mining resources, Botswana needs to diversify its economy from the mining sector to other engines of growth such as tourism, manufacturing, finance etc.

Botswana has achieved a marked improvement in the quality of educational facilities provided to its citizens, but the pace of educational change has lagged behind the pace of national development. The challenge is now been adequately geared to the needs of the country, and to the job market. The challenge is to place greater emphasis on the technical and practical subjects, and business skills –skills that are most needed. With the prevailing high levels of unemployment, it is necessary to re-orient the education system so that it provides relevant practical training. Business and practical courses should counter-balance the academic focus of the present curriculum so that the perceived education system should create job creators and not job seekers. Because global competition is increasingly human resource-driven, thereby placing a premium on human resource development, Botswana should therefore build on its sound macroeconomic fundamentals establish one of the best education systems in the region based on ‘best practices.’

Due to her small size, Botswana will do well to target sub-sectors that have a proven or demonstrable competitiveness. Botswana should engage on an industrial development, which shift from exporting raw material to the one, which export finished or semi-finished goods.

The labour market is characterised by a passive policy that puts emphasis on growth to deal with the problem of un- and under-employment. Unemployment stands at around 17% of the labour force. In addition, there is no national social security scheme covering all workers and existing social safety nets are inadequate.

Employment growth in the private sector has been slow, with the burden of employment creation falling on central and local government. While employment in central government grew by almost 30% during the period 1996-2000, private sector employment increased by only 9%.

Furthermore, the level of unionisation is still very low, with sectors such as domestic service unorganised.

PEEPA, the Botswana Privatisation Agency has been established and is developing an action plan for privatisation. This plan will take into account the desirability and the feasibility of privatising the public entity or activity. The objectives of privatisation are:

- Promoting competition, improving efficiency and increasing productivity of enterprises;
- Increasing direct citizen participation in the ownership of national assets;
- Accelerating the rate of economic growth by stimulating entrepreneurship and investment;
- Withdrawing from commercial activities which no longer need to be undertaken by the public sector;
- Reducing the size of the public sector;
- Relieving the financial and administrative burden of government in undertaking and maintaining a constantly expanding network of services and investments in infrastructure;
- Broadening and deepening the capital markets.

1.2 Political Developments

Botswana current electoral system is based on the “first pass the post wins”. Botswana Federation of Trade Unions believes in political pluralism, good governance (rule of law, electoral system of government, and the separation and independence of the organs of government – executive, legislation and judiciary).

The labour movement in Botswana has, by and large, been pretty much apolitical. Since one of the primary objectives of the BFTU is to organize all the workers in the country under a single, united trade union movement, the BFTU has, to date and true to that objective, demonstrated very little bias, if any towards particular political orientation or ideologies. It is, therefore, become common to find BFTU officials belonging to different political parties, including the ruling party.

Besides the remote political bias already alluded to, complaints of bias motivated by ethnicity, religious beliefs, etc, is unknown within the Botswana trade union movement. Despite the lack of any particular political ideology that could enhance the extent of BFTU influence on government policies, the BFTU is, by and large, autonomous from government, to the extent that government cannot interfere in its activities except in terms of the provisions of the Trade Unions and Employers’ Organisations Act.

While BFTU operates in a political environment, impacts on and is in turn impacted upon by political developments, it nonetheless believes that it can best represent the interests of the working people by leaving party politics to individuals. In this regard, BFTU will not explicitly support any particular party, but will encourage

political parties to adopt pro-labour positions. It will therefore work closely with the government of the day and will advocate for the implementation of policies that promote the interests of the working people.

There has been minimal attempt in the past to align the movement with the opposition Botswana National Front. However since the movement does not appear to have a particular political ideology, the association was, at most, tangential. Consequently, the labour movement has never really been a factor in politics and hence its inability to influence government policy. That is, government never feels compelled to advance the interests of labour to any considerable extent due to the fact that the labour movement does not have an influence over the outcome of the national/general elections.

2 Legal Framework and Practice of Labour Relations

2.1 Labour Relations: Overview and Recent Trends

2.1.1 Legal Situation

The major pieces of legislation governing labour relations are and the rights and activities of trade unions are:

- **Employment Act (Cap 47:01)**

It sets out the basic minimum terms/conditions of employment for private sector, parastatal corporations and local government employees. In particular, it outlines the duties of the parties to a contract of employment, maximum hours of work, their entitlement to various types of leave with pay, minimum wages as well as legally permissible ways of terminating employment contracts.

- **Trade Unions and Employers' Organisations Act (Cap 48:01)**

It embodies the rules on formation and registration formalities for trade unions, amalgamation of trade unions, federations of trade unions as well as employers' organizations. It also spells out the consequences of registration of the aforementioned bodies. More importantly, it reiterates each employee's entrenched right to form and/or join trade unions and outlaws discrimination on the basis of trade union membership.

- **Trade Disputes Act (Cap 48:02)**

Outlines the trade disputes settlement mechanism at both individual and collective level. It also encourages collective bargaining in the sense that it does create a possibility for the establishment of Joint Industrial Councils between employers/industries and trade unions recognized by such employers/industries and it also states the legal significance of collective labour agreements. More significant is the fact that it discourages strike action by failing to outline circumstances under which strike action will be deemed to be lawful.

- **Factories Act**

Provides for the regulation of the conditions of employment with particular regard to safety, health and welfare of persons employed in factories and for the safety and inspection of certain plant and machinery in order to ensure that workplace safety is observed at all times.

- **Worker's Compensation Act**

Obliges employers to keep all their employees insured or for them to set aside sums of money as may be determined by the Commissioner of Labour for purposes of compensating the employees for injuries suffered or occupational diseases

contracted in the course of their employment or for death resulting from such injuries or diseases.

- **Public Service Act**

Sets out in general terms the criteria for appointment to the public service, termination of appointments and retirements, as well as the terms and conditions of service for public officers. The Act also defines misconduct and unsatisfactory service and the appropriate penalties therefore. It is the only statutory enactment that seeks to address sexual harassment in the workplace.

There have not been any major changes to the labour legislation having a bearing on the workers and/or trade union rights over the past decade. Only a few changes that demonstrate a reduction in the extent of the intrusion that government has always had in the affairs of trade unions are worth mentioning:

Prior to the 1992 amendment to the Trade Union and Employers' Organisations Act, if a trade union intended to engage a full time employee, the terms and conditions of such employment had to be agreed to by the trade union, the prospective employee and the Registrar of Trade Unions. This provision has since been repealed.

Section 30 entitled a representative of the Minister to attend meetings of the delegates' congress and those of the executive committee of a federation of trade unions. This provision has since been repealed.

Section 32 required registered trade unions to, inter alia, make available for inspection, minutes of meetings of their executive committees. This requirement has since been removed.

The most notable change to the legislation came with the replacement of the whole of Part XII of the Act. In terms of that Part, the Minister was empowered, where he felt that the activities of a registered trade union were not being conducted properly, to dissolve all the committees of the union, including the executive committee and vest all the functions of all the offices in a public officer known as the "Minister's Commissioner". The Minister's Commissioner could then, after concluding his investigations, fill the offices afresh at the Minister's instruction. While the Minister is still empowered to investigate the activities of a registered trade union through an investigator under the current law, he no longer has the power to remove officers of a trade union from office.

2.1.2 Recent Trends in Labour Relations

While the current legislation still provides a tight legal structure for intrusive government control, there appears to be a move, slowly but surely, towards acceptance of trade unions by employers in the different sectors of our economy. Most notable is the fact that dismissals that are motivated by trade union participation are getting fewer and far between and there is a move towards giving trade unions more recognition than that provided for under the law.

