Industrial relations in the public service: the right to join a union in Botswana contrasted with South Africa

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Introduction

This paper attempts to illustrate how industrial relations in the public service especially that of Botswana and South Africa impact significantly on security of tenure in the public service. It underscores the contention that there is more security of employment in circumstances where an employee is allowed to join a union and within that union to bargain collectively with others.

A further attempt is made to find out how aspects of industrial relations in the two countries have significantly been influenced by conventions and recommendations of the International Labour Organisation. An argument is made that International labour standards positively impact on security of tenure in both the public and private sector especially the right to freedom of association. The study acknowledges the special and peculiar nature of the public service but however urges for an indivisible labour law regime for both public and private employment.

An outline of unionisation in the public service in Botswana and South Africa is made. The position in Botswana is less than satisfactory in that only associations are permitted and only industrial workers employed by the state can organise and belong to unions. The South African position is found to be appealing and Botswana can learn from its experience.

ILO Conventions, recommendations and resolutions

International Labour Organisation standards are intended to be universal in nature.[1] They are intended to be applicable to and capable of attainment by countries with very different social structures and at all states of industrial development.[2] They are flexible and set as meaningful targets for social development. In framing any conventions or recommendation the International Labour Organisation has "due regard to those countries in which climatic conditions, the imperfect development of industrial organisation, or other special circumstances make the industrial conditions substantially different and shall suggest the modifications, if any, which it considers may be required to meet the case of such countries."[3] Systematic efforts are made in the standard setting process to give effect to this constitutional principle.[4]

International Labour standards have exerted and continue to exert their influence in every corner of the world, in industrialised and developing countries alike, and that the policy constantly pursued by the International Labour Organisation of adopting standards designed to be universally applicable would appear to be still fully valid today.[5]

International Labour Organisation standards may either take the form of a convention or recommendation. A convention is designed to be ratified and like an international treaty, a ratifying state undertakes to discharge certain binding obligations, and there is regular international supervision of the way in which those obligations are observed.[6] A recommendation on the other hand, gives rise to no binding obligations but provides guidelines for national policies and action. It is essentially for this reason that workers's delegates to the International Labour Conference often press for the adoption of a convention whereas the Employers' delegates are more in favour of a recommendation.[7]

It is against this background that when we consider the question of unionisation in the public service, particularly the right to join a union that the relevance of International Labour standards comes to the fore. The question then becomes, what do International Labour Organisation conventions and recommendations say on the matter?

The question of unionisation, whether in the public or private sector is inextricably linked, if not part of the broader fundamental human right called freedom of association. Human rights are an essential concern of the International Labour Organisation, and none of them is more important to it than freedom of association.[8] As a specialised agency within the United Nations system, the International Labour Organisation is an organisation with the fundamental purpose of defending and increasing human freedom, and in particular civil liberties.[9]

Freedom of Association

The International Labour Organisation has adopted several conventions related to freedom of association. Convention no. 87 and 98 belong to the category of its instruments the purpose of which is to promote and guarantee certain basic human rights within the broader sphere of social rights.[10] The principles embodied in these Conventions do not presuppose any standard pattern of trade union organisation, but they serve as a yardstick against which to measure the freedom of a trade union movement, irrespective of the way in which it is organised.[11]

Convention no. 87 and 98 cover different areas as regards the exercise of trade union rights and their provisions are intended primarily as safeguards to guarantee the exercise of these rights as appropriate to the area concerned.[12] Both conventions protect the right to establish and join a trade union, but not freedom of non-association.

> In fact, during the discussion of the first of these instruments an amendment to secure recognition of the right not to join an organisation was rejected. Subsequently, at the time of the adoption of Convention 98, it was agreed that this instrument should not be interpreted as authorising or prohibiting union security arrangements, such questions being matters for regulation in accordance with national practice. In consequence legal systems which permit the conclusion of union security clauses are not deemed to be contrary to convention 98 and nor are those which prohibit such practices in pursuance of the principle of freedom of non-association.[13]

It should be borne in mind, that the fundamental inquiry here is security of employment in the public service. To the extent that this inquiry is being examined we are constrained to consider the question of unionisation in the public service which is inextricably bound if not part of the broader fundamental right of freedom of association. It will be argued in the course of the study that the extension of freedom of association to workers, either in the public or private sector greatly enhances and promotes security of employment. The following freedom of association principles taken from; *ILO Principles, Standards and Procedures Concerning Freedom of Association*[14]underscore the importance and significance of the above contention.

