

The State Of Industrial Relations In Botswana: Collective Bargaining In Crisis

Motsomi Ndala Marobela
University of Botswana, Botswana
Email: marobela@ub.ac.bw

Kethhalefile F.C. Motshegwa
Botswana Federation of Public Private & Parastatal and Sector Unions
[Email: comrademotshegwa@gmail.com](mailto:comrademotshegwa@gmail.com)

ABSTRACT

This paper explores the state of industrial relations in Botswana in the context of public sector collective bargaining as a structure of mediation and power relations. Previous research on Botswana trade unions has focused more on the workers strikes, without specific attention to the structure and process of collective bargaining. This paper fills this gap by examining efforts of trade unions to use collective bargaining as a platform to raise demands, and in the process to arouse workers consciousness. The authors argue that, while collective bargaining is a useful conciliatory structure, it can also be injurious to workers struggles if it is not backed by real collective power from rank-and-file workers to put pressure on the negotiation. A history of Botswana labour movement is outlined in relation to the economic and political background. The multiple roles played by the state as enactor of labour laws, as an economic agent and employer are outlined. To help appreciate the tussle between the key main players in public sector bargaining relevant Botswana labour laws are examined in light of the International Labour Standards (ILO) fundamental conventions (see www.ilo.org). In conclusion the critical role of trade unions as agents of change to promote workers' rights and industrial democracy is recognised. However, the researchers posit that their ability to navigate power structures and to win depends on the balance of class forces.

Keywords: Collective Bargaining, Trade Unions, Industrial Relations, Public Sector, Botswana, International Labour Standards.

INTRODUCTION

There are different approaches to industrial relations. Bain and Clegg (1974) relate industrial relations with “job regulation and rules governing employment relationship”. Some however, associate industrial relations with collective bargaining, trade unions and strikes (Mabey *et al*, 2002; Bratton and Gold, 1999, cited in Mwatcha 2015). For Hyman (1975)¹ industrial relations go beyond work regulation and mechanisms of managing relations. It extends to underlying issues of resources, power and conflict (Bean, 1985). Even though Hyman presented his own frame of industrial relations, he was careful not to prescribe it as sine-qua-non definition. In his seminal work he invokes scholars to be open minded to avoid universal definitions that are applied without appreciating contextual factors which shape

¹ This classic book has been widely cited, in a way it has succeeded in providing an alternative paradigm to empiricism. Hyman, R. (1975), *Industrial Relations: A Marxist Introduction*, Macmillan, London

phenomenon. Moreover, Hyman (1977 in Frege, Kelley, McGovern, 2011) posits that most of the research in industrial relations has tended to focus on a single context, hence examining phenomenon as undifferentiated. As a result, specific national context is lost in generalisations instead of appreciating and learning from a unique situation. Edwards (2005:265) calls this context sensitive explanatory research. Therefore, a definition of industrial relations needs to be anchored to the context in which industrial relations is practiced and indeed theorised.

Following Hyman's (1975) perspective on contextuality and differentiation and Edwards (2005) explanatory research, It argued that in Africa generally and Botswana, specifically, the state still plays an active role in both the economy and industrial relations. It sets the environment and framework in which industrial relations occur for the private and public sector. Accordingly, (Mwacha, 2015)² affirms the dominant power of the Botswana state in shaping the nature and practice of industrial relations in Botswana, one of the main employers. In Botswana, the overwhelming power exercised by the state as the overseer³ of industrial relations and also its role as the main employer is important to understand. In fact, state ownership is not limited to state-owned enterprises. Government has a large shareholding in the diamond industry, the main economic activity which accounts for most of the government revenue. While the state is a powerful economic player, it is also vulnerable to anything which disrupts the status quo or threatens its dependent economic foundation. Consequently, the way collecting bargaining council was undermined from performing its duties is emblematic of how the state attempts to protect its interests through various control mechanisms of the employment relationship. This presents a specific and unique case in framing Botswana industrial relations in the context of transformation, liberalization, corporatization and commercialization of the public sector (Marobela, 2008)

METHODOLOGY

Most studies in management and labour studies ignore the ontological and epistemological issues, yet they frame and set the researcher's worldview. This paper draws from realist research paradigm (Sayer 2003; Fleetwood 2004; Callinicos 2006; Bhaskar 2008) and complements it with a dialectical methodology to illustrate the dialectical interplay between structure and agency—the state as an employer and trade unions, representing workers.

A realist approach is grounded on historical development and social change (Prattern, 2013). It therefore rejects the positivist empiricist reductionism of cause and event regularity. Rather than focusing on one layer of reality, the empirical, as positivists do, critical realism sees reality as stratified or multi-layered. Hence, the three domains: the real, the actual and the empirical. Critical realism sees social structures as emergent from social interactions (Callinicos, 2006) hence the notion of generative mechanisms and close association with qualitative methodology (Roberts, 2014). Critical realism fares well with the dialectical inquiry, as it goes deeper to investigate phenomenon beyond causality, since industrial relations are conflict-bound because of oppression and exploitation of labour. A dialectical methodology has been used in industrial relations to study the relationship between the state and trade unions (Faniel, 2012; Nnonye, 2012). It is most suited to explain the antagonistic nature of conflicting interests between the state and trade unions during collective bargaining. Moreover,

² This study provides a detailed account of the nature of Botswana's industrial relations as it was done in the background of Botswana historic public sector strike of 2011

³ Through legislative instruments: Trade Unions and Employers Organisations- Act (Chapter 48:01) and governing agents such as the Minister, Registrar of Trade Unions, Commissioner of labour. The state extends and exerts power over Trade Unions through mechanisms which seek to regulate their affairs, registration process, constitutions, membership, management and administration of unions and rights.

placing the conflict in context helps to appreciate underlying structures, mechanisms and relations which might account for the behaviour of either party during the negotiations. For example, in placing their demands for better pay, the union leaders take cognisance of their rank-and-file members, while government officials are careful not to agree on conditions that might upset their political principals.

According to Rivers and Truitt, (2014) qualitative research seeks to understand participant's experience of phenomenon. Data was collected from documents, interviews, archival records, reports, court records, observational notes and union activities, as well as from the researcher's own participation in meetings and personal experience in the collective bargaining. As is common with traditional research, especially positivism, the question of objectivity arises. How can research be plausible and reliable, when the researcher is in fact actively engaged and entangled in the process? In this sense, the researcher is expected to adhere to strict protocols by maintaining neutrality. That means keeping a distance from data and suppressing his viewpoint to avoid bias and tainting is results.