2.2 Establishment and Functioning of Trade Unions

2.2.1 Legal Situation

The law governing the establishment and the functioning of trade unions is found in the Trade Unions and Employers' Organisations Act. In terms of the Act, an application for the registration of a trade union must be made within 28 days of its formation, failing which each of its officers will be guilty of an offence and liable to a fine of at most P100. Additionally, such failure could be a ground for refusal of registration. This provision is unnecessary, having regard to the fact that an unregistered trade union is not empowered to perform any act in furtherance of the objects for which it was formed, a scenario that should provide enough motivation for members of a trade union to want to have it registered.

While the Constitution of Botswana appears to recognise an employee's freedom to contract away his right to form and/or join a trade union at the time that he enters into a contract of employment, that remains a mere theoretical and not a practical possibility. This is in view of the fact that the Act makes it unlawful for an employer to make it a condition of one's employment that he/she will not become a member of a trade union and/or for an employer to terminate one's contract of employment on the grounds that he is a member of a trade union. While the Act appears, if the above is considered in isolation, to fully embrace and promote employees' freedom to join trade unions of their choice, it does contain restrictions on their rights to form and/or join trade unions. The first and most notable is the fact that some employees are not permitted to form and/or join trade unions. In particular, public officers and persons employed by local authorities do not qualify to be members of and/or to join trade unions except where they belong to the so-called industrial class.

As noted above, the Act provides a tight legal structure for intrusive government control over the activities of trade unions. The Registrar of Trade Unions can refuse to register a trade union, inter alia, because its accounts are not being kept in accordance with the Act and because its funds are being applied for an object not authorised by the Act. Similarly, the registration of a trade union may be cancelled on the grounds, inter alia, that its funds are being used for an object not authorised by the Act and that its

accounts are not being kept in accordance with the Act. The Minister may also order that the registration of a trade union be cancelled following an investigation thereof under section 50 of the Act. As far as union dues are concerned, however, there are no provisions on how much should be levied on employees by way of membership fees and/or subscriptions. That, consequently, gives trade unions the latitude to impose whatever fees would be deemed appropriate under the circumstances.

Much as the Act does not seem to be the most attractive piece of legislation as far as the promotion of trade union autonomy is concerned, it does provide a relatively friendly mechanism for recognition of trade unions as negotiating bodies on behalf of their members. In terms of the Act, the only prerequisite for recognition of a trade union by an employer or industry is that the trade union must have, as its members, at least 25% of the employees of the employer or industry. Once the trade union has satisfied that minimum threshold, the employer or industry will be bound to deal with the trade union as the negotiating body, on behalf of its members, on all matters that have a bearing on the relationship between the members and the employer or industry. This means that recognition occurs automatically once the union has a 25% membership of the employees of a particular employer or industry, who qualify to be members of the union, whether or not there exists a collective labour agreement between the trade union and the employer or industry. Collective labour agreements, especially the so-called “Recognition and Procedural Agreement” come in to merely confirm what would have occurred *ipso jure*.

The law as it currently stands is silent on organizational rights. That is, there are no statutory provisions that confer any specific rights on trade unions on matters of organization. For example, matters that are central to the process of union organization such as automatic deductions of union dues and trade unions’ access to work sites are not provided for in the Act. Similarly, the law does not recognize automatic union membership for workers in any category/sector/company.

2.2.2 Trade Union Rights in Practice

While the legal provisions governing the establishment and functioning of trade unions appear to be unduly restrictive and rather anti labour, the situation is slightly different in practice. Even with the type of legislation that could enable government to frustrate all attempts by employees to form and/or join trade unions, there has hardly been a situation where government has interfered in the affairs of trade unions. Similarly, and notwithstanding the fact that the check-off system is not provided for under the Act, some employers have been particularly cooperative and have assisted trade unions with deducting members’ subscriptions at source. The arrangement is ordinarily made pursuant to collective labour agreements between employers and trade unions. The same situation obtains with regard to trade union access to workplaces to meet with its members. Such rights of access, though not expressly provided for in any statute,

are normally agreed upon between the employer and the trade union and consequently incorporated in a collective labour agreement.

Since trade union membership is based on freedom of association in Botswana, there is no possibility for automatic trade union membership. Therefore, a collective labour agreement that seeks to achieve that purpose will, in all probability, be deemed to be invalid to the extent that it creates the possibility for automatic union membership. Even if the parties were to enter into an agreement that provides for automatic union membership, either party would not be able to enforce the agreement when the other party defaults in observing it, particularly by taking industrial action, which, under normal circumstances should be used to compel the defaulting party to abide by the terms of a collective labour agreement. This is in view of the fact that the Trade Disputes Act outlaws industrial action whose objective is to achieve a closed shop.

2.3 Wage Setting and Collective Bargaining

2.3.1 Legal Situation

In terms of Part XVI of the Employment Act, the Minister of Labour and Home Affairs is solely responsible for fixing the minimum wage. As a precursor, however, the Minister is obliged to refer all matters relating to the fixing, adjustment and/or abolition of the minimum wage to the Minimum Wages Advisory Board. The Board is appointed by the Minister and consists of three government representatives, three representatives of employers, three representatives of the trade union movement and three persons who do not represent either the employers or employees.

As the name implies, the Board's role is merely to carry out the necessary investigations and consequently make recommendations to the Minister, who can either accept or reject such recommendations. That is, the Minister is not obliged to accept the recommendations of the Board.

Once a matter relating to the fixing, adjustment and/or abolition of the minimum wage with respect to a particular trade or industry is referred to the Board, the Board has to investigate the wages in that trade or industry and make recommendations to him on the minimum wage that, in its opinion, has to be paid to employees in that trade or industry. It appears to be mandatory for the Board, during the investigation, to take into account representations, if any, made by employers or their registered organizations and employees or their registered organizations. To the extent that it may be practically possible, the Board may even permit the above-mentioned individuals or bodies to make representations before the Board.

As far as the setting of a minimum wage in the public sector/service is concerned, however, the situation alluded to above does not obtain. There does not exist a

mechanism for the fixing, adjusting and/or abolition of the minimum wage. This means, therefore, that the minimum wage in the public service/sector is determined by the state unilaterally.

Notwithstanding the fact that there exists, within our law, a mechanism for setting the minimum wage, it is possible for an employer and a trade union, through the collective bargaining process, to agree on a minimum wage within a particular trade/ sector or industry. As indicated above, there exists only one pre-requisite for the recognition of a trade union as a negotiating body on behalf of its members, namely that the trade union should have, as its members, at least 25% of the employees of the employer or industry who qualify to be members of the trade union, as de facto members of the trade union. Once this requirement is satisfied, recognition occurs ipso jure, even in the absence of a recognition agreement.

The law as it currently stands provides a measure of flexibility on levels of collective bargaining, and it attaches the same amount of significance (legal) on collective bargaining at all levels. It primarily provides for collective bargaining at employer and industry level. Section 30A of the Trade Disputes Act does, however, create a possibility for the establishment of Joint Industrial Councils. In terms of that Act, Joint Industrial Councils may be established by and between a trade union that represents employees in an industry and an employers' organization in that industry, in a joint application to the Commissioner of Labour for that purpose.

2.3.2 Wage Setting and Collective Bargaining in Practice

As already alluded to above, only private sector employees and the so-called industrial class employees of both local authorities and government are recognized by the Trade unions and Employers' Organisations Act as employees. That is, only those employees are competent to form and/or join trade unions and, consequently, to engage in the process of collective bargaining. It is currently accepted practice, once a trade union has satisfied the legal requirements for recognition, to engage the employer/industry that it was established to deal with in terms of its constitutive documents and the process normally results in the execution of collective labour agreements on either procedural, substantive or both issues. It is, however, currently not known how many eligible employees are covered by collective labour agreements.

