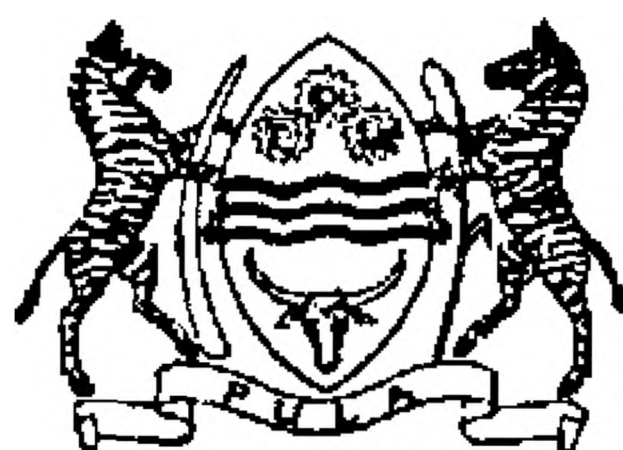


**TRADE UNIONS AND EMPLOYERS' ORGANIZATIONS
(AMENDMENT) ACT, 1992**

No. 24



of 1992

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Amendment of section 21, Cap. 48:01
3. Amendment of section 22
4. Deletion of sections 24 and 30
5. Amendment of section 32
6. Amendment of section 47
7. Replacement of Part XII
8. Amendment of section 64

An Act to amend the Trade Unions and Employers' Organizations Act

Date of Assent: 25th September, 1992.

Date of Commencement: 9th October, 1992.

ENACTED by the Parliament of Botswana

1. This Act may be cited as the Trade Unions and Employers' Organizations (Amendment) Act, 1992. Short title

2. The Trade Unions and Employers' Organizations Act, hereinafter referred to as "the Act", is amended in section 21 thereof by adding at the end of subsection (2) the following proviso — Amendment of section 21
Cap. 48:01

"Provided that where the member is being dismissed, he shall be entitled to representation by the union for the purpose of any appeal against or in respect of such dismissal."

3. Section 22 of the Act is amended by substituting for subsection (1) thereof the following new subsection — Amendment of section 22

"(1) No person shall become an officer of a trade union or of a federation of trade unions if —

- (a) he is an employee of that trade union, or that federation of trade unions, as the case may be;
- (b) he is not a member of that trade union or of a trade union belonging to that federation of trade unions, as the case may be; or
- (c) he has been an employee for less than one year in the industry to which that trade union or that federation of trade unions, as the case may be, relates."

Deletion of
section 24
and 30
Amendment
of section 32

4. The Act is amended by deleting therefrom sections 24 and 30.

5. Section 32 of the Act is amended —

- (a) in subsection (1), by deleting the words “or meetings of its executive committee” from paragraph (a), and the words “or of the federation’s executive committee” from paragraph (b) thereof; and
- (b) in subsection (2), by deleting the words “at a charge not exceeding 10 thebe for every 100 words”.

Amendment
of section 47

6. Section 47 of the Act is amended by deleting therefrom subsection (3).

Replacement
of Part XII

7. The Act is amended by replacing Part XII thereof by the following Part —

“PART XII — *Investigations*

“Enquiries
by Minister
etc

51. (1) The Minister may, whenever he considers it necessary in the public interest so to do, by notice in the Gazette, call on any registered trade union to produce for his inspection, or for the inspection of any other person so authorized in the notice, all or any of the books or documents of the trade union.

(2) Where, in relation to any registered trade union, it appears to the Minister that —

- (a) the affairs of the union are being conducted, or the powers of the officers thereof are being exercised in a manner oppressive to one or more members thereof, or in disregard of his or their proper interests as such member or members;
- (b) that any book or document which the trade union is required to send to him or to a person so authorized in accordance with subsection (1) does not disclose a full and fair statement of the matters to which it purports to relate; or
- (c) that the affairs of the trade union are being conducted in a manner prejudicial to the interests of the members thereof, he may, by notice published in the Gazette, call on the trade union to produce for his inspection, or the inspection of any person so authorized in the notice, all or any of the books and documents of the union, or to furnish in writing such information or explanation as may be specified in the notice.

(3) Where a notice is published in the Gazette under subsection (1) or subsection (2), the trade union concerned shall comply with the terms thereof within such time as may be specified in the notice, and all persons who are or have been officers of the union shall, so far as it lies within their power, produce such books or documents, or furnish such information or explanation.

(4) Where a trade union fails to comply with any requirement under subsection (3) the union and any officer of the union who is in default shall be guilty of an offence and liable to a fine of P500, and where any officer or former officer of the union fails to comply with any requirement imposed on him as an individual under the said subsection, he shall also be guilty of an offence and liable to a fine of P500.

(5) If, after the receipt and consideration of such books, documents, information or explanations as are required under the provisions of this section, the Minister considers such action to be necessary or desirable, he may appoint an investigator and proceed in accordance with the provisions of section 52, but whether or not he appoints an investigator, where it appears to him, as a result of such investigation or otherwise, that —

- (a) any person may have committed an offence for which he is criminally liable, the Minister may refer the matter to the Attorney-General for such further action as the Attorney-General considers necessary;
- (b) the registration of any trade union ought to be cancelled, the Minister may direct the Registrar to cancel the registration of that union; or
- (c) proceedings ought, in the public interest, to be brought by any trade union against any officer or former officer of such union, or any other person, or against any person to recover property, damages or compensation to which any trade union or member of a trade union is entitled, the Minister may direct the Registrar to bring proceedings for that purpose in the name of that trade union or member.

