

1

## 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

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## **Paper 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***

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.

# 3

## 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.

# 4

## Implications

- ❑ A Public Health Act (PHA) empowered the Director of Health Services (DHS) – a WHO-recognised-and-linked country authority and the PHA to declare and manage a state of public emergency.
- ❑ A Presidential decree, on the other hand, would uplift and enhance the authorisation and decision-making throughout the state-dominated economy.
- ❑ 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.
- ❑ The DHS 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.
- ❑ 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, a development vehemently opposed by opposition parliamentarians.
- ❑ 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.

# 5

## Regulating content

- ❑ **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.

## 6

# Impact regulation

**Employment:** preventing an increase in unemployment is one of the most difficult challenges facing government in current circumstances. Firms may not be able to continue paying their workers, and could be forced into bankruptcy as a result. One option is to change the law to enable firms to lay off workers temporarily, to reduce costs, but with a commitment to re-hire when conditions improve. Another option is to provide wage subsidies, while access to any low-cost government loans and guarantees (noted above) could be made conditional upon not reducing employment.

## Background - Literature review of covid-19-workplace conflict

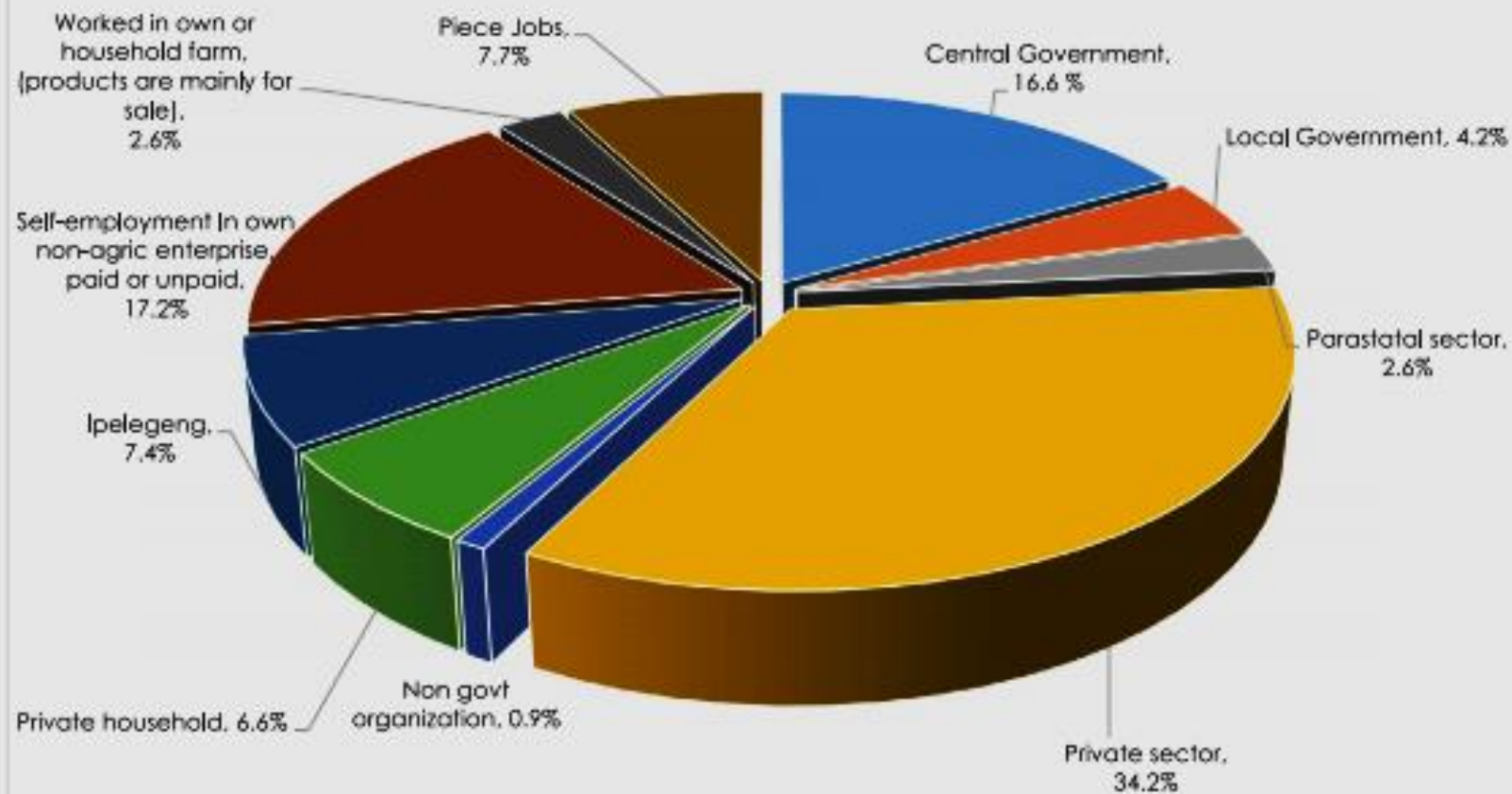
- Schotte, Danquah, Osei and Sen (2021:1) investigated changes in labour market outcomes since the onset of the pandemic, using Ghana as a case study.
- They found that legal shutdown orders induced a substantial decline in employment during the lockdown period in the affected districts and that workers 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.
- 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.

## Background - Literature

- 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.



**Figure 1.11: Currently Employed by Sector/Employer Category QMTS Q4, 2020**



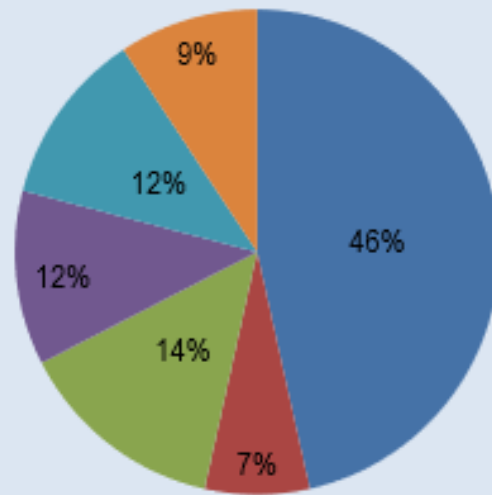
## Labour Disputes Data – Covid Strikes



# Comparison, 2010

FIGURE 21: Grouped incidence (%) of LM Regulation violations

■ Work Time Regulation ■ Minimum Wages ■ Leave Regulation  
■ Social Protection & Injuries ■ Administrative Regulation ■ Other



15

# Covid Strikes, 2020



## Conclusion – Hope or Despair

- Is there a conclusive causal link between labour disputes and macro-economic performance?
- Can the ADR system be trusted to manage a crisis in employment regulation caused by a global recession or pandemic?
- Does the ADR respond flexibly to protect jobs, social protection or does it exacerbate state domination in IR?
- Does the Emergency Regulation suspend Employment regulation and Collective Bargaining?
- Does Covid-10 employment regulation suspend DWA – Is this consistent with global (ILO) DW Regulation?