Due to the fact that the law does not expressly place restrictions on the right to bargain collectively, the parties are ordinarily free to determine the extent of their collective bargaining rights. As far as salary negotiations are concerned, the practice is for employers/industries to adopt specific or fixed salary structures and often, the employer/industry and the relevant trade union would enter into a Pay Structure Agreement, which seeks to ensure that the employer/industry consults with the union each time it intends to change the structure. To that extent, there is not much flexibility

in terms of salary negotiations between employers and individual employees. Where that occurs, it is normally done within a particular, fixed range.

It is no doubt important to have a minimum wage to minimize worker exploitation by employers. The minimum wage applies to specified industries in terms of the Employment Act, namely, Building, construction, quarrying, garage or motor trade, road transport, hotel, catering or entertainment trade, manufacturing, service or repair, wholesale or retail distributive trade and watchmen industries. The involvement of trade union in the fixing of minimum wages is limited to the participation of representatives of the trade union movement in the Minimum Wages Advisory Board. To that extent, the influence of trade unions in the fixing of minimum wages is rather insignificant in that all that trade unions do is make submissions to the Board as and when the Minister feels there is a need to adjust the minimum wage. Considering that trade unions only contribute 25% to the total membership of the Board, more often than not, their submissions would be frustrated by the rest of the members of the Board, which constitutes 75% of the membership. Over and above that, even if submissions by trade unions were to carry the day at any particular point in time, the Minister could still turn them down since he is not bound to implement the recommendations of the Board, whatever form they take.

It is possible, through the collective bargaining process, for trade unions and employers to agree on a minimum wage that is higher than the one prescribed by the minister within a particular workplace/industry. However, due to the fact that a dispute relating to wages is a dispute of interest and not one of fact, it is not common for employers to readily agree on minimum wages proposed by trade unions, even where, in terms of a collective agreement between the union and the employer/industry, wages are listed under negotiable items.

2.4 Dispute Resolution and the Right to Strike

2.4.1 Legal Situation

The procedures, mechanisms and institutions charged with the responsibility of settling trade disputes are outlined in the Trade Disputes Act. In terms of the Act, trade disputes should primarily be handled by the Department of Labour. In particular, the Commissioner of Labour is primarily charged with the responsibility for handling trade disputes. His powers may, however, be delegated to specified labour officers. The role of the Commissioner of a Labour Officer, when dealing with trade disputes, may be mediatory or conciliatory in nature, depending on the form in which the dispute was referred to him. The Commissioner assumes a mediatory role where the dispute was not referred to him in terms of section 5, 6A or 6B. That is, where the dispute was not referred to him in writing, the dispute does not entail a protest against termination of employment or the dispute does not pertain to a violation of the terms of a contract of

employment, he acts as a mediator in the dispute. In all disputes covered by sections 5, 6A and 6B, his role is conciliatory in nature. The involvement of the labour department in disputes resolution at this level does not depend on the nature of the dispute, provided it can properly be categorized as a trade dispute.

If the Commissioner or a designated/delegated labour officer fails to reach a settlement that is acceptable to both parties, the Commissioner can issue a referral certificate, in terms whereof either party to the dispute would be free to approach the Industrial Court for redress. The Industrial Court is a specialized court that has exclusive jurisdiction to hear all trade disputes properly brought before it. The decisions of the Industrial Court are binding on the parties to the dispute and have the same effect as the decisions of the High Court of Botswana. Unlike the labour department, the Industrial Court does not have the power to entertain disputes of interest, such as wage disputes.

The current law uses the term industrial action to refer to lock outs, strikes or actions short of strikes. It does not, however, entrench the right to strike. That is, strike action, as a right accruing to employees is not embodied in any written law. It follows, therefore, that the position of the law remains unclear on what constitutes a lawful strike and/or the circumstances under which strike action will be lawful, particularly in non-essential services. As regards, the so-called essential services, the legislature has made a vague attempt at outlining the procedure that should be followed before employees in essential services engage in a strike.

The lack of the same provisions with regard to non-essential services notwithstanding, the Industrial Court has held that the fact that the law is silent on the right to strike does not mean that such right is not recognized in Botswana. The Court went further to say that a strike in non-essential services will be deemed to be lawful until it is declared otherwise in terms of the Trade Disputes Act. In both situations (essential and non-essential services), however, the strike should be in furtherance of a trade dispute as defined within the Act. (*Morupule Colliery Ltd. V. Botswana Mining Workers Union* Case No. IC 4/95).

As is evident from the afore-going discussion of the right to strike, the Trade Disputes Act does not necessarily exempt any category of employees from the right to strike. The position of the law is, however, unclear as regards public service/sector employees, since they are not covered by the Act. The only logical conclusion that can be made, bearing in mind the fact that public sector employees do not have the right to form and/or join trade unions under the current law, is that the employees do not have the right to strike. This argument is premised on the fact that the right to strike is normally used as a collective bargaining tool and since public sector employees (except the so-called industrial class employees) do not have the right to bargain collectively, they cannot have the right to strike.

As for the issues that may form the basis for a lawful strike, it will be sufficient for the trade union or employees to show that the strike is in furtherance of a trade dispute as defined in the Act. As indicated above, it remains unclear when a strike in non-essential services will be lawful due to a lack of guidelines on that aspect. The same cannot be said of strikes in essential services, however. Part VII of the Trade Disputes Act outlines the procedures that should be followed before employees in essential services engage in a strike. In terms of section 43 of the Act, either party to the dispute has to refer the dispute to the Commissioner who has to make all efforts to secure a settlement of the dispute within 21 (twenty one) days of the dispute being referred to him. If the Commissioner fails to secure a settlement of the dispute within that time, either party can proceed to take industrial action. There is, however, a requirement that before industrial action is taken, the employees have to conduct a secret ballot in terms whereof two-thirds of the employees have to vote in favour of taking industrial action (strike).

While the procedure that has to be observed by employees in essential services before taking industrial action seems to be uncomplicated and rather friendly, there exist major obstacles to the taking of such industrial action. The Minister may, within the 21 days that the Commissioner will be seized with the matter and before either party can lawfully take industrial action, refer the matter to the Industrial Court if he is of the view that the dispute may jeopardize the essentials of life or the livelihood of the people of Botswana or that it may endanger the safety or life of the community. Once the Minister has intervened, neither party may lawfully take industrial action. The other obstacle is inherent in the apparently broad definition or categorization of too many sectors as essential services.

Where a strike is declared to be lawful by the Court, an employer will be prohibited from taking adverse action against his employees on the ground that they took part in the strike. (*Modise v. Kagiso Funeral Parlour (Pty) Ltd* Case No. IC. 125/2000).

2.4.2 Dispute Resolution and the Right to Strike in Practice

The dispute resolution mechanism provided for under the Trade Disputes Act, particularly at the Labour Department level, is not very effective. This is due to the fact that the mechanism is merely mediatory and conciliatory in nature as opposed to being arbitral. This means, therefore, that the efficiency of the system is very much dependent on whether or not either party wants to be bound by the recommendations made by the labour department because the recommendations do not have a legally binding effect. Additionally, due to the fact labour officers do not necessarily have any particular labour law related training, their decision are often legally wrong, which, in turn, has made the parties to regard the labour office as the gate-way to the Industrial Court particularly since the law obliges the disputants to go through the labour office before their dispute can be entertained by the Industrial Court.

The Industrial Court, on the other hand, is a fully competent Court and it has, often made decisions that seek to protect the interest of workers beyond what our laws provide. This is particularly so because as a court of equity, the Court normally takes into account International Labour Organisation Conventions, which are otherwise not self-executing and are not expressly incorporated into our laws, when making its decisions. To that extent, the Court has developed our labour laws to a point where they can be said to compete with the best in the world, especially with regard workers' rights.

The Court has, however, not been very pro-active as far as recognizing and protecting the right to strike. This is mainly due to the fact that the extent of the Court's jurisdiction is determined by statute (Trade Disputes Act) and since the statute has specific provisions that tend to discourage strikes, the Court cannot but enforce those provisions, in view of the fact that statutory provisions take precedence over any other law, including international conventions.