Appointment
of
investigator

52. (1) The Minister may appoint an investigator to investigate and report to him, in such manner as he may direct, on the affairs of any trade union, in accordance with the provisions of section 51(5), or he may appoint such an investigator upon application being made therefor by the Registrar, or upon application being made therefor by not less than six members of such trade union:

Provided that —

(a) the Minister shall not entertain an application under this subsection unless at least fourteen days prior notice thereof has been given to the trade union concerned, which shall be entitled to be represented at the hearing and to give evidence and call witnesses; and

(b) in the case of an application being brought by members of a trade union, the application shall be supported by such evidence as may be necessary to show that the applicants have good reason to require an investigation, and at least fourteen days prior notice of the application has been given to the Registrar, who shall be entitled to be represented at the hearing, and to give evidence and call witnesses.

(2) The Minister may, on the recommendation of an investigator appointed under subsection (1), order the investigation of any other trade union or person which or who is, or has at any time been associated with the trade union under investigation, and the investigator shall thereafter investigate and report on the affairs of such other trade union so far as he considers that they are relevant to the investigation into the affairs of the trade union under investigation.

(3) It shall be the duty of all officers and agents of any trade union or of any other person whose affairs are investigated under the provisions of the previous subsections, to produce to the investigator all books or documents of or relating to the trade union or other person, as the case may be, which are in their custody or power, and otherwise to give to the investigator all assistance in connexion with the investigation which they are reasonably able to give.

(4) The investigator may examine on oath the officers or agents of the trade union concerned, or the other person concerned, as the case may be, in relation to the constitution of the union, its administration, affairs or activities, and may administer an oath accordingly.

(5) If an officer or agent of the trade union or other person concerned destroys or refuses to produce to the investigator any book or document which it is his duty to produce under this section, or who refuses to answer any question put to him by the investigator in respect of the constitution, administration, affairs or other activities of the trade union or other person, as the case may be, he shall be guilty of an offence and liable to a fine of P1 000 and to imprisonment for one year.

(6)(a) If the investigator considers it necessary for the purposes of an investigation under this Act that a person whom he has no power to examine on oath should be so examined, he may apply to the High Court, and the High Court may thereupon order that person to attend before it and be examined on oath on any matter relevant to the investigation.

(b) On an examination under this subsection the investigator may take part therein, either personally or by an advocate, and any person examined shall answer all questions that are put or allowed to be put to him by the High Court.

(c) Such person may, by a statement made by him personally, or in answer to questions put to him, with the approval of the Court, by an advocate employed by him at his own cost, explain or qualify any answers given by him under paragraph (b).

(d) Notes of the examination and any explanations or qualifications made by the person examined shall be taken down in writing and shall be read over to and signed by him, and may thereafter be used in evidence against him.

(7) Notwithstanding the provisions of subsection (6)(c), the High Court may allow the person examined such costs as it considers just in all the circumstances, and any such costs allowed shall be paid as part of the expenses of the investigation.

(8) The investigator shall, at the conclusion of the investigation, make a final report to the Minister, and the Minister, shall, unless in his opinion it is not in the public interest so to do, —

- (a) forward a copy of the report to the trade union concerned;
- (b) forward a copy of the report, on request, to any member of the trade union concerned who was one of the applicants as a result of whose application the investigation was undertaken;
- (c) forward a copy of the report, on request and on payment of any reasonable fee therefor, to any member of the trade union concerned, or to any other person whose affairs are investigated in the report; and
- (d) cause a copy of the report to be published in the Gazette.

Investigation
of membership
of trade
union

(9) A copy of the report as published in the Gazette shall be admissible, in any legal proceedings, as evidence of the opinion of the investigator in relation to any matter contained in the report.

(10) For the purposes of this section, any reference to officers or to agents of a trade union shall be deemed to include past as well as present officers or agents, as the case may be, of the trade union.

53. (1) Where it appears to the Minister that there is good reason to investigate the membership of any trade union, he may himself carry out such investigation, or, by notice in the Gazette, appoint an investigator to carry out the investigation.

(2) The Minister or the investigator may require any person whom he has reasonable cause to believe to be or to have been a member of the trade union concerned, or to be or to have been interested in the affairs or activities of the trade union, or to act or to have acted as an agent or advisor of someone interested therein in relation to the affairs and activities of the trade union, to give him any information which such person has or could reasonably be expected to obtain as to the present and past activities or interests of the members of the trade union, and the names and addresses of any other persons interested, or of any persons who act or have acted on their behalf in relation to the membership, affairs or activities of the trade union.

(3) For the purposes of this section, a person shall be deemed to have an interest in the membership, affairs or activities of a trade union if he has done anything in relation to such membership, affairs or activities.

(4) Any person who refuses or fails to give any information required of him under this section, or who, in giving such information, makes any statement which is false in any material particular, shall be guilty of an offence and liable to a fine of P1 000 and to imprisonment for one year:

Provided that it shall be a defence to a charge of making a false statement if the person charged proves that when he made the statement he believed, on reasonable grounds, that the statement was true.

(5) Where it appears to the Minister that there is difficulty in finding out the relevant facts about any such membership, affairs or activities, and that the difficulty is due wholly or mainly to the unwillingness of the persons concerned, or any of them, to give accurate information as required by this section, the Minister may, by notice in the Gazette, cancel the registration of the trade union, and the Registrar shall forthwith remove the name of the union from the register.

Application of
Part to feder-
ations of trade
unions

53A. The provisions of this Part relating to the investigation of trade unions shall apply, mutatis mutandis, to the investigation of federations of trade unions.”

8. Section 64 of the Act is amended by substituting for subsection (2) thereof the following new subsection —

Amendment
of section 64

“(2) In this section, funds includes all donations, loans or other assistance having pecuniary value, other than air, road or sea passages, or scholarships.”.

PASSED by the National Assembly this 20th day of August, 1992.

C.G. MOKOBI,
Clerk of the National Assembly.