

7TH REGULATING FOR DECENT WORK CONFERENCE, 6TH – 9TH JULY 2021
2021 Conference Theme: “*Covid-19 and the World of Work: Towards a Human-centred recovery*”
Virtual, Geneva, Switzerland.

<https://www.ilo.org/global/research/events-courses/rdw/7/lang--en/index.htm>

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Theme: 8th July 2021 – Governance, Regulation and Collective Bargaining

Title: Hope or Despair? The Resilience and Efficacy of Botswana’s Dispute Resolution System in Times of Crisis, With Reference to Covid-19 Emergency Regulations

Abstract (General category)

Since March 2020, Botswana implemented lockdowns, curfews and emergency Covid-19 regulations, to control the spread of the corona virus on its small population of 2 million, by curtailing individual and social contact. The regulations were in response to rising statistics of covid-19 infections and fatality rates. The main set of regulation, the Emergency Powers (Covid-19) Regulations, passed under the Emergency Powers Act, conferred sweeping powers on the President to make specific rules on any aspect of human activity deemed a threat. The first set of rules encompassed regulations concerning the world of work, more specifically, the ban on strikes and retrenchments and the quarantining of truck drivers. Notwithstanding the clampdown, a pattern of rising workplace disputes and wildcat strikes emerged. The paper uses statistics of dispute resolution cases reported for Mediation at the Block 8 Regional labour office in September – December 2020. The data is presented by sector, nature of workplace conflict and their outcomes. The objective of the paper is to interpret the resilience and efficacy of Botswana’s alternative dispute resolution (ADR) system, in times of crisis. The paper looks at the impact of these regulations on workers, trade unions and employers and how each interest group responds and adjusts as the situation evolves, hopefully, towards recovery. Included in the analysis is the effectiveness of the collective bargaining and national social dialogue structure. The background to the analysis is a well-known context of a highly open, mineral-dependent and state-dominated economy. Based on the statistical analysis, the paper asks three critical questions: How effective has been social dialogue? Are Emergency regulations compliant with Decent Work pillars? Is the nature of the dispute system appropriate in a time of crisis and does it evoke hope or despair? A comparison is made about Botswana’s handling of the current crisis and the 2009 Global Economic and Financial crisis, in the world of work.

Keywords: *regulations, strikes, retrenchments, dispute resolution*

1. Introduction – Botswana’s Covid-19 work regulations

In March-April 2020, Botswana, alongside neighbouring states, implemented lockdowns, curfews and emergency Covid-19 regulations, to control the spread of the corona virus, by curtailing individual and social contact. The various regulations were a policy response to rising statistics of covid-19 infections and fatality rates. The main regulation, the Emergency Powers (Covid-19) Regulations, passed under the Emergency Powers Act, conferred extensive powers on the State President to make specific rules on any aspect of human activity deemed a threat.

The promulgation of the regulations was marred in political and administrative controversy, for several reasons. Firstly, a Public Health Act (PHA) was already in place – which empowered the Director of Health Services (DHS) with the same authority – to declare and manage a state of public emergency. A DHS is the WHO-recognised-and-linked country authority and the PHA would still be required in force even if Emergency powers were passed. Second, a Presidential decree, on the other hand, would uplift and enhance the authorisation and decision-making throughout the state-dominated economy. Third, a DHS, though perfectly legal in existing legislation, was a middle-management position in the public service, two steps below a Permanent Secretary of Health, which itself was three positions below the overriding Permanent Secretary to the President (PSP) position, which is the highest administrative authority in government, according to the Public Service Act of 2008. Thus, the DHS it was argued, would require *extra* administrative support to enforce such sweeping powers on the rest of the public service, including the army and the police, which were the *de facto* enforcement agencies. Fourth, there was political and administrative controversy around the State President, as opposed to the PSP, for instance, since it introduced a state-political clout to the regulations, which gave the State President a 6-months Emergency powers exculpation (essentially, a no-fault rule by decree, to promulgate laws without reference to parliament), a development vehemently opposed by opposition parliamentarians. Lastly, a precedent was set in the 1990s, with the HIV-AIDS pandemic, which was managed by a Council that reported directly to the State President.