A realist framework goes beyond causal analysis within closed variables but draws inference from contextualising phenomenon to explain deeper underlying factors shaping accounts of events experienced (Fleetwood, 2004, Marobela, 2006). Consistent with realist framework, this study takes an emancipatory and advocacy role to give workers a voice. This is done in recognition of power asymmetry and inequalities of the players in the employment relationship landscape and collective bargaining process. The power of the state and the sword wielded by capital, undoubtedly weighs heavily on workers. Hence Hyman (1989) has rightly averred "if knowledge is power, it must empower the weak".

BOTSWANA LABOUR HISTORY AND TRADE UNIONS

As in other African countries, Botswana's labour history is marked by accumulation and the class struggle between labour and capital. The mineralization and gold rush both in Johannesburg and Francistown gave impetus to migration and the resultant brute cheap migrant labour system, which was at best slave working:

The history of Southern Africa in the last 85 years is essentially a series of attempts, by political violence, to produce docile, cheap black labour. One key to this policy has been the system of migrant labour by which black workers have been actively recruited from all over Southern Africa (Leys, 1974)⁴

A comprehensive historical account of Botswana trade unions is credited to Gilbert Sekgoma⁵ (1978), though given less recognition. Botswana's labour history is entwined with that of Africa in general, and Southern Africa in particular. It is traced to the emergence of imperialism, mineralisation and exploitation of black migrant labour in Southern Africa (Leys, 1975; Lewis, 2001; Marobela, 2008). According to Colclough and McCarthy (1980:11), as early as 1867 gold was discovered in Northern Botswana, Tati area. This resulted in an influx of fortune seeking-explorers and the development of a small settlement, which is today called Francistown, named after Daniel Francis⁶ the second largest city in the country. The arrival of British colonialism in 1885 and the declaration southern and northern Bechuanaland as their Protectorate (de Wit, 2018) was a critical move in an attempt to secure both the mineral

⁴ Leys, R (1974) South African Gold Mining: "The Gold of Migrant Labour: African Affairs, Vol. 74, No. 295 pp. 196-208: Oxford University Press.

⁵ In his undergraduate thesis, "History of Trade Unionism in Botswana" Sekgoma (1979) provides a detailed and deeper investigation of early formation of trade unions in Botswana under colonial government, significantly he illustrates that unions were allied to politics, in their efforts to influence a post-colonial independent state.

resources and accompanying cheap labour⁷.

Therefore, Francistown provides a good account of both mining imperialism and the rebirth of the labour movement in Botswana. Tragic as it was, it was not a coincidence that in 1974 a mine recruiting company plane from Malawi, crushed shortly after taking off from Francistown, killing all 77 Malawi returning employees (Leys, 1975). Malawi retaliated by immediately stopping the recruitment of its people to South African mines (Chirwa, 1996). Francistown was also a hub of recruitment of Botswana migrant mine workers by the Witwatersrand Native Labour Association (WNLA), popularly known as WENELA, for short. It was therefore fitting that the first pioneering trade union Botswana was started in Francistown 1948⁸.

There are conflicting accounts on which union was formed first, though most of the literature suggests that it was Francistown African Employees' Union (FAEU) which was established in 1948 (See Cooper 1985, Mogalakwe, 1994, Mwatcha, 2015). However, Hunyepa (2008) provides a different chronology as he posits that the Bechuanaland Protectorate Teachers Association (BPTA) was formed in 1937. According to Makgala, Maudeni and Molosiwa (2007) the European Civil Service Association was established in 1948, but it could be argued that these were not really trade unions in a formal sense, since they were associations with no collective bargaining rights. Later, another union materialized. The Bechuanaland Protectorate Workers Union emerged in 1958, and shortly before independence two trade unions were established, the Bechuanaland Trade Union Congress (BTUC) was formed in 1962. The BTUC was sympathetic to the anti-colonialist Pan-African leaning opposition, the Botswana Peoples Party, raising demands for wage improvement, and against racism and indigenous land ownership.

According to Copper (1985) to counter the BTUC and the BPP electoral influence, the Botswana Democratic Party (BDP) formed the Bechuanaland Federation of Labour in 1963. On the eve of independence, the National Union of Government Manual Workers (NUGMW) was established in 1965, and soon thereafter embarked on a strike in 1968 (Makgala et al., 2007) which was provoked by government decision to sack the unions' General Secretary.

Following the manual workers strike, government started to pull a plug in order to control emerging workers resistance (Cooper, 1985) by enacting new labour legislation such as the Trade Dispute Act. Later on, a number of trade unions sprung up in response deplorable working conditions (Hunyepa, 2008). Shortly after independence there were strikes in Botswana, one involving construction workers in Gaborone, According to Suter (1958) the main demands revolved around racism/discriminatory work conditions against locals, foreigners were given preferential treatment in wages, hiring and promotions.

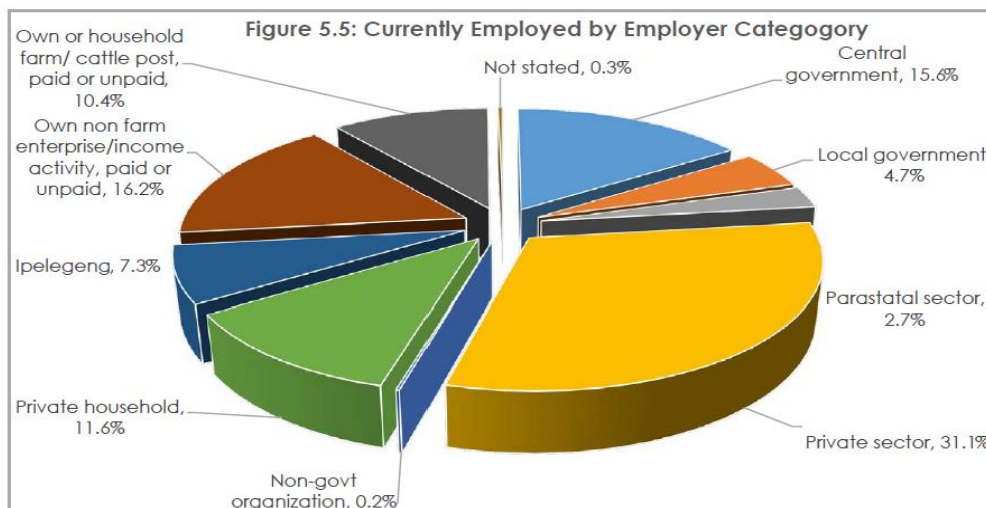
Yet another union was formed in 1959, the Bechuanaland Protectorate Workers Union (BPWU), which was inspired by Chief Tseki Khama, who was concerned about the welfare of his people. In all there were about 20 trade unions with a spread across different industries. As a measure to rein the proliferation of trade unions, the Trade Dispute Act required that "no trade union would be registered if there was already a registered union with similar objectives" (Makgala et al., 2007: 35). As a result, trade unions began to merge and coalesced around the