Notwithstanding the fact that the Court has held that a strike in non-essential services is prima facie lawful until declared otherwise, hence creating an impression that the right to strike is protected, the current law has too many cumbersome provisions, which make strikes difficult or even virtually impossible to engage in. The law empowers the Minister to declare strikes unlawful, even those that would appear to have been lawful at the time that they were taken. Similarly, the Court has the power to enjoin workers from engaging in a strike, even an apparently lawful strike.

To compound the problem, the Court has said that where a strike is found to have been unlawful, which determination is made in retrospect, the employees would not be entitled to be paid their wages equivalent to the number of days that they were on strike. Since the rationale for this rule is that the strike would be equivalent to an unauthorized absence, it necessarily implies that the employer would also have the right to dismiss such employees for unauthorized absence from work, which is an act of misconduct and as such, justifies summary dismissal.

To that extent, employees have been particularly reluctant to engage in strikes for fear of being victimized by employers, a phenomenon which is apparently encouraged by the law. Owing to the hostility, in a majority of cases, with which some employers view trade unions, it would arguably be difficult for employees dismissed from work as a result of their participation in a strike to be reinstated. This is due to the fact that reinstatement as a remedy is only available where the relationship between the employer and the employee has not irrevocably broken down and the likelihood that the employer would say that he would not want to continue employing an employee who had been dismissed for participation in an unlawful strike is very high.

2.5 Workers Participation at the Shop Floor Level

2.5.1 Legal Situation

It must be pointed out that beyond providing for the recognition of a trade union as a negotiating body on behalf of its members on any matter that touches upon the relationship between the employer and those employees who are members of the trade union, the law is silent on how collective bargaining, as a process, should be undertaken in practice. That is, beyond recognizing a trade union as a medium through which employees can engage in collective bargaining with their employers, the law does not prescribe the structures that should be put in place to achieve, to an optimal level, the fruits of collective bargaining. The structures that are ordinarily set up at the shop floor level result from the collective bargaining process itself and as such, they vary from one employer or industry to another.

2.5.2 Workers Participation in Practice

As alluded to above, the structures that exist at the shop floor level normally result from the collective bargaining process and as such, their exact nature, functions and responsibility vary from one employer/industry to another, depending on the agreement between the trade union and the particular employer/industry.

One aspect that is worth noting is the fact that the majority of the trade unions in Botswana are in-house as opposed to sector/industry based. This, in my view, has a bearing on the nature and function(s) of each structure that may possibly be established to deal with collective bargaining and/or employer/employee issues at the shop floor level. This factor, coupled with the fact that Botswana has relatively small industries means that there is generally a small pool of employees per employer/industry, which, in turn, would render elaborate structures unnecessary.

The most common structure that is ordinarily established between trade unions and employers/industries is the so-called Joint Committee. As the name implies, the Joint Committee is a committee that consists of an equal number of trade union and employer's/industry representatives and its functions are, inter alia, resolution of trade disputes, negotiation of substantive matters in terms of the existing collective labour agreement(s), as well as consulting on any other matter relating to employees within the bargaining unit.

These structures are normally used to increase trade union influence in the work place and have, more often than not, proved to be a success in the collective bargaining process. However, since this structure is not specifically provided for in any written law, its success is ordinarily dependent on the attitude of a particular employer towards unionism its workplace.

In addition to the Joint Committee, employers do recognize and deal with shop stewards on a daily basis on matters affecting trade unions and employers. The shop stewards would be persons within the shop floor who are elected independently by the trade union in terms of its constitution. Shop stewards, in practice, function relatively effectively, especially since their recognition is normally embodied in a collective labour agreement. While their efficiency could, arguably, improve with the establishment of a shop steward council at the shop floor level, the establishment of the council may not be practical in all workplace due to the problem of workforce/workplace sizes alluded to above.

2.6 Trade Union Representation in Tripartite and other Consultative Structures

2.6.1 Legal Situation

The Employment Act establishes two tripartite structures, the Minimum Wages Advisory Board and the Labour Advisory board. As already alluded to above, the mandate of the Minimum Wages Advisory Board is to advise the Minister on any matter relating to the setting, alteration and/or abolition of the minimum wage with respect to the industries listed in the Fourth Schedule of the Act. The Labour Advisory Board, on the other hand, acts a consultative group on labour laws. In terms of the Act, the Minister is obliged to consult with the Board before presenting any Bill before parliament or before making subsidiary legislation, provided that such Bill or subsidiary legislation makes fresh provisions for contracts of employment, relates to the productivity of employees or amends the Act. In any other situation, the Minister may consult the Board only if it is reasonably practical to do so.

The Trade Disputes Act establishes the third tripartite structure in the Industrial Court. Judges of the Industrial Court sit with assessors, one nominated by an employers' organization and another nominated by an employees' organization. The role of the assessors, however, is not similar to that of the Judge. The assessors assist the Judge with questions of fact and not of law. Even on questions of fact, the Judge's view can prevail over that of the assessors if he disagrees with them.

There exist other structures, which, although not strictly tripartite in nature, deal with labour matters and therefore, allow for participation of the labour movement therein. These structures are, the National Employment, Manpower and Incomes Council, whose functions are, inter alia, to determine the conditions of service for parastatal organizations and to formulate general employment policies, the Rural Development Council, the National Productivity Centre, the Botswana Training Authority and the Tertiary Education Council.

Since there does not exist any national social security funds in Botswana and instead, employers operate their own individual pension schemes, there are no bodies that govern national social security funds. With respect to those employers who operate pension schemes (as opposed to gratuity), trade unions are almost invariably involved in the administrative/governing bodies of such schemes. This follows from the fact that as an employment benefit, pensions would ordinarily be made a negotiable issue under a collective labour agreement.

2.6.2 Tripartism and Social Dialogue in Practice

All the tripartite structures alluded to above are operational in practice. The extent of their influence on the decisions that are ordinarily taken by government is, however, debatable. One is tempted to think that the influence of such structures is very minimal. As far as their influence on government decisions is concerned, the fact that the structures merely play an advisory/consultative role and the fact that the Minister is not legally bound by their recommendations logically means that if the view of government is inconsistent with that of any of these structures, the view of government will prevail.

At the level of the respective structures, it is unlikely that trade unions could have an influence on government policies through these structures. Beyond the above-stated reason, the composition of the Boards dictates that government policy invariably prevails. In a free market economy such as Botswana, government policy on employment is more likely to favour employers compared to employees and the fact that the trade union movement has a 25% representation in each of the Boards, the will of trade unions will invariably be frustrated if it is inconsistent with any government policy relating to employment/labour.

3 Trade Union Profile

3.1 Trade Union History in Botswana

The first union to be formed was the Francistown African Employees Union (FAEU) in 1948, which was based only in Francistown under the leadership of the late Mr. G. M. K. Mmusi. This was because of restrictions imposed by the District Commissioner on the formation of trade unions. The union was recognised by the colonial government under the Protectorate Proclamation Act No. 16 of 1964. It collapsed six years later.

The late development of trade unions can be put down to under-development of the economy during colonial rule when unemployment was high. In 1959, Bechuanaland Protectorate Union was formed in Serowe under the presidency of the late Lenyeletse Seretse. It was formed at the instigation of Tshekedi Khama. In 1962, the Bechuanaland Trade Union Congress was formed under the leadership of Mr. Klaas K. Motshidisi as its first General Secretary. It was closely with the Bechuanaland People's Party and collapsed in 1965. After independence, the local unions financially supported by the ICFTU formed the Bechuanaland Federation of Labour with Mr. G. M. K. Mmusi as General Secretary.