After lengthy debates in a special Parliament session called for the purpose, the Emergency Powers Act was passed on 2nd April 2020 and signed by the State President [Gasennelwe, 2020; Statutory Instrument No. 61 of 2020, Emergency Powers Act (Cap. 22:04)]. Schedule 4 of the Act also revoked 10 other related statutory instruments.

Specific content of rules (Non-Pharmaceutical Interventions- NPIs)

The first set of rules encompassed regulations concerning the world of work, more specifically, the ban on strikes and retrenchments and the quarantining of truck drivers. Several Sections of the Act had specific work-related provisions. For instance, **Section 6** provided for mandatory remote working: *“all businesses and offices may only continue their business operations by allowing their employees to work remotely from home except employees designated as essential service providers and that all persons employed within the public service and parastatals and nay other state-owned entity, unless specifically designated s essential service providers, shall work remotely from home”*.

Other key work-related protocols included the following set of specific rules:

- **Section 2** declared a new set of 42 “essential services” which rendered all employees in such activities, “essential service providers” as well as 10 “essential supplies”.
- **Section 17** declared work arrangements for the whole public service and for the private sector to subordinate itself under the Director of Health Services.
- **Section 19** limited hours of work for restaurants, takeaways and 13 other business services.
- **Section 20** declared closure of all schools (from pre-primary to vocational institutions and universities) during the state of public emergency.
- **Section 25** set the maximum penalty at about USD10,000, which included deliberate exposure or misleading information.

Notwithstanding such seemingly absolute clampdown, a pattern of rising workplace disputes and wildcat strikes emerged. It is these that this article analyse, against the set system of labour market regulation, and specifically, a stable dispute resolution system.

2. Global context – a synoptic, global literature review of covid-19-workplace conflict effect

Schotte, Danquah, Osei and Sen (2021:1) investigated changes in labour market outcomes since the onset of the pandemic, using Ghana as a case study. They found that legal shutdown orders induced a substantial decline in employment during the lockdown period in the affected districts and that workers in lockdown districts faced a 63.4% risk of being out of work in the month of April, compared with a *ceteris paribus* risk of 28.3% faced by workers located in districts not affected by the lockdown. Interpreted, this means that workers located in districts under lockdown had a 35.1% lower chance of continuing to work throughout April than workers in districts not subject to lockdown policies. Despite such strong and significant short-term effect, they also found evidence for a strong recovery in employment. Four months after the lockdown was lifted, they found no

statistically significant difference in employment rates between lockdown and no-lockdown districts. Nonetheless, nationwide, workers' chances of employment remained 11.6% below the February 2020 benchmark, indicating a persistent impact of the pandemic on the labour market.

Castex, Dechter and Lorc, M., (2020:137) showed that NPIs which impose strict social distancing rules, such as school and workplace closures, are more effective in countries with lower population density, lower surface area, lower air pollution, higher GDP per capita, lower employment rate, higher health expenditure, and lower proportion of elderly population. They attribute the differences in effectiveness of NPIs to incentives driven behaviors and public resource constraints. In their view, compliance with closures and lockdowns may demand more resources in places with higher population density, larger geographical area, and higher employment rate, impairing the effectiveness of these policies. They opine that, communities with access to a better health care, measured by health expenditure as % of GDP, may have less incentives to voluntarily reduce social interactions; therefore, social distancing measures in such communities could be more effective.

Maloney and Taskin (2020:13), used Google mobility data to identify the determinants of social distancing during the 2020 COVID-19 outbreak. Their results confirmed the direct impact of the voluntary component on economic activity, showing that the majority of the fall in restaurant reservations in the United States and movie spending in Sweden occurred before the imposition of any non-pharmaceutical interventions. Further, their global data suggested that other measures beyond closing nonessential workplaces have important impacts—school closures, restrictions on internal mobility/shut-down of public transportation.