⁷ For a detailed account on migrant labour and gold mining (Cf. Lewis, R, An outline history of Monarch Gold Mine Francistown [Botswana Notes & Records](#), Volume 33, Number 1, 1 January 2003, pp. 41-46(6). Yudelman, D and Jeeves, A, New Labour Frontiers for Old: Black Migrants to the South African Gold Mines, 1920-85. *Journal of Southern African Studies*, Vol. 13, No. 1 (Taylor & Francis, 1986), pp. 101-124. Francis Wilson, *Labour in the South African Gold Mines* (Cambridge, 1972), 141-2. Leys, R. *South African Gold Mining in 1974: The Gold of Migrant Labour : African Affairs*, Vol. 74, No. 295 (Apr., 1975), pp. 196-208 Oxford University Press-Royal African Society

⁸ See Friedrich Ebert Foundation (2008) *Trade Unions in Botswana Country Report*. Though written some years back this report provides useful insights on Botswana Trade unions and the myriad of challenges they face even today

Botswana Federation of Trade Unions (BFTU)⁹ in 1977. In its formative years the BFTU received support and training from the African American Labor Centre (Cooper 1985; Mogalakwe, 1995). According to Werbner (2014), a new parallel federation to BFTU, emerged in 2010 under the auspices of the public sector unions, the Botswana Federation of Public Private and Parastatal Union (BOFEPUSU). This is today the biggest federation with affiliate members from both the public service and private sector. Currently its membership density is estimated to be 100 000¹⁰ members. More recently BEFEPUSU has broadened its membership base. Some of its affiliate members include teachers, lecturers, administrators, land board workers, nurses, manual workers, truck drivers, media workers, hotels employees, and commercial and communication workers union. A combined trade union membership trade union of BFTU and BOFEPUSU density is estimated to be around 170 000. According to Statistics Botswana (2018:4) Multi-Topic Household Survey Report (2015-16), Botswana’s population is 2, 073 675, just slightly above 2 million. Currently 689, 528 people are employed in Botswana, of these 280, 482 are unemployed (17.7%). As shown in figure 1 the private sector accounts for a larger share with 31.1%, just slightly above the public sector with 30.3% (a composite figure of government includes, central government-107,811, local government-32,431, parastatal-18, 894 & Ipelegeng-Poverty relief workers-50,09) (Statistics Botswana, 36).

Figure 1. Botswana Employment Structure: Sectoral Distribution



Source Statistics Botswana

BOTSWANA POLITICAL GOVERNANCE

Botswana attained independence from imperial Britain in 1965. When the British ceded power to a new national government, led by the BDP, there was barely any development, nor basic infrastructure, such as roads, schools and health care institutions. Hence the country was categorised as one of the poorest countries in the world. (<https://www.worldbank.org/en/country/botswana/overview>)¹¹ According to Crowder

⁹ Current membership is estimated at 70 000 members, interview with Mr Butale Secretary General

¹⁰ Membership confirmed in an interview with executive committee members, Mr Molaodi, labour secretary, Mr Kesebonye, 2nd Vice President and BOFEPUSU office Secretary.

¹¹ The British did not see any need to develop Botswana as basic infrastructure such as roads, schools, health. Their main interest was in the rail line which was planned to traverse from Cape to Cairo as part of Cecil Rhodes ambitious imperial accumulation plan to exploit African resources

(1985:1) at independence Botswana Gross Domestic Product (GDP) was \$30 and its per-capita income \$60. This picture changed dramatically within two decades as per capita rose to \$2000 in 1990 as a consequence of mining (Parsons, 1984). These achievements have been widely credited to Botswana's political stability, prudent economic management and good leadership (Sarraf and Jiwanji 2001; Acemoglu et al., 2002).

Post-colonialism the country has had five successive general elections, all won by the conservative BDP. The most recent elections were held in October 2019. For the first time, these elections were hotly contested and controversial. The opposition party Umbrella for Democratic Change (UDC) a coalition of three parties filed numerous petitions complaining that the ruling party has committed electoral fraud. However, the Appeals Court dismissed the petitions appeals, on the basis that they have no jurisdictions adjudicate (Daily News, January 2020¹², accessed on 07.03.2020) parliamentary petitions.

The Appeals Court ruling surprised many people who expected it to be the last resort for justice. This exposed gaping deficit on Botswana's democracy, contrary to the general perception of Botswana's celebrated history of upholding liberal democratic values. A comparative case in Malawi, which also held elections recently, shows a progressive judiciary and democratic justice as the Constitutional Court arbitrated the election petitions brought by the opposition, and even called for fresh re-run because the Judges found that the election process was fraught with mistakes (The Conversation, February 10, 2020, accessed on 07.03.2020).¹³ Botswana's conservative judicial system extends to labour law and reflects why government was reluctant to ratify the ILO conventions and late enactment of collective bargaining council.

BOTSWANA ECONOMIC STRUCTURE AND MINERAL DEPENDENCE

Botswana's economic structure is deeply grounded on and dependent on the mining industry, most prominently diamond mining (Jefferies, 1998; Leith 2004; Good; 2008). As stated earlier, exploration in Botswana has been going on since the 1800s. However, a breakthrough was made in 1959 when the Bamagwato Chief, Tshekedi Khama (Cooper, 1975)¹⁴ the uncle of the first president, Seretse Khama, negotiated and signed mineral rights concession with the Chairman of Rhodesian Selection Trust (RST), Ronald Prain,¹⁵ to start mining copper in Selebi Phikwe. It was therefore not surprising that one of the first post-colonial worker's strikes occurred in this town involving the state, mine workers and the multinationals giants such American Metal Climax, Anglo American Corporation (Cooper 1975: 143; International Labour Research and Information Group¹⁶, Undated).