The labour movement in Botswana was formed in the early 1970's with the establishment of the Botswana Trade Union and Education Centre comprising of a handful of trade unions. In April 1977, the Botswana Federation of Trade Unions, the only federation in the country, was founded and it replaced the Botswana Trade Union and Education Centre. The following unions fought tirelessly to form the BFTU:

- Botswana Mining Workers Union
- Botswana Bank Employees Union
- Botswana Commercial and General Workers Union
- Botswana Construction Workers Union
- Botswana Railways Workers Union

The BFTU membership has increased over the years and it currently stands at 25 (twenty five) affiliate which are more in-house and lack the capacity and resources. In the late 1991, the BFTU commissioned a task force whose terms of reference were inter alia :

To identify problems including but not limited to the growth of trade unions in Botswana. The outcome of the study revealed that there were a number of small unions which were more 'sweetheart unions' than sectoral unions. Demarcation and mergers became the priority of the organization.

There has recently been a deliberate move towards merging the different in-house trade unions belonging to the same or allied/related industries into single and bigger

sectoral unions. This move will see the BFTU affiliation reduced by approximately (50%), from the current 25 affiliates to 13. This is consistent with the BFTU's attempt to encourage bigger and more influential trade unions, compared with the current, smaller and consequently, extremely incapacitated trade unions. The re affiliation of two major unions, Manual Workers Union and Commercial Workers Union, has been seen as a major achievement by the Centre.

As indicated earlier, the BFTU does not have any significant and/or open ties with any political party in the country. Neither has it attempted to form political alliances with any political party. Its interaction with government and/or its capacity to influence government decisions is only limited to its participation in tripartite and other structures established under the laws wherein it participates. However, as already indicated above, the BFTU has not achieved much in terms of influencing government decisions or policies on employment and labour issues primarily because its role or mandate within these tripartite and other structures is merely advisory in nature. This, in turn, means that government will not be bound by any view of the BFTU which is contrary to any government policy or decision.

The BFTU has been particularly vocal on the adoption of international labour standards contained in the International Labour Organisation Conventions. Since its role is merely advisory, a lot of the conventions have not been made into law and consequently, are meaningless since treaties and/or international conventions are not self executing (do not automatically become law) in Botswana. Other than the adoption of international labour standards, the BFTU has not been particularly vocal on other international issues such as globalization and world trade. At the domestic level, however, the BFTU and indeed the whole trade union movement, has been vocal on the issue of privatization of state owned enterprises (parastatal corporations) and its effects on job security of employees.

The trade union movement has, by and large, been autonomous from government. That is, there have not been any significant incidents of government interference in the activities of trade unions, even in a purported attempt to enforce the law that governs the establishment and registration of trade unions, notwithstanding the fact that it does permit some measure of government interference in the activities of trade union.

The trade union movement can be argued to be politically neutral in that it has not, thus far, formed any alliances of a political nature with any particular political party in the country, including the ruling party. This notwithstanding, public perception, especially in the mid-1990's was that Botswana Mine Workers Union and Manual Workers Union, leaderships aligned to the Botswana National Front, the then main opposition political party and a strong contender in the 1994 general (national) elections. However, this suspicion was never supported by the facts on the ground because there was never a public declaration of the alliance. To the extent that the trade union movement does not have alliances with any political party, it does not have any political power. Neither

does in yield any influence of a political nature. But political parties are struggling to win support of union leaders for membership drive of their parties.

Similarly the trade union movement does not have any significant negotiating power especially since the extent of the trade unions' negotiating power is not prescribed by law. The law merely recognizes the right of trade unions to negotiate with employers on matters that have a bearing on the terms and conditions of employment of their members. As to what the exact extent of the negotiation process is, the law is silent. This has often resulted in confusion between employers and trade unions on the scope of negotiable as opposed to consultative matters. At the tripartite level, the Government, Employers and Employees the machinery used is consultative, they are not bargaining. They recommend to minister.

The most common type of trade unions in Botswana is what may be referred to as in-house trade unions as opposed to sectoral trade unions. It is not uncommon, to date, to find two different in-house unions in one work-place representing employees of the same employer. Only in rare cases would one find a sectoral and an in-house trade union representing employees of one employer. In the majority of cases where there were two in-house trade unions representing different employees against one employer, the trade unions amalgamated, resulting in a single trade union in the workplace.

3.2 Membership Development and Union Density

Infighting, divisions and internal conflicts which created long term cleavages and tension, which was a major challenge to the BFTU, have been resolved. The independent unions which have about 40 000 paid up members have re-affiliated to the BFTU. This has brought unity within the organization.

As already indicated above, the most prevalent type of trade unions in Botswana is in-house unions. Very few trade unions are either industrial or sectoral. As far as in-house trade unions are concerned, the rate of unionization is relatively high, with some unions being able to achieve closed shops in some of their branches. The recruitment process targets all eligible employees irrespective of their sex/gender and/or age.

The converse is true for industrial unions. Their rate of unionization is relatively lower compared with that of in-house unions. This is mainly due to the fact that employees appear to be ignorant on the importance of unionization, beyond the fact that a trade union can negotiate better pay packages and/or represent them when they have a grievance or have been charged with misconduct. This problem is compounded by lack of capacity on the part of trade unions to teach employees on the importance of unionization. To that extent, employees appear to be more likely to have a perception that an in-house union is more likely to represent their interests better since its officials will be their colleagues, who experience similar problems as them first hand.

Due to the lack of capacity by both trade unions and the BFTU, there are no statistics to show the rate of unionization in the different workplaces, industries and sectors. What is common cause, however, is the fact that the rate of unionization among women is very low across the different age groups, compared with that of their male counterparts.

3.3 Trade Union Structure

3.3.1 Trade Union Centre

As indicated above, there exists only one trade union centre or federation of trade unions in Botswana, the Botswana Federation of Trade Unions, commonly known as BFTU. All the major trade unions in the country are affiliated to this federation and the total number of trade unions affiliated thereto constitutes well over 90% of the existing trade unions. Membership of the BFTU is open to all registered trade unions irrespective of their political or ideological orientation.

The Headquarters of the Botswana Federation of Trade Unions are situated in Gaborone, the capital city of Botswana. The BFTU has regions across the country, totalling 6 (six) in number.

3.3.2 Individual Unions

As already alluded to above, the prevalent type of trade union is in-house unions. Industrial and sectoral unions constitute the minority. As far as membership is concerned, while it may be possible to determine the average size of trade unions in terms of their membership, that cannot provide a guide on whether that makes the union a major (important) or a minor trade union. This is primarily because the size of the union, especially where there are too many in-house unions, will not ultimately be determined by its rate of unionization among eligible employees (average membership) but by its de facto membership. It is, therefore, not surprising that the Botswana Manual Workers Union is the most important trade union in the country, notwithstanding the fact that its rate of unionization is not known with any measure of precision.

Owing to the inability of trade unions to employ full time, competent personnel to run their affairs, the organization and/or administration of individual unions is relatively poor. This is attributable to the fact that the day to day activities of the unions get to be carried out by persons who have full time jobs elsewhere.

The decision making structures of the unions are normally the Delegates Congress, the General Council and the Executive Committee. While the supreme authority of the unions vest in their Delegates Congresses, and the General Councils are responsible for the good governance and administration of the unions, their executive committees

are normally the ones that are in charge of their day to day activities. The unions also normally have branch, regional, as well as shop steward committees.

3.3.3 Relationship between Trade Union Centre and Affiliates

The Botswana Federation of Trade Unions does not fund its affiliates and instead relies on their subscriptions to run its activities. Instead, it formulates policies for adoption by its affiliates through its General Council.

3.4 Internal Organisation and Finance

The Trade Unions and Employers' Organisations Act does not, per se, prescribe what the decision-making structures of a federation of trade union should be, save for the fact that it makes it obligatory for the federation to have an executive committee. The constitution of the BFTU makes provision for three decision making (governing) structures within the federation. These are the Delegates Congress, the General Council and the Executive Board. The supreme authority of the BFTU vests in the Delegates Congress, the General Council is vested with the power to and authority to carry out the business of the BFTU while the Executive Board is charged with regular administrative power between Councils.

