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Government plays an important role in industrial relations in Botswana. First and foremost it provides a legal framework for industrial relations and for the settlement of industrial disputes. The main Acts of government in this respect are the Trade Unions Act, 1969 and the Trade Disputes Act, 1969. In addition, Government provides legal protection for people at work. The relevant Acts in this respect are the Employment Act 1963 which lays down conditions for contracts of service, termination of contracts, dismissals, etc., and employee welfare in places of employment, and The Regulation of Wages and Conditions of Employment Act, 1969, which provides for the establishment of Wages Councils for the regulation of remuneration and conditions of employment in some industries.

Government action and the favourable climate which it produces have facilitated the recognition of trade unions by employers. The legal basis of organisation of trade unions is provided by the Trade Unions Act, 1969. Under the Law a trade union means "any combination of more than thirty persons, ... associated together prima-
rily for the purpose of regulating relations between em-
ployees and employers or between employees and employees
in any industry, trade, or occupation..." To begin with,
what exactly is the significance of a minimum of thirty
persons? Furthermore, what could regulation of relations
"between employees and employees" really mean? How signi-
ficant is it? Shouldn't these two provisions be dropped
altogether?

Trade unions are required to register under the
Law. The Act confers certain rights, immunities, or pri-
vileges to registered organisations. For example, regis-
tered trade unions cannot be sued for any alleged wrongful
act done by them or on their behalf, nor can their members
or officials be sued for any act done collectively in fur-
therance of a trade dispute. Registered trade unions can
also have access to the courts, being able to sue and be
sued under their names. There are also liabilities and
obligations. A registered trade union is liable on any
contract to which it is a party. The obligations include
the requirement that they submit to the Registrar a list
of their officers, a copy of their constitution and rules,
a copy of the balance sheet and auditors' report, etc.

Section 16(1)(e) of the Trade Unions Act is
particularly relevant to our present discussion as it
concerns the recognition of trade unions for purposes of
negotiation. It reads, "a registered trade union of which
at least 25 per centum of his employees who fall within the
scope of membership of such union are members shall be the
negotiating body with which that employer shall be bound
to deal in respect of all matters relating to the rela-
tions between that employer and those of his employees
who are members of that union." This clause raises an
important point of principle. The issue is: should recog-
nition come before or after a trade union has achieved a
substantial membership? Why does it matter? The Act has clearly come down on the view that a trade union can only be recognised as a negotiating body after it has achieved a substantial membership among the employees it purports to represent. But what would happen if a previously recognised trade union's membership were to fall below the minimum 25 per cent. Would recognition be withdrawn? What about a trade union which is able to muster only 22 per cent of the employees. Would it be recognised or not? If the objective is to facilitate the development of strong trade unions it could be argued that prior recognition could be more beneficial. One reason for arguing that a trade union should be given recognition even if it has not yet achieved a substantial membership is that very often workers will only join a trade union after it has demonstrated its worth which it can do by winning a wage increase or other real concession from the employer. All this will depend on the employer's willingness to bargain with the union, which presupposes recognition. Granting unconditional recognition could thus break a real vicious circle and open the door to union membership growth. The author is of the opinion that the law should be amended to require that an employer recognise and deal with a registered trade union regardless of the number of union members.

Another provision of the Act which appears to be detrimental to trade unionism is Section 20(3) which says, "no person shall hold the post of treasurer to a registered trade union who in the Registrar's opinion is incapable of carrying out his duties." Why should the Registrar have the power to remove any person democratically elected from holding the post of treasurer? Wouldn't the union members themselves sack an incompetent treasurer? Or is the assumption that the union organisation is incapable of doing so
through its established procedures? It is right that the
Law should insist on proper books of account to be kept
by the union. It cannot choose the union’s officers.

A further retrogressive provision is that em-
powering the Registrar to refuse to register or cancel
the registration of a trade union if "any of the officers
of the trade union or any other committee member thereof
is a person who is not a citizen of Botswana" (Sections
8(1)(j) and 9(1)(b)(vii)). The implication of this provi-
sion is very serious. Take the teaching field for example
which is still so dependent on thousands of non Batswana
including refugees from Zimbabwe and South Africa. Why
shouldn’t such persons have full trade union rights? For-
tunately, this rule does not appear to have been applied
in the case of the Teachers Union. Why should it remain
on the statute book? The point is, trade unions, like many
other organisations in the country, are short of skilled
and experienced leaders. Many organisations try to solve
the problem by allowing non Batswana to occupy leadership
positions. The central government is a typical example.
It is not suggested that trade unions should hire expa-
triate leaders (They already have expatriate advisors!)
What is being suggested is that non-Batswana who ordinarily
live and work in Botswana should have full trade union
rights - the right to join a trade union and, if elected
by the members, hold office in such a union. One of the
sad things about the South African labour scene is the prohibition of black trade unions. People throughout the world have urged that South Africa should legalise black trade unions even among the black migrant workers in the gold mines.

Our final observation is on the penal clauses of the Act. Much of the Act is littered with far too many clauses about the imprisonment and fining of trade unions and trade unionists for various alleged offences. We suggest that fines and imprisonment should be for really major offences (such as those relating to the misappropriation of trade union funds) and not for every little misdeed of trade unionists. Good industrial relations cannot be built by fines and imprisonment of trade unionists.
REFERENCE NOTES

The Trade Unions Act, 1969
The Trade Disputes Act, 1969
The Employment Act, 1963
The Regulation of Wages and Conditions of Employment Act, 1969