Shortly thereafter, diamonds were discovered in Orapa, around the same concession area that was signed by Chief Tshekedi. Though some researchers hypothesise that Botswana's diamond wealth was a mere fortune windfall (Colclough and McCarthy, 1980). However, the trajectory of mining exploration demonstrates that this was a planned, painstaking and rigorous effort in search of minerals to develop the country. Faced with a mammoth task of developing

¹² Botswana: Moshe Galeragwe UDC Loses Appeals, Botswana Daily News. <https://allafrica.com/stories/202001300238.html>

¹³ The Conversation: Will bold landmark election ruling improve Malawian democracy? <http://theconversation.com/will-bold-landmark-election-ruling-improve-malawian-democracy-131494>

¹⁴ Dumbered the Black Prince (See Crowder,) Tshekedi fought hard with the British Colonial Administration, against granting concessions, first he opposed mining in preference for agricultural development but later changed his mind and negotiated a better deal, which gave the Bamangwato community a 15% share of the profits

¹⁵ According to Botswana Chamber of Mines this agreement was later ratified by the British House of Lords to pave way for mining. <https://www.bcm.org.bw/our-members/bcl/>

¹⁶ See, The International Labour Research and Information Group (ILRIG) handbook, Workers of the World Series Number 1, Botswana: The Story of Mine Workers in an Independent African Country.

the country from scratch, the new government focused on mineral exploration as a development path proposed by the first president:

“if development and economic growth are to benefit the majority of our people and if we are to maintain the social stability which is essential if economic growth is to continue, we must see that the new resources generated by mining development are mainly re-invested and not consumed” (Khama, 1972:12)

The discovery of minerals, mainly diamonds, shortly after independence propelled Botswana’s prosperity. This economic progress was so phenomenal that in the past decade “Botswana had the highest rate of per capita growth than any country in the world in the last 35 years” (Acemoglu et al., 2002). Today, the country is ranked amongst the upper middle-income nations (World Bank, 2015). Unlike other African countries, which are endowed with mineral wealth but wasted them in self-enrichment of leaders, Botswana was exceptional in channelling the diamonds wealth to social development. Schools, hospitals and paved roads were constructed and free education provided. This led some researchers (Leith 200; Limi, 2007; Sekwati, 2009; Silve, 2012; Meijia, and Castel. 2012) to pronounce that Botswana had escaped the “resource curse.¹⁷” This refers to a common phenomenon in some African countries endowed with mineral wealth which was squandered by elites and ravaged by wars while majority of people experienced extreme poverty (See for example, Bond, 2006).

There is no doubt that Botswana has fared well in diverting part of the mineral funds to development. For this reason, Taylor (2005) has maintained that Botswana is a development state and hence it might be problematic to append it with a neoliberalism narrative. However, Taylor’s defence is problematic. The development story cannot be sustained given the context of Botswana’s asymmetrical development and current realities of deepening socio-economic challenges (See for example, Hope, 1996; Hillbom, 2012). Botswana today is one of the most unequal societies in the world as illustrated by the Gini-coefficient of 0.52 (World Bank in Botswana, <https://www.worldbank.org/en/country/botswana/overview>, accessed 22. 03.2020).

Part of Botswana’s deep inequality, mass unemployment and poverty can be ascribed to its neoliberal free market macro-economics, which has pushed back the state from its development agenda through privatisation of public enterprises, retrenchment of government workers, outsourcing and casualization of government work (Marobela, 2008). Even though Botswana might not be experiencing a classical “resource curse” there are signs that point to some of the attributes associated with “resource curse” (see for example, Colclough and McCarthy 1980). Two decades back Jefferies and Kelly (1999) observed that the poverty levels in Botswana were disturbingly high and their concern was evident from the title of their paper “Poverty amidst Plenty.”

In recent years Botswana’s economy has experienced serious challenges. The 2008 economic crisis had a big impact on the diamond-dependent economy. Since then, the economy has not fully recovered, as it runs on a deficit budget. The Minister of Finance Thapelo Matsheka, recently informed parliament that, “the preliminary balance of payments for 2019 indicates a deficit of P10 billion, following a lower deficit of P4.2 billion in 2018” (Republic of Botswana, 2020). As the coronavirus virus replicates globally with far reaching grave consequences, including triggering a global economic crisis. African countries with poor health systems and raw resource dependent economies are likely to be most affected. Botswana is facing a gloomy economic scenario as its main revenue sources diamonds exports and tourism are affected by the COVID-19 effect. Speaking recently at the Debswana¹⁸ press briefing

¹⁷ In his book: Resource Curse (2018), Professor Murshed, states: “The resource curse,” or “paradox of plenty,” refers to the long-established notion central in development economics that countries rich in natural resources, particularly minerals and fuels, perform less well economically than countries with fewer natural resources. In other words, resources are an economic curse rather than a blessing.” <https://cup.columbia.edu/book/the-resource-curse/9781911116493>

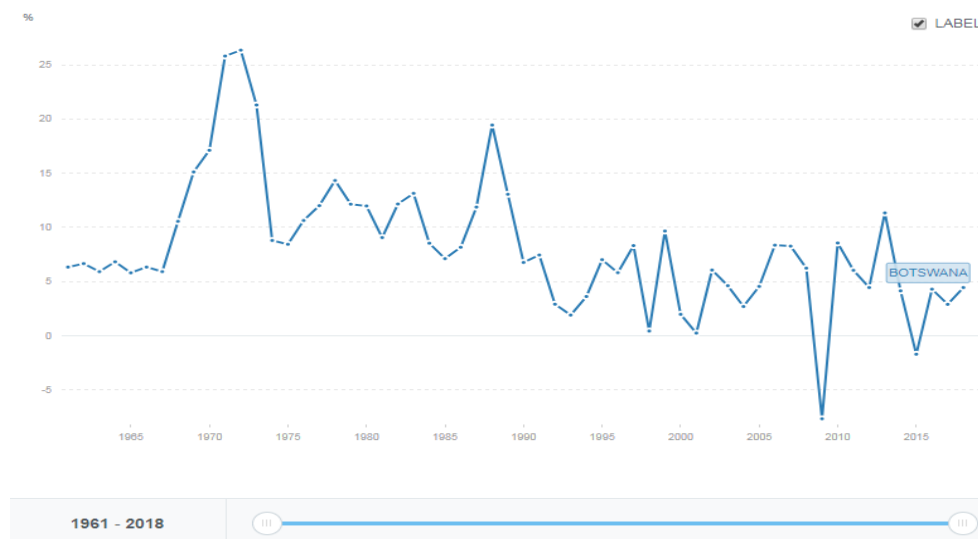
¹⁸ Debswana is a diamond mining private company, jointly owned by De Beers and Botswana government, with a shareholding of 50:50- for more information. Botswana government also owns 15 percent stake in De Beers see <http://www.debswana.com/>

ceremony, the Acting Managing Director of De Beers, Ms Lynette Armstrong, confessed that their company faces vulnerability due to current global volatility posed by the coronavirus outbreak (Sennamose, 2020; Botswana Daily News, March 12).