Recognition of the right to organise: the right to organise is to be granted to workers and employers, without distinction whatsoever (Article 2 of Convention No. 87). Only the armed forces and the police may be exempted by national laws or regulations. The general right guarantees freedom of association without distinction or discrimination in respect of occupation, sex, colour, creed, race, nationality or political opinion. The supervisory bodies of the International Labour Organisation have clearly indicated that national legislation that seeks to deny or restrict the recognition of the right to organise of certain groups, whether established by occupation or by other criteria, contravenes the convention.[15]

While the tenure of Convention no. 87 is crystal clear, and in conformity thereof, virtually all countries recognise the right of association of workers in the private sector in order to defend their rights by being organised, the same does not always apply to public servants and officials. There are those countries whose public servants have exactly the same right of association as their private sector counterparts; in others the right does not exist for certain classes of public servants or is curtailed by restrictions that do not normally apply to other workers. And in some countries, the legislation does not recognise the right of all public servants and officials to organise, or explicitly refuses them this right.[16]

In Botswana a distinction is made between public servants who belong to the industrial class and those who do not belong to the industrial class. Industrial class public servants are then accorded the right to form and belong to unions in order to defend their rights but the other class of public servants are allowed to set up associations which are in fact recognised by the government as the employer for the purpose of discussing wages and other aspects of working conditions. The fact that their right of association is recognised by law does not mean that as public employees they are able to establish effective organisations to protect their interests. Consequently, Botswana belongs to that category of countries where the right to form and belong to trade unions for certain classes of public servants does not exist or is curtailed by restrictions that do not normally apply to other workers. The lack of effective organisation seriously compromises and erodes the ability of public servants to negotiate with their employer for a better and secure employment relationship.

Although the armed forces and the police are the only classes that may be excluded under Convention no. 87 from the right to establish trade unions, the legislation in some countries also excludes fire service personnel and prison staff (the latter on the grounds that they are comparable to the police). So far as the International Labour Organisation is concerned, the functions exercised by these classes of public servants would not normally justify their exclusion from the right to organise under Article 9 of the Convention.[17]

Establishment of Organisations: it must be possible for organisations to be established without previous authorisation (Article 2). In terms of Article 2 workers and employers should not have to seek permission from the public authorities before setting up an industrial organisation. Clearly and by implication, the authorities should not impose legal formalities which would be equivalent, in practice, to previous authorisation nor constitute an obstacle amounting in fact to a prohibition.[18]

Free choice of organisation: workers and employers are guaranteed the right to establish and, subject only to the rules of the organisation concerned, to join organisation of their own choosing (Article 2). This freedom of choice in establishing and joining organisations must be regarded as one of the foundations of freedom of association. It entails among other things, the right to determine the structure and composition of trade unions; to set up one or more organisations in any one enterprise, occupation or branch of activity, and to establish federations or confederations in full freedom.[19] The setting of a minimum number of members for an organisation could well affect freedom of choice by making it more difficult to establish an organisation. The principle to be applied in this regard is that where an effort is made to specify the minimum number of members for the founding or the existence of an organisation, this number should be set at a reasonable level, so that the establishment of the organisation should not be hindered.[20]

Functioning of organisations: organisations shall be free from interference by the public authority when drawing up their constitutions and rules, electing their representatives, organising their administration and activities and formulating their programmes (Article 3). International Labour Organisation instruments seek to guarantee

not only the right to establish and join organisations but also the freedom of these organisations to function.

Dissolution or suspension: organisations shall not be liable be dissolved or suspended by administrative authority. The dissolution and suspension of trade unions are regarded by the International Labour Organisation as extreme forms of interference by the authorities in the activities of organisations. In view of gravity of these measures, it is important that they should be accompanied by the necessary guarantees, which can be secured only under normal judicial procedure. The dissolution of a union involves such serious consequences for the occupational representation of workers that it is preferable, in the interests of labour relations, that action of this kind should be taken only in the last resort, after exhausting other possibilities with less serious consequences.

Federations and confederations: organisations shall have the right to establish and join federations and confederations (Article 5).

International affiliation: organisations, federations and confederations shall have the right to affiliate with international organisations of workers and employers (Article 5).

Organisation and the law: in exercising the rights provided for in the convention, workers and employers and their respective organisation shall respect the law of the land; however, the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in the convention (Article 8).