Notwithstanding the fact that the General Council has the primary responsibility of carrying out the objects of the BFTU in accordance with the policies and recommendations of the Delegates Congress, in practice, the decision making function on the day to day activities is undertaken by the Executive Board and more particularly by the President of the BFTU, acting in consultation with the Secretary General.

The Constitution of the BFTU does give women a forum especially meant to encourage them to participate more significantly to the cause of the labour movement through the Women's Council. The Executive Officers of the Women's Council are ex-officio members of the Executive Board but they do not have the right to vote. To the extent that all the decision making or governing structures of the BFTU are dominated by men, the fact that Executive Officers of the Women's Council are members of the Executive Board does not do much to encourage women participation in trade union activities due to the fact that their lack of voting rights necessarily means that they cannot influence decisions made at the Executive Board level.

The elections for membership of the General Council and the Executive Board are held every three years at the federation's Triennial Delegates Congress as per its Constitution. The criteria for participation at the Delegates Congress as well as the process for the election of the federation's officers are outlined in the BFTU Constitution and both are consistent with the applicable legal requirements. There have been complaints in the past about the amount of influence which some trade unions have over the outcome of

the elections. These complaints, however, did not have anything to do with electoral fraud or vote buying for that matter. They, instead, had to do with the fact that the BFTU recognizes the system of proportional representation, meaning, therefore, that the bigger the union, the more likely it is to have a substantial influence on the outcome of the elections. Neither government nor any external body has been known to interfere with and/or influence the conduct and/or outcome of the BFTU elections. This may be mainly due to the fact that the BFTU does not appear to have any political ideology, which in turn, makes it unattractive to both the government and opposition political parties alike.

Due to a lack of funding to finance staff salaries, the BFTU is inadequately staffed. While it has paid full time staff, these are individuals who do perform menial administrative tasks and cannot undertake any significant administrative responsibilities in their own capacities. This, in turn, means that the BFTU accesses professional services externally and on an ad hoc basis. The major weakness of the BFTU derives from lack of adequate resources. This translates into incapacity on its part to discharge most of its primary responsibilities towards its affiliates since the personnel responsible for carrying out its normal daily functions are the Executive Board members, who are employed elsewhere and are often resident in different town in the country. Attempts to redress this situation normally take the form of engaging professionals who have to be paid large sums of money in the form of consultancy fees.

As already indicated, the BFTU is insufficiently resourced and relies mainly on its affiliates' subscriptions. These subscriptions are mainly used to remunerate the skeleton administrative staff as well as for educational purposes. However, due to the fact that the affiliates and consequently the BFTU do not keep proper records of members, it is never too clear whether moneys received by way of subscriptions represents what ought to actually be paid by the unions.

This above notwithstanding, the BFTU has been getting a lot of support from Friedrich Ebert Foundation. The support related mainly to activities with respect to trade union mergers or conversions from in-house to sectoral unions as well as for educational purposes, the most recent being the current on-going para-legal training.

BFTU's financial management is relatively good. This is in view of the fact that there have, thus far, not been major complaints touching on financial management within the federation. The support for this view is also premised on the fact that the BFTU is required, in terms of the Trade Unions and Employers Organisations Act, to produce audited financial statements annually, the requirement that the BFTU has always been able to comply with.

3.5 Services Provided

Trade Unions are a cornerstone of any effective system of industrial relations that seek to balance the need for enterprises to remain competitive with the aspiration of workers for higher wages and better working conditions. Unions act as agents for labour, organizing large numbers of workers into a single entity whose collective bargaining power matches that of the employer. Trade Unions can also monitor employers' compliance with Government regulations, and they can help raise workplace productivity and reduce discrimination. Unions provide their members with important services. At plant level, unions provide workers with a collective voice and at micro or national level they provide advice to Government.

3.5.1 Individual Unions

The primary responsibility of individual unions is to act as a negotiating body on behalf of its members on all matters that have a bearing on the relationship between the employer and employees who are its members. Their other responsibilities, which are by no means less important include taking up of employees' grievances as well as the settlement of trade disputes that arise in the workplace. Where the internal mechanisms fail and/or the union and the employer cannot amicably resolve any trade dispute, unions normally take the disputes through the mechanism established by the Trade Disputes Act (from the labour office through to the Industrial Court).

In terms of the constitutive documents of all trade unions, they are supposed to have or establish what is normally referred to as the Education and Research Committee, whose primary responsibility is to educate union members on unionism through the holding of seminars and the distribution of written material on the same subject. In practice however, the Education Committees hardly ever fulfill their mandate because to date, the level of ignorance on trade unionism is very high.

Much as the unions are primarily established for collective bargaining purposes, not much success has, thus far, been achieved in negotiating real wages for employees. This is due mainly to the weakness inherent in the prevalent type of unions in the country, very minimal, if any, militancy as well as the fact that the unions are apolitical. The other reason is attributable to the fact that the right to strike is not recognized both in law and in fact. Most importantly, our courts have held that a dispute relating to wages is a dispute of interest. This means, therefore, that the unions cannot take employers to court when there is a dispute relating to wages, unless the wages being paid are lower than the minimum wage.

The unions have also not been very successful in safeguarding employment in the sense that the employers normally determine, where there exist collective labour agreement, what the content of such agreements are. Where none exist, the employers

unilaterally formulate all policies, be they disciplinary or otherwise. In most cases, termination of one's employment is not safeguarded beyond what is legally permissible, notwithstanding the fact that the law merely provides the minimum possible standards of workplace relations. This problem is compounded by the fact that the Industrial Court has not been particularly receptive towards the issue of reinstatement as a remedy. The Court appears to have adopted the view that only in exceptional cases should reinstatement be ordered. Notwithstanding the fact that the circumstances under which it should not be ordered are enumerated in the Trade Disputes Act, the Court does not ordinarily order it even where such circumstances do not exist.

At present, the Mining Workers Union and Manual Workers Union have respectively a Thrift and Loan Scheme for its members and reached agreements on certain conditions with money lenders for their members to borrow when under financial constraints. Otherwise all individual unions help members in collective bargaining and grievance handling. However, most unions are struggling to negotiate for their members on better conditions of service. Because of such weaknesses, poor collective agreements are signed wherein members are not protected and thus resign from membership and further weaken the strength of trade unions in Botswana.

3.5.2 Trade Union Centres

The Botswana Federation of Trade Unions BFTU, the sole "National Centre" represents affiliates at international, continental, regional and national tripartite forums.

At national level, BFTU represents its affiliates in various tripartite forums. Such are purely consultative as against negotiations resulting in government dominance in final decisions.

On international, continental and regional issues, such as globalisation, WTO, Continuo agreements etc, the BFTU is voiceless despite so many national issues which need its input. But because of the lack of capacity of the BFTU and the absence of political alliance with other social movements it becomes the limping partner amongst other social partners (Government and Employers).

3.6 Government-Trade Union relations

The relations between government and trade union is limited to the participations of the duo in tripartite structures such as the Labour Advisory Board, the Minimum Wages Advisory Board and other such structures set up by government where the labour movement is deemed to be a stake holder. The participation of trade unions is, however, not very significant in terms of their ability to influence government decisions and/or policies particularly since their role is advisory and consequently, the government is not bound to accept any of its views or propositions in those forums.

As indicated earlier, the trade union movement is, by and large, politically neutral. It is, therefore, not surprising that it has thus far not formed an alliance with any political party, including the ruling party. Consistently with this, government has adopted a neutral stance towards the labour movement. The participation in or contribution of the labour movement to government policies has, therefore, been limited to matters relating to labour and employment. Further confirmation of government's attitude or lack of interference in the activities of the labour movement is found in the fact that the government does not provide funding to trade unions or the BFTU. Further, the government does not interfere in trade union elections.