In their economic outlook for Botswana the International Monetary Fund points out that the economy faces headwinds and slow growth,¹⁹ and the World Bank paints a pessimistic scenario of the economy: “Unemployment has remained stubbornly high at 17.7% and, with a Gini coefficient of 0.52, Botswana’s income inequality is one of the highest in the world” (World Bank, 2019). Moreover, the African Development Bank suggests:

Botswana’s economy faces significant external headwinds from weaker global diamond demand. Other risks arise from ongoing weak growth prospects of South Africa and lower SACU revenues. This reflects the country’s heavy dependence on exports of diamonds. Despite rapid economic progress and its benefits to the country, the economic base remains narrow. Spatial poverty is still high in rural areas, remote communities, female-headed households, and among those with low education. Inequality remains high despite recent improvements. (African Development Bank) <https://www.afdb.org/en/countries/southern-africa/botswana/botswana-economic-outlook> accessed 20 March 2020)

Figure 2: Botswana’s Economic Performance 1961-2018



Source: <https://data.worldbank.org/indicator/SL.UEM.TOTL.ZS?locations=BW>

Figure 2 shows the trajectory of Botswana’s economic performance from 1961-2018. Most notably performance indicators reflect formative years of independence when the economy grew substantially, then the early boom of the 1970s when diamonds were discovered, followed by the spectacular downturn caused by the 2008 global economic crisis, when the diamond mines were closed. Furthermore, statistics reflects the biting effects of cost of living, which resulted in the 2011 public sector strike. As the corona virus hits the global economy and stock markets fall, workers are more exposed and vulnerable as some of their pensions are invested in offshore markets in Europe and US.

¹⁹ See IMF 2019 Article iv to Botswana-Press Release no: 19/436

STATE INDUSTRIAL RELATIONS AND COLLECTIVE BARGAINING

As we have seen throughout the history of Botswana the state plays a major role in industrial relations: as an employer, as a gate keeper of the private sector interest, as a partner for a private a company and as an institution that sets a framework for labour laws and dispute resolution. Aware of the radical working class in nearby South Africa, government was determined to curb the growth of the labour movement in the country, lest it became a fetter, on the liberal political ideology of the free market, which openly and vigorously campaigned for private accumulation by multinationals such as Anglo American and De Beers. One mechanism that has been used by the state to guard the interests of capital is maintaining a draconian employment relationship. This effectively outlawed strikes and more seriously, it denied public sector workers to unionise (Cooper, 1975; Mogalakwe, 1995, Marobela; 2011).

Whenever there is a dispute between employers and workers, the state has tended to defend the interests of capital while systematically suppressing the demands of workers. This often comes under the pretext of safeguarding national interests, declaring virtually all strikes as illegal. The most notable and explosive example has been the 1975 Selebi-Phikwe miners' strike against a joint venture between government and a consortium of multinationals. To quell this anger, paramilitary police were quickly dispatched to tear gas striking miners. Consequently, this reached a bitter end when hundreds of miners were dismissed for leading a strike on wage increment. An eyewitness reported:

“The Police Mobile Unit guarded the whole town for a few days. 180 people were detained. Over 600 workers lost their jobs... the government supported the mine company when they fired the workers. This made workers angry” (ILRIG, Undated: 20).

The worker's resistance prompted the then President of Botswana, Seretse Khama, to react angrily, threatening to shoot the miners. Like the present regime he was concerned more about the damage to capital than workers welfare: “illegal and unnecessary strikes have continued to such an extent that Botswana will lose its reputation as a stable and safe country in which to invest money. A strike at Selebi Phikwe, Orapa, Morupule or elsewhere, therefore, does not only harm the companies, who own the undertaking, but Botswana as a whole.” (Cooper,1975: 247).

This could be interpreted to confirm what Littler and Salaman (1984:44) say is the rationalisation of foreign investment to justify the control of labour. Peaceful labour relations are necessary for capitalist accumulation. Any deviation from the norm, in this case submissiveness of workers, is viewed as dangerous. For the rulers such action is seen as directed against the national interests. The conflation of these two issues is clearly a deliberate appeal to harmonise antagonistic interests of capital and labour.

After the Selebi-Phikwe strike government was faced with a spate of strikes, this time coming from its own workers. In December 2002, thousands of government workers stopped working demanding more salaries and better working conditions. An important part of these demands was that government should reform the labour law and start implementing the ILO conventions (87 and 98) on the right for freedom to associate and organise, so that public sector workers can form unions. Interestingly, the main trigger for the teachers and council workers strikes was the failure of previous public sector reforms: job evaluation and parallel progression.

In attempting to reflect generally on the state of trade unionism in Botswana, it is essential to situate the discussion within the broader political economy where the capitalist state power and tussle with labour is embedded. Trade union struggles are not merely relations of economics, but are also fundamentally rooted in the political system. Thus legal instruments,

such as labour laws are enacted by the state not only to assure harmonious relations but also to control workers (Takirambudde and Molokomme 1994). Botswana the principal legal documents which mediate and regulate industrial relations are:

1. Employment Act Chapter 47:01
2. Trade Union and Employers Organisations: Chapter 48:01
3. Trade Dispute Act Chapter 48:02
4. Public Service Act N0:30
5. Industrial Court

The state conceptualizes and enacts these acts through parliament and oversees implementation through Commissioner of Labour and the Registrar of Trade Unions. All these apply to all categories of employment, except the Public Service Act which is specific to the public sector employees. However, public service workers are governed by all other acts as they set terms and conditions of employment, dispute mediation and resolution, registration of trade unions and regulation of strikes. The Industrial Court is a legal structure, which relies on these acts to adjudicate grievances brought by employees and employers. According to the Trade Dispute Act, Clause 16, the President, has the sole discretion of appointing judges of the Industrial Court, as he does with other judges of the High Court and Court of Appeal. This raises the question of his ability to independently judge without fear or favour. For example, during the 2004 Debswana Miners' strike and the 2011 public sector strike, many workers felt that the Court's dismissal of worker's cases was biased in favour of government as a partner of De Beers and as an interested employer.

The Trade Union and Employers Organisation Act, clause 10, 30, 45, gives the Registrar of Trade Unions, who is a government employee, overwhelming powers to decide whether to register a trade union or not. Some of the restrictions include refusal to register a trade union "if it is used or has been used for illegal purposes. "However such illegal purposes are not spelled out. The Act also allows a representative of the minister to attend union meetings.