Anti-union discrimination: workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment, both at the time of entering employment and during the employment relationship. Such protection shall apply more particularly in respect of acts calculated to: (a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership; (b) cause the dismissal of or otherwise prejudice a worker by reason of union membership of because of participation in union activities outside working hours or, with the consent of the employer, within working hours (Article 1 of Convention 98).

The importance of freedom of association in the public service

Freedom of Association (Convention 87 of 1948) is one of those fundamental human rights enunciated by the United Nations in December 1948 in the Universal Declaration of Human Rights. It is also included in the International Covenant on Civil and Political Rights. Amongst those principles enunciated in the Universal Declaration of Human Rights which are pertinent to the present study are: (a) the right to freedom and security of the person and freedom from arbitrary arrest and detention; (b) freedom of opinion and expression and in particular freedom to hold opinions without interference and to seek and receive and impart information and ideas through any media and regardless of frontiers; (c) freedom of assembly; (d) the right to a fair trial by an independent and impartial tribunal; (e) the right to protection of the property of trade union organisations.

The International Labour Organisation owes its existence largely to the promotional efforts of trade union organisations. It could not fail to give recognition in its constitution of 1919 to the principle of freedom of association as of one of the objectives to be attained by the Organisation through its programme of action.[21] The "Declaration of Philadelphia" in 1944 by the Labour Conference re-affirmed this principle, it being emphasised that "freedom of expression and association" are essential to sustained progress. There is no doubt, that it was because of this continued importance of this principle that when most of the former British colonies in Africa gained their independence, they had in their Bill of Rights, freedom of assembly and association enshrined in their constitutions, and protected as a fundamental right and freedom of the individual. The power of the workers irrespective of whether they were employed in the public service or in the private sector lay in their ability to freely associate and freely

employer who controls the workplace and has the capacity as well as the legal or at least equitable obligation to negotiate a settlement. Secondary strikes involve employers who are not directly in dispute with the striking workers and are viewed less favourably and tend to received little or no legal support.

Christie argues that in a sense all public sector strikes are secondary as the social and economic costs of public sector labour disputes are not carried by the state as employer, but by an unpredictable community. She gives the example that if clerical staff in the department of manpower were to strike, Workmen's Compensation Act benefits are denied to people who have nothing to do with the dispute and no direct or immediate capacity to effect change in attitude or behaviour of those directly in conflict.

Public service tends to be a monopoly: it is argued by the author, that public service is often a monopoly or near monopoly and this may make it difficult to set up a substantive service should labour disputes threaten service continuity. That furthermore, the consequences may be devastating to public health and security.

Public sector provides essential services: there is an assumption here that all public or government service is essential and that the focus of legislative control is directed at ensuring "the continuation of the service at a basic level, either by the workers in dispute or by others".

Christie argues that while some services may be essential there are inconsistencies. Some services she argues are essential and yet are unregulated. Others are deemed essential yet they are not. The Labour Relations Act outlaws all strikes in essential services. Discussing the notion that the public service is essential, the author says

> There is little factual support for the notion that public service is preternaturally essential. The functions and services of modern governments (and local authorities) vary in the degree to which they are essential to public welfare and attempts to define essential service are bedevilled by social and economic relativism. As state departments and agencies become privatised, the nature of the state as employer has changed. The service supplied by the military, the police and fire fighters is different in importance and kind from that of the public service and teachers. We should explore the extent and nature of the public service and consider whether a particular service is monopolistic and the extent to which the state is involved in economic activity.[24]

The above are some of the arguments put across to vitiate the contention that there should be collective bargaining in the public service. It may be quite difficult to refute some of the above arguments and International Labour Organisation recognizing this dilemma, allow some flexibility in the choice of methods of determining conditions of employment in the public service. Procedures enabling conditions of employment to be negotiated between public authorities and the organisations concerned are envisaged by the International Labour Organisation or such other methods as will allow representatives of public employees to participate in the determination of those matters. Article 6 of Convention 98 allows public servants engaged in the administration to be excluded from its scope (collective bargaining and the obligation to promote it) but other categories should enjoy the guarantees of the convention and therefore be able to negotiate collectively their conditions of employment, including wages.[25] Countries like Argentina, Belgium, Guatemala, Italy, Spain and Portugal have legislation guaranteeing the right of collective bargaining of the public servants.[26] It is however denied to public servants in Colombia, Iraq, Liberia and Pakistan amongst other countries.

It should be borne in mind that the focus of the present study is the importance of unionisation in the public service and how it impacts on security of employment therein. Amongst background material are the International Labour Organisation convention and recommendations of freedom of association and collective bargaining.