While the pre-1994 law (Trade Unions and Employers' Organisations Act) gave the Minister the authority, where he felt that the activities of a trade union were not being conducted in accordance with the provisions of the Act, to declare all the trade union offices vacant, it did not authorize him to put into the trade union office, replacements appointed by him. The current position of the law is that the Minister no longer has the power, even where he has made findings of fact that the activities of a trade union are not being carried out in terms of the Act. Where such findings have been made, the Minister may, at worst, cancel the registration of the union.

This apparently neutral attitude of government towards trade unions is similar across unions. No trade union has previously been given preference over another. In fact, government involves the labour movement within the legally constituted bodies at the BFTU and not at individual union level. Similarly, the law has the same requirements for the setting up of trade unions, irrespective of their type. This, therefore, eliminates the possibility for the creation of government backed unions and also ensures that there is consistency in the registration process. To that end, it can be argued that there has not been any apparent move by government to deny the registration of new unions other than in terms of the law. If that had been the case, the elaborate appeals procedure outlined in the Act would have, so far, exposed such incidents.

3.7 The Role and Importance of International Cooperation

The Trade Unions and Employers Organisations Act does to a considerable extent limit the right of trade unions to get into international cooperation and/or associations with bodies outside Botswana. In particular, it prohibits the affiliation of a registered trade union with any body outside the country with out the written consent of the Minister. Similarly, a registered trade union is prohibited from receiving any funds originating outside the country. This notwithstanding, the BFTU is affiliated to international organizations such as the International Confederation of Free Trade Unions, the Organisation of African Trade Unions and the Southern African Trade Union Coordinating Council. These organizations run educational programmes on such issues as HIV/AIDS, shop stewards training, women's programmes and several

other courses on capacity building and the BFTU ordinarily sends representatives to participate in these programmes.

The labour movement has, both in the past and currently, been funded by Friedrich Ebert Stiftung (Foundation). The foundation also funds BFTU educational programmes. Besides funding the seminars on the various aspects of trade unionism that BFTU regularly conducts for its affiliates, the FES has recently funded the Para-Legal Training Programme. The contributions made by the aforementioned organizations to the development of the labour movement in Botswana are commendable. As already indicated, these organizations assist in trade union education and capacity building by training trade union officials on matters of administration.

The main positive aspects of international cooperation are rather obvious in that it is through international cooperation that the trade union movement can get the necessary exposure to enable it to bargain more effectively as well as to position itself in a manner that will enable it to influence government policy decisions on labour and employment. This external assistance has, thus far not had any negative implications such interference with the BFTU policies and its internal democracy by the donors or the organizations that offer other types of assistance that are not necessarily financial in nature. Similarly, the assistance has not brought about and/or encouraged acts of patronage and corruption thus far.

4 Problems and Prospects

4.1 Internal Organisational Problems and Trade Union Response

As already indicated above, the major weakness of trade unions in this country, including the BFTU derives from lack of adequate financial resources. This translates into incapacity on the part of trade unions to discharge most of their primary responsibilities towards their members since the personnel who are expected to carry out the trade unions normal daily functions/activities are Executive Committee members, who are employed elsewhere and are often resident in different towns in the country.

The other major problem lies in the lack of qualified officials. This problem is primarily inherent in the fact that trade union membership is only limited to employees who do not qualify as “members of management” so called in terms of the law. This, therefore, makes trade unionism prevalent only amongst lowly placed employees within workplaces and such lowly placed employees, more often than not, lack the basic necessary education to adequately understand and appreciate issues of unionism to a level where they can bargain meaningfully with their employers. Alternatively, employers are always too eager to promote or elevate an employee whom they see as a potential threat in terms of advancing the course of labour towards the levels that they deem undesirable so that he can be disqualified by the law from membership of the trade union. Issues of internal power struggles and lack of internal democracy within trade unions do not currently pose much of a problem and cannot, as such, be said to be a threat to the existence and/or growth of the trade union movement.

The majority of trade unions do not appear to be doing much to redress the problem of lack of resources because this problem has haunted them to an extent that in some cases, the trade unions cannot afford to pay consultancy and/or legal fees when the need for such services is extremely crucial. The minority of trade unions, however, are moving towards engaging in profit-making endeavors such as investing in real estate and subsequently letting it out. Compared to other civic organizations, there have also been unsatisfactory attempts, if any, to solicit external funding on the part of trade unions, notwithstanding the apparent need for such funding. In the absence of any radical changes in terms of trade union membership, (especially trade union officials) the possibility of a change in approach in terms of accessing funds from international donors by trade unions appears to be very remote.

As far as the possibility of trade unions being able to reach out to a better qualified membership is concerned, trade unions appear to be fighting a losing battle. As indicated above, the problem does not per se lie with the trade unions themselves.

The problem, instead, is inherent in the fact that the law excludes persons who are deemed to be members of management from trade union membership. This, in turn, has motivated employers to promote employees whenever the employers perceive such employees to be too vocal on the rights of employees (union matters). Unfortunately, there does not appear to be any move by the legislature to change the current position of the law on this aspect. Whether the BFTU has ever brought this up at any of the tripartite structures is not clear. What is apparent, though, is the fact that it will always keep qualified personnel away from trade unions.

4.2 External Challenges and Trade Union Response

The major challenge currently faced by trade unions is loss of membership. The loss of membership is attributable mainly to the now fashionable retrenchments. While these retrenchments may result from the current economic recession, which is not only national but global and therefore, genuine or justified, that is not the case in all situations where employees are retrenched. Since our law does not require an employer to demonstrate that he can no longer operate at a profit if he does not reduce the size of his workforce before he retrenches employees, employers have habitually hidden under the guise of retrenchment to eliminate trade unionists from within their workforce. The other cause of loss of membership is the current privatization of state owned enterprises (parastatal corporations so-called). Job losses due to privatization of state owned enterprises are currently at a minimal since the process is at its nascent stages. The numbers are predicted to rise once the privatization process gains momentum.

The impending labour law reforms may also pose challenges to trade unions. Most notable is the issue of recognition of trade unions as negotiating bodies on behalf of their members. Under the proposed legislation, trade unions will be expected to apply for recognition. This represents a radical departure from the current legal position where recognition of a trade union as a negotiating body is automatic once the prescribed formalities have been satisfied.

The other challenge faced by trade unions is the tendency by employers to marginalize trade union members. Rather than being viewed as stakeholders in the employer's business, trade unions are normally seen by employers as rivals who are competing for business profits and hence the hostile attitude normally adopted by employers. Since the majority of government employees are not unionized, government attitude towards trade unions has generally been neutral. This neutrality is, however, not necessarily advantageous to trade unions in that it ultimately has a bearing on the extent to which trade unions have an influence on government policy. That is, due to the somewhat indifferent attitude by government towards, trade unions, government has never really demonstrated an awareness that the views of trade unions on issues of employment and labour are material and consequently worthy of serious consideration.

Quite apart from the question of whether or not trade unions have the willingness to deal with the challenges identified above, they do not appear to possess the capacity to deal with them effectively. As indicated above, the labour movement has been particularly vocal on the issue of privatization of parastatal corporations, arguing primarily that it will result in serious job losses and hence compound the ever increasing unemployment rate in the country. Whether and/or to what extent government will heed this concern remains to be seen but judging by what has transpired so far, it is doubtful whether government will suspend the process in order to undertake research on how to address the potential for retrenchments due to privatization in accordance with the labour movement proposal.