The minister is also empowered to inspect trade union books of accounts and a list of their members. Such excessive powers were indeed exercised by government after the 2011 strike when the Registrar of trade Unions decided to deregister BOFEPUSU. However the union federation successfully challenged this through the courts (See: The ruling delivered by Justice Tshosa on the *Botswana Land boards and Local Authorities Workers' Union and Others vs. Director, Public Service Management 2010(3) BLR 351*).

There is no explicit act which outlines a collective bargaining process for the private sector. Presently they rely on in-house negotiation with the employer. If parties are satisfied, they sign a collective labour agreement, which is then lodged with the Commissioner of Labour and binding to agreed parties (Trade Dispute Act, Clause 37-38), a tripartite alliance between government, employer and trade union. However, according to Mr Butale, Secretary General of BFTU, the law does allow for sectoral bargaining councils. As for the public service, the Public Service Act of 2008, which came to operation in 2010, provides a space for collective bargaining. Membership of the bargaining council is determined by membership strength. In most meetings of the bargaining council, where salary negotiations were on the agenda, government insisted that audited membership to meet a one thirds threshold. Subsequently, the government, through the Directorate of Public Service Management decided, to deregister the unions from the public service bargaining Council citing failure to comply with Section 46 of the Public Service Act: "A trade union which is representative of one third of the employees of the employer engaged in the same trade as members of the same union, may apply to the director for recognition for purposes of collective bargaining". The trade unions took the matter to court and argued convincingly that they meet the required numbers and also pointed out that they existed and were registered prior to the establishment of the bargaining council.

The behaviour and attitude of government towards unions illustrates how managerial

structures, such as the collective labour bargaining council can be used as mechanisms, which entrench the hegemony power of the state over the working class as Klare (1981: 452) explains:

“Collective bargaining law articulates an ideology that aims to legitimate and justify unnecessary and destructive hierarchy in the workplace. The second theme is that collective bargaining law has evolved an institutional architecture, a set of managerial and legal arrangements that reinforces this hierarchy and domination.It seeks to place unions in the uncomfortable position of serving as fiduciaries on an imagined societal interest in industrial peace and serving specific managerial and disciplinary functions”

These seem to apply to Botswana's situation and Southern Africa generally, as governments are not always prepared to allow trade unions to operate freely and independently: “labour law in most states reflected their authoritarian orientation, allowing autonomous associations and their activities only if it was functional to its objectives. Unions were therefore, made to function as administrative and disciplinary arms of the state” (Takirambudde, 1995:41).

Ideally, collective bargaining should form part of industrial democracy where there is participation and shared power between employees and employers and acts therefore as a mechanism for ensuring fairness and guarding against workplace injustice. Even though in principle the right to strike is assured, the political governance has ensured that the way labour legislation is crafted and couched has long winded procedures, as outlined in the Trade Dispute Act:

“Every party to a dispute of interest has the right to strike or lockout if:

- (a) the dispute has been referred to the Commissioner in accordance with section 7, and, subject to subsection (2) and (3), the dispute still remains unresolved after 30 days;
- (b) After 30 days has expired, 48 hours’ notice of the commencement of the strike or lockout has been given in the prescribed form to the commissioner and the other parties to the dispute and
- (c) The strike or lockout conforms to-
 - (i) The provisions of this part, and
 - (ii) Any agreed rules regulating the conduct of a strike or lock-out, or
 - (iii) Any rules determined by the mediator in terms of section 40.1

(Republic of Botswana, Trade Disputes, Chapter 48:022)

Such stringent rules make it nearly impossible for workers to exercise patience and follow the prescribed regulations. More often, workers didn’t follow the long road to an official strike and that meant that the strikes were declared illegal. For government, these long procedures serve the political goals as they help to deter strikes which can hurt a fragile mineral economic structure. For instance, Cooper (1975) outlined that: “theoretically the workers have a right to strike but in practice this is not the case, since the law prescribes them to go through cumbersome requirements for a lawful strike.” For example, the trade dispute act states:

Where it appears to the minister that there is actual or declared industrial action in furtherance of a trade dispute, whether existing or apprehended, and he is satisfied that all practicable means for reaching a settlement of the trade dispute, by way of the procedures prescribed by a collective labour agreement or by this Act, have not been exhausted, he may by order, declare the industrial action to be unlawful (Trade Disputes, 48:97, Section 34).

TRADE UNIONS SEEK COLLECTIVE BARGAINING

Trade unions sort collective bargaining because they genuinely believed that it was a step forward in upholding their rights to bargain within a structure that is open, transparent, and democratic. Previously the state announced salary increments without consulting or negotiating with the trade union. Now with the Collective Bargaining Council functional government was bound to negotiate with trade unions.

Many workers' organizations that previously had been only associations have become formal trade unions. The collective bargaining process and Public Service Act became law in 2008, the same year when former President Ian Khama, was sworn in as president. These were crucial labour reforms, in a sense, a positive gesture to public sector workers. With recognition of formal unions, it was now possible to seek institutionalisation of negotiations in the form of collective bargaining process. According to Article 2 of the Collective Bargaining Convention, 1981 (No. 154), Collective Bargaining refers to:

“Negotiations which take place between an employer, a group of employers or one or more employers organisations, on the one hand, and one or more workers organisations, on the other, for the purpose of determining working conditions and terms of employment; and/or regulating relations between employers and workers.”

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312299

It is essential to assess collective bargaining from the context in which it is placed — the nature and powers of the employing organisations and what the law and policy provides for. Since independence, employees' organisations were in the form of staff associations because the law then did not permit for unionisation and hence the absence of collective bargaining. To this extent, Botswana's industrial relations were premised on a unilateral approach where employers decided on conditions of service without the involvement of workers. The Government dealt with conditions of service through Salary Review Commissions and later the outcome announced in parliament through the Minister of Finance on what has been offered. Workers had no participation when their conditions of service were altered inclusive of processes and procedures of disciplinary enquiry and grievance handling. Further, there were no structures of alternative dispute resolution mechanism to deal with matters arising from Collective Bargaining or disputes on negotiable items. All these made workers and employees organisations very weak, shifting power largely to the employer.

Realising that they were vulnerable, employee organisations vigorously campaigned for ratification of ILO Conventions by the Government. Subsequently, indeed these were domesticated into Botswana's labour laws, which triggered amendments of the Trade Dispute Act, the Trade Unions and Employers Organisations Act, and the Employment Act. This change ushered in a period of unionisation as workers organisations transformed from Staff Associations into Trade Unions, now legally empowered and capable of bargaining with the employer. In 1997 government ratified various ILO Conventions, notably the Freedom of Association and Provision of the Right to Organize Convention (C87), and also Right to Organize and the right to Collective Bargaining Convention (C98). Furthermore, after ratification, Trade Unions mounted a campaign for domestication of such conventions into Botswana's labour laws and achieved implementation.