Last, and more relevant, a Eurofound Report (2021:3), observed that:

“The public health measures adopted... have all but halted activities that are reliant on travel and public gatherings in close proximity and have thus particularly impacted on the arts, entertainment, live performance, tourism, transport and hospitality sectors. However, the economic and labour market impacts have gone far beyond this, as working practices have had to be adapted to comply with travel restrictions, social distancing measures and other health and hygiene protocols...Reductions in working hours and job losses have increased the share of households reporting challenges in making ends meet, leading more households to fall into rent and mortgage arrears and default on consumer loans. Restrictions on social contacts have contributed to a decline in overall well-being, with some small improvements seen during the initial lifting of the most severe restrictions in the summer of 2020 (Eurofound, 2020a).

3. Botswana context

- a. Botswana’s macro-economic context is summarised in a recent (May 2021) IMF Article IV Consultation report, thus:

“The pandemic caused a 7.9% GDP contraction, due to heavy reliance on diamonds and contact-intensive services, while the unemployment rate reached 24.5 percent in the last quarter of 2020. The economy is expected to recover in 2021, with growth projected at 8.3%, driven by improvements in the global demand for diamonds, the easing of restrictions on mobility, and the expansionary fiscal stance. The recovery is expected to be uneven across sectors, depending on improvement in both domestic and external environment, reflecting the expected improvement in the global demand for diamonds, phasing out of the one-off COVID-related spending, and implementation of revenue enhancing and expenditure consolidation measures. Inflationary pressures are expected to rise temporarily in the near term, following the rebound in oil prices, the increase in fuel levy and VAT rate, and the increase in administered prices. The growth outlook is subject to high uncertainty. Downside risks stem mainly from the evolution of the pandemic, availability and deployment of vaccines, and lower-than-expected diamond revenue. On the upside, a faster rollout of vaccines in Botswana and worldwide could raise growth; while steadfast implementation of supply side reforms could promote private sector activity and diversify the sources of growth.”

b. Employment regulation

c. Dispute Resolution systems

4. Presentation of Covid-19 comparative Trade Disputes data

COVID-19 TRADE DISPUTES- SEPTEMBER 2020

Month	Brought forward	Reported	Total cases	Settled	Arbitration	Default Awards	Referred to Police	Referred to the commissioner	Industrial Court	Did not turn up	Pending
September 2020	185	281	466	165	0	23	0	11	111	87	92

Summary of the COVID-19 Disputes

Brought forward (from August 2020): 185
Referred during September 2020 : 336
Settled : 165
Referred to the Industrial Court : 111
Referred to the Commissioner : 11
Referred to Police : 0
Did not turn up : 87
Arbitration : 0
Default Awards (part of c/f) : 23
Pending (and carried forward) :92
Disposed off cases (including 11 sent to the Commissioner for confirmation: 374

BROUGHT FORWARD FROM AUGUST 2020	REPORTED SEPT-DEC 2020	TOTAL	SETTLED	ARBITRATION	DEFAULT AWARD	REFERRED TO POLICE	INDUSTRIAL COURT	DID NOT TURN UP	PENDING
185	359	544	318	0	30	0	116	7	73

SUMMARY

As from September to December 2020, 258 disputes were referred to mediation. These disputes emanate from issues concerning the following;

- Failure to provide work (forced/unpaid leave): 258
- Retrenchments : 101

Total disputes =359

5. Critical analysis

How effective has social dialogue been, in the Covid-19 era?

Are Covid-19 Emergency regulations compliant with Decent Work pillars?

Is the nature of the dispute system appropriate in a time of crisis and does it evoke hope or despair?

- 6. Policy conclusions** – Was Botswana’s handling of the current crisis – *in the world of work* – better than its management of the 2009 Global Economic and Financial crisis (GEFC)?

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