As for the proposed law reforms, it can be safely assumed that the labour movement, through its representatives in the Labour Advisory Board, did make significant contributions that were primarily geared towards the advancement of the interests of labour. While the reform alluded to above will pose a challenge to trade unions in future, there are quite a number of positive labour law reforms. For example, the impending legislation (Trade Disputes Act) will, for the first time, recognize employees' right to strike as well as to indicate with sufficient clarity the circumstances under which a strike will be lawful. The other development, among others, is the fact that trade unions will no longer require the consent of the Minister to accept funds from outside Botswana.

One possible and potentially effective way of dealing with the challenges faced by trade unions in this country is for the trade union movement to start forming alliances with local political parties, as part of its strategy. A political alliance, compared to any other type of alliance, stands to benefit trade unions more given the fact that the working class represents the majority of the population and is therefore likely to have a bearing on political power such that whichever political party would be in power at any point in time would make the interests of labour one of its main priorities for fear that if they are ignored, trade unions could change alliances, resulting in the then ruling party losing the general elections. To that end, ad hoc as opposed to permanent alliances would be more ideal so that whenever it is necessary to change them that could be done with relative ease.

4.3 Prospects

The future of the trade union movement appears to be set to change for the better in the not so distant future. This is mainly due to the impending labour law reforms which may commence being operational in the coming years (2004). Of particular interest is the fact that the right to strike will, as already noted, be recognized in our law for the first time in the history of the country. The other major development with is no doubt being awaited with bated breath is the recognition of the rights of government employees and employees of local authorities (other than those belonging to the industrial class)

to form and/or join trade unions. These developments will, no doubt, strengthen the trade union movement not only in terms of their bargaining position vis-a-vis their employers but also in terms of numbers/membership. The need to form alliances with political parties will, nonetheless, be crucial if these changes are to achieve the best of what they have the potential of achieving.

Annex

Socio-Economic Data

Indicator	Value	Year
Population	1680863	2001
GDP at current prices (million pula)	36337	2002/03
GDP at constant prices. 93/94 prices (million pula)	18038	2002/03
GDP per Capita. Current prices (pula)	20538	2002/03
GDP per capita. Constant prices 1993/94 (pula)	10195	2002/03
Formal sector employment	281915	2003
Economically Active	558752	2001
Informal sector employment	68383	1999/00
Unemployment rate (%)	19.6	2001
Private sector employment	160200	2003
Public sector employment	108814	2003

Summary of Labour Legislation

Employment Act (Cap 47:01)

It sets out the basic minimum terms/conditions of employment for private sector, para-statal corporations and local government employees. In particular, it outlines the duties of the parties to a contract of employment, maximum hours of work, their entitlement to various types of leave with pay, minimum wages as well as legally permissible ways of terminating an employment contract.

Trade Unions and Employers' Organisations Act (Cap 48:01)

It embodies the rules on formation and registration formalities for trade unions, amalgamation of trade unions, federations of trade unions as well as employers' organizations. It also sets out the consequences of registration of the aforementioned bodies. More importantly, it reiterates each employee's entrenched right to form and/or join trade unions and outlaws discrimination on the basis of trade union membership.

Trade Disputes Act (Cap 48:02)

Outlines the trade disputes settlement mechanism at both individual and collective level. It also encourages collective bargaining in the sense that it does create a possibility for the establishment of Joint Industrial Councils between employers/industries and trade unions recognized by such employers/industries and it also states the legal significance of collective labour agreements. More significant is the fact that it discourages strike action by failing to outline circumstances under which strike action will be deemed to be lawful.

Factories Act (Cap 44:01)

Provides for the regulation of the conditions of employment with particular regard to safety, health and welfare of persons employed in factories and for the safety and inspection of certain plant and machinery in order to ensure that workplace safety is observed at all times.

Worker's Compensation Act, Act No. 23 of 1998

Obliges employers to keep all their employees insured or for them to set aside sums of money as may be determined by the Commissioner of Labour for purposes of compensating the employees for injuries suffered or occupational diseases contracted in the course of their employment or for death resulting from such injuries or diseases.

Public Service Act (Cap 26:01)

Sets out in general terms the criteria for appointment to the public service, termination of appointments and retirements, as well as the terms and conditions of service for public officers. The Act also defines misconduct and unsatisfactory service and the appropriate penalties therefore. It is the only statutory enactment that seeks to address sexual harassment in the workplace.

Trade Unionism in Figures

Unionisation Rate (% of formal sector employees)	Not available
Collective bargaining coverage (% of formal sector employees covered by Collective Labour Agreements)	Not available
Number of trade union members, (year) Female (in % total)	Not available
% of women in leadership function in trade unions (in % total leadership)	Not available
Number of trade unions, (year)	26, (2003)
Number of national centres, (year)	1, (2003)
Number of unions affiliated to major national centres	25
Sectors that tend to have sector unions	Mining, retail and manufacturing
Strikes and lock-outs (man-days lost in wage-related strikes), (year)	Not available

National Trade Union Centre

Name	Botswana Federation of Trade Unions
Number of affiliates, (year)	25 (2003)
Membership, (year)	Not available
Political orientation	None
International trade union affiliation	ICFTU, OATU
Regional and sub regional affiliations	SATUCC
Name of President	Mr. Ronald Dust Baipidi
Name of Secretary General	Mr. Teboho Makhale

National Affiliates

Name (and Acronym)	Sectors Organised	Member- ship (year)	National Affiliation	International Affiliation
Botswana Mining Workers Union BMWU	Mining	n.a.	BFTU	ICEM
Botswana Power Corporation Workers Union BPCWU	Energy	n.a.	BFTU	ICEM
Botswana Diamond Sorters & Valuers Staff Union BDSVU	Diamonds Sorting	n.a.	BFTU	ICEM
National Amalgamated Central, Local and Parastatals Manual Workers Union NACL&PMWU	Manual Workers in Government and Parastatals	n.a.	BFTU	PSI
Botswana Commercial and General Workers Union BCGWU	Hotels, Wholes, and other General sectors	n.a.	BFTU	UNI
Botswana Manufacturing & Packaging Workers Union BM&PWU	Manufacturing	n.a.	BFTU	ITGLWF
Botswana Bank Employees Union BOBEU	Commercial Banks	n.a.	BFTU	UNI
Botswana Agricultural Marketing Board Workers Union BAMBWU		n.a.	BFTU	

Name (and Acronym)	Sectors Organised	Member- ship (year)	National Affiliation	International Affiliation
Botswana Hotel, Travel & Tourism Workers Union BHT&TWU		n.a.	BFTU	
Botswana Vaccine Institute Staff Union BVSU		n.a.	BFTU	
Botswana Meat Industry Workers Union BMWU		n.a.	BFTU	
Botswana Beverages & Allied Workers Union BB&AWU		n.a.	BFTU	
Botswana Central Bank Staff Union BCBSU		n.a.	BFTU	
Botswana Savings Bank Employees Union BSEU	Commercial Banks	n.a.	BFTU	
Botswana Railways Amalgamated Workers Union BRAWU		n.a.	BFTU	
Botswana Telecomms Employees Union BOTEU		n.a.	BFTU	
Botswana Postal Services Workers Union BOPSWU		n.a.	BFTU	

Name (and Acronym)	Sectors Organised	Member- ship (year)	National Affiliation	International Affiliation
Botswana Construction Workers Union BCWU		n.a.	BFTU	IFBWW
Botswana Housing Corporation Staff Union BHCSU		n.a.	BFTU	
Botswana National Development Bank Staff Union BNDBU		n.a.	BFTU	
Botswana Institute of Development Management Workers Union BDMWU		n.a.	BFTU	
Botswana Wholesale, Furniture & Retail Workers Union BWF&RWU		n.a.	BFTU	
Botswana Private Medical & Health Services Workers Union BPM&HSWU		n.a.	BFTU	
Rural Industry Promotions Company Workers Union RIPCWU		n.a.	BFTU	
Air Botswana Employees Union ABEU		n.a.	BFTU	