The state of collective bargaining in this era was however, marked by lack of institutional framework to support collective bargaining though the law providing for it. Negotiations took place under employer's roof in situations where the employer provided both, chairperson and secretarial services accompanying the process, facilitating control of bargaining by the employer. It was an arrangement under the control of the employer. In the absence of structures, negotiations were premised on the collective labour agreements signed

between the employer and recognised Trade Unions, until the establishment of the collective bargaining council.

THE BIRTH OF COLLECTIVE BARGAINING COUNCIL

Full Collective Bargaining in the Public Sector took place following the enactment of Public Service Act 30, 2008, which got implemented in 2010. The Act states in section 50 that: “A Bargaining Council for the Public Service, to be known as the Public Service Bargaining Council shall be established and registered in terms of this part”. The function of the Public Service Bargaining Council (P.S.B.C) is clearly outlined in the Public Service Act: Section 53(i) as:

- a) negotiate, conclude and enforce collective bargaining agreements between the employer and recognised Public Service Trade Unions
- b) prevent and resolve labour disputes
- c) facilitate cooperation between public officers and the employer regarding matters affecting public service in order to increase the efficiency of the service and well-being of Public Officers
- d) facilitate relations between the Government as the employer and Trade Unions based on mutual trust and respect (See, Republic of Botswana, 2008).

In terms of section 54 of the above Act, there were to be sectoral Bargaining Councils. The mandate of the Sectoral Bargaining Councils was of jurisdiction on matters that are specific to that’s sector, for example teaching or Health services. For purposes of negotiating in good faith, section 58 of the Act compels the employer to disclose information to recognised Trade Unions for purpose of bargaining.

In the private sector Collective Bargaining took place in the mining industry, while for other industries it was only minimally implemented. Private Sector Trade Unions then had to enter into recognition agreements with the employer for purpose of enjoyment of Trade Union rights in the workplace. Recognition of Trade Unions is done through Section 32 or 34 of Trade Dispute Act and Section 50 of Trade Unions and Employers Organisations Act. Further the Trade Unions and Employers Organization Act confers certain organisational rights for purpose of Bargaining in the workplace.

THE PUBLIC SECTOR STRIKE – TEST FOR COLLECTIVE BARGAINING

The state of industrial relations changed drastically in 2011 during the historic and massive public-sector strike. The industrial action commenced on 8 April 2011, with close to 100 000 public officers participating over a dispute about salary increments. Workers in the public service wanted an increment of 16% and the employer offered 0%. Negotiations hit a dead lock and ultimately workers declared a dispute, which was not resolved at mediation level. Consequently, workers went on strike. Employees felt the Government was unreasonable to offer 0% at time when the economy was doing well. The strike took about two months, and this marked a period of strained relations between Government and Public Sector Unions which still persists today. In response to the workers strike, Government unleashed a vicious campaign to disempower workers and Trade Unions. One such punitive action was to resort to legislation to declare the strike illegal. The state went to the Industrial Court to nullify the strike with respect to Essential Service Workers. The Public Service Act 2008: (49) 6, defines essential services as, “a service the interruption of which endangers, or is likely to endanger, the life, personal safety or health of the whole or part of the population” At the time of the

strike, the following categories were specified as essential.

Air Traffic Control Services, Botswana Vaccine Laboratory, Fire Services, Bank of Botswana, Health Services, Operational and Maintenance Services of Railways, Sewage Services, Water Services, Transport and Communications workers.

While workers were still breathing a sigh of relief, the tables turned around on the 6th May, 2011, when the Industrial Court ruled that the strike was illegal and interdicted essential service workers from striking, consequently on 16 May 2011, government moved swiftly to dismiss 2 934 essential service workers (Case NO: 2013 Attorney General v Botswana Land Boards and Local Authorities Workers Union and Others, 1BLR 432 (CA)).

This ruling caused fear amongst workers as it served to break their solidarity and alienate essential service workers from the rest. The Union successfully appealed to the High Court, whereupon Justice Dingake set aside the dismissal of essential service workers on account that the government failed to apply the principle of “audi alteram partem” (the right to be heard) before dismissing workers strike (Attorney General v Botswana Land Boards and Local Authorities Workers Union and Others (2013) Case No: MAHLB-000631-11).

<http://www.world-psi.org/sites/default/files/attachment/news/judgment.pdf>). However, this was short-lived victory as the Appeals Court reversed this freedom:

“The Trade Disputes Act promotes collective bargaining as the primary mechanism for employers and employees to resolve matters of mutual interest themselves without outside interference. An exception to this is in respect of essential services. In these services compulsory adjudication by the Industrial Court or arbitration resolves disputes after negotiation and mediation has failed” And concluded: “in our view all the employees in an essential service play an important role individually towards ensuring the effectiveness of the team delivering the essential service in question to ensure a hygienic, safe and healthy environment conducive to the effective delivery of service” (<https://www.world-psi.org/en/botswana-court-halts-return-fired-workers>).

The state took advantage of the Appeals Court judgment and swiftly motivated the amendment of labour laws to curtail workers and Trade Union rights. Essential Service category was later expanded to include: Teaching and Training Services, Shift Workers, Field Workers, Pumpers, Gatekeepers, and Camp keepers (Public Service Act, 2008, Amendment Public Service Regulations, 2011). The trade unions strongly opposed this as they argued that the amendments were in violation of ILO Conventions 87 and 98. Initially, the Government refused the establishment of the Bargaining Council, preferring to continue altering the conditions of service at the exclusion of Trade Unions and workers. The Unions declared a dispute and threatened court action. Subsequently, demonstrations took place against the refusal to establish the Bargaining Council despite the laws providing for that. The matter was heard at mediation and an agreement was reached for establishment of the Council which was ultimately registered by the Commissioner of Labour on the 11 August 2011, through Government notice no. 372 of 2011. The Council then adopted procedures for its meetings. That included how matters will be submitted at the Bargaining Council for purpose of Collective Bargaining the desired conduct in the Council. The processes and procedures of the Council were established with the assistance of ILO Pretoria office. The ILO also assisted in training of representatives at the Council. Further, representatives of the Council from both Government and Trade Unions went to benchmark from the South African Bargaining Council. Later the Council planned to benchmark in Australia, but Government representatives did not travel as they were refused by their principals. Perhaps not wanting them to get much exposure to Collective Bargaining as Government preferred unilateral action.

The first negotiations at the Council took place within 2013/14 financial year, where the Trade Unions had submitted a proposal on salary increment and several conditions of service. The parties then engaged in adoption of negotiation rules, which highlighted the need

for negotiation in good faith, the disclosure of information, the facilitation of negotiation and how disputes are dealt with should they arise. Both submissions of the parties assessed the economy at domestic, regional and global level and ultimately indicated their percentage proposal and pool of conditions of service. The negotiations at the Council covered the whole public service, i.e., unionised, non-unionised and managerial levels. While negotiations were ongoing, the Government made a unilateral salary increment by 4% as per announcement by President Ian Khama in a public address and thereby bypassing and disrespecting the Bargaining Council. The Trade Unions took the matter to Court in a case of *BLLAHWU and others v DPSM*. The Court ruled that Government negotiated in bad faith by awarding salary increment while negotiations were still on: “Government is not permitted to grant unilateral wage increases to public servants during the period when wage negotiations are in progress as this constitutes negotiating in bad faith” (Court of Appeal Case N0. CACGB-058-17 Consolidated with Case N0. CACGB-057-17). This was a divisive ruling with dual benefit. While on the one hand, the Appeals Court affirmed the trade unions request that government should adhere to fair labour relations practice, on the other hand however, the Court of Appeal agreed with Government’s decision to award a unilateral salary pay to those employees who are not members of the Bargaining Council.

THE DEATH OF BARGAINING COUNCIL

Prior to the negotiations the trade union federation-BOFEPUSU had written to the Minister of Presidential Affairs, Governance and Public Administration, urging him to withdraw the Public Service Bill, as there has not been consultation. Trade Unions had misgivings about the Bill because contrary to ILO stipulations, such a Bill seeks to interfere with the independence of Trade Unions by making the Bargaining Council effectively a Government Department. This was reflected by the fact that the Secretariat will be based at the Directorate of Public Service Management (DPSM) with the Minister appointing the Chairperson and Vice Chairpersons. The Bill further gives the Minister the power to bypass the Bargaining Council and to make unilateral decisions on salary and conditions of service. All this rendered the Bargaining Council insignificant, as it serves as a mere administrative structure of government. In the end, BOFEPUSU left the Bargaining Council, as it became clear that government’s intention was to use it as an instrument to purge the unions. The government also had an agenda of using the Bargaining Council to split the unions. This was revealed when government wanted to readmit a sympathetic union, which did not meet the set threshold criteria of membership to the Bargaining Council.

The greatest success in the whole process of Bargaining was the ratification and ultimate domestication of ILO Conventions into Botswana Labour Laws. A partial success was the establishment of the Bargaining Council itself and its successful conclusion of 2014/15 salary and conditions of service negotiations. But looking at the reversals of some of the positives gained by the workers over time, it seems government is revenging for the 2011 public sector strike. Therefore, collective bargaining seemed meaningless. It died before it can breathe. The current state of labour relations remains fractured and paralysed. Ironically, this happens under President Masisi, who soon after acceding to leadership of the country, publicly promised the trade unions that his government will ensure that the Bargaining Council is resuscitated and functional as the President of Botswana’s biggest labour federation explains:

“Tshukudu said failure by Masisi to deliver promises he made to the labour movement such as the resuscitation of Public Service Bargaining Council (PSBC) shows lack of political will from him. So, BOFEPUSU has vowed to punish Masisi together with his party, particularly for exposing workers to the immense risks under the State of Public

Emergency (SoPE), during the Covid-19 pandemic. "We firmly oppose the current state of emergency and even asked the President and BDP to justify to the nation why it is necessary and they failed. We are wondering if Masisi will during this five years rule through the SoPE. We will meet at the 2024 elections," he warned, classifying Masisi and Khama as birds of the same feather when it comes to frustrating trade unions" (<https://thepatriot.co.bw/masisi-faces-unions-revolt/>).

Three years in his presidency the bargaining council remains lifeless and public service workers' salaries are negotiated outside a formally and legally constituted structure. This has dire consequences for the trade unions as they cannot hold government responsible and accountable to an informal negotiating setting. When high ranking government officials raise expectations and fail to fulfil them, their credibility for trust and ability to negotiate in good faith is compromised, which is not good for the country's industrial relations.

CONCLUSION

This paper explored Botswana industrial relations in the context of the public sector. It highlighted the efforts by trade unions to institutionalise collective bargaining in line with ILO standards. Critical realism paradigm was used alongside dialectical methodology to illustrate the role played by underlying structures, power relations, and mechanisms in the employment relationship. A historical evolution of Botswana Labour movement was examined during the colonial and post-colonial time period. Botswana's political and economic structure was discussed to appreciate their impact on the relation of state and trade unions in Collective Bargaining.

Initially the government and trade unions showed interest and commitment to work together institutionalizing bargaining. However, it emerged that Collective Bargaining did not contribute to stability, but exposed numerous fractures. Salary negotiations soon failed to reach a compromise, and Government quickly returned to unilateral actions ignoring the Bargaining Council. Currently, collective bargaining is minimally present in private sector and non-existent in the public sector following deregistration of the Bargaining Council by Government. The lack of existence of Collective Bargaining in Botswana contravenes ILO standards, especially convention 98 and further it renders as worthless Freedom of Association and the Right to Organise. This means Botswana has fallen back from its original position of upholding trade union rights and complying with ILO conventions. However, worker's organizations have a share fair of their blame. Power-centred leadership and poor organisational skills and strategies has given Government the opportunity to divide the labour movement resulting in weakening of trade unions. Ideally collective bargaining is a useful conciliatory forum for addressing workplace disputes. In its current form and structure, it cannot fulfil its noble mandate because there is no bargaining relationship and ground rules of negotiating are not respected by government. It remains a difficult process to realise if the underling structures and powers are not prepared to negotiate in good faith and ready to accommodate trade unions not just as a key stakeholder in the industrial relations but an equal partner in the bargaining council.

Considering the foregoing governance, structural and administrative issues, the labour legislative instruments such as the Trade Dispute Act and the Public Service Act needs to be reviewed with a view to conform to best ILO standards and practice. For the Collective Bargaining Council to function effectively and fulfil its mandate, government needs to create environment mutuality and commit to the spirit and letter of the Public Service Act and ILO Conventions. That means guaranteeing public sector workers the right to negotiate and bargain agreements without undermining the status of trade unions by using coercion and power of the

employer party. To avoid either party moving out of the collective or deliberately frustrating the negotiations, independent institutional structures in the form of Labour Relations Board and Industrial Appeals Court be created to support, mediate and resolve the impasse or deadlock of the Collective Bargaining Council and the cases from the Industrial Court respectively.

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