There is absolutely no doubt that the essence of their existence is to greatly enhance the bargaining power of the workers. This is irrespective of where they are employed, semi-public, public or private employment. It therefore remains to be examined the position of unionisation in the public service in Botswana. The position in South Africa and some other countries in Africa will also be looked at for purposes of comparative jurisdiction.

Unionisation in the Public Service in Botswana

In considering the issue of public service unionisation in Botswana, the genesis is non other than the constitution of the country, of which the relevant section is 13(1), falling under protection of fundamental rights and freedoms of the individual. The section is reproduced below in its entirety.

> 13(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests.
>
> (2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:—
>
> (a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health;
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> (b) that is reasonably required for the purpose of protecting the rights or freedoms of other persons;
>
> (c) that imposes restrictions upon public officers, employees of local government bodies, or teachers; or
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> (d) for the registration of trade unions and associations of trade unions in a register established by or under any law, and for imposing reasonable conditions relating to the requirements for entry on such a register (including conditions as to the minimum number of persons necessary to constitute a trade union qualified for registration, or of members necessary to constitute an association of trade unions qualified for registration) and conditions whereby registration may be refused on the grounds that any other trade union already registered, or association of trade unions already registered, as the case may be, is sufficiently representative of the whole or of a substantial proportion of the interests in respect of which registration of a trade union or association of trade unions is sought, and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not be reasonably justifiable in a democratic society".[27]

The freedom to assembly freely and associate with other persons and in particular to form and belong to trade unions or other associations for the protection of ones' interests is generally permitted by the constitution of Botswana. While the constitution allows restrictions to be imposed on public officers, employees of local government bodies or teachers in respect of forming or joining trade unions or other associations, the present restrictions arise mainly by necessary implication. The Employment Act of Botswana which mainly regulates employment relationships between private and parastatal sector employees and employers allows public sector employees of the industrial class to form and belong to trade unions. The term "employee" in the Employment Act has been defined to include industrial class employees in the public sector. The industrial class employees apart, all categories of employees in the primary sector are not allowed to form and belong to a trade union or to enter into collective bargaining or any meaningful negotiations about the terms and conditions of service with the employer, the government. The Public Service Act, which is concerned with the organisation of the civil service, appointments and conditions of service stipulates that the President may make regulations for the setting up of a body for the purpose of consultations between

government and public sector employees.[28] The body that has been created to cater for such consultations in central government is the Botswana Civil Servants Association, and in local authorities is the Botswana Unified Local Government Service. Both bodies can only consult, and cannot enter into any collective bargaining with government on behalf of their members. This conspicuous absence of collective bargaining or the denial thereof to public servants other than to the industrial class workers deals a terrible blow to job security in the public service, and consequently renders the so-called freedom of assembly and association enshrined in Section 13 of the constitution a hollow right for the majority of public servants. It is perhaps convenient at this stage to sketch an outline of the consultation process between central government and public servants.

The Consultation Framework. The public service consultative machinery has two levels. The lower level has been created at the ministerial level to deal mainly, but not exclusively, with ministry specific issues only. In this respect the relevant section provides,[29]

> (1) There shall be established in each Ministry a Ministerial Consultative Committee which shall consist of the Permanent Secretary of the Ministry who shall be the Chairman and three other members in that Ministry who shall be appointed by the Minister of that Ministry, and four members (who may or may not be members of the association) appointed by the association or, in default of the appointment, elected from among themselves by persons employed in that Ministry.
> (2) In appointing the members the association shall bear in mind the need to represent as far as possible all categories of staff in such Ministry.
> (3) The members appointed by the association shall be appointed after the members appointed by the Minister and the association shall not appoint any person to be a member who has been so appointed by the Minister.

The other level is the Central Joint Staff Consultative Council. Ministerial Consultative Committees operating within each of the executive ministries report to the Central Joint Staff Consultative Council, which is the national body nominated partly by the Minister responsible for the public service and partly by the Botswana Civil Servants Association. The section[30] creating the Central Joint Staff Consultative Council provides—

> (1) There shall be established a Central Joint Staff Consultative Council which shall consist of the Director and six other members of the rank of Permanent Secretary who shall be nominated by the Minister, and the Minister shall appoint one of those seven members to be Chairman, together with six members nominated by the Association.
> (2) In nominating the members, the Association shall bear in mind the need to represent as far as possible all categories of officers in the public service.
> (3) There shall be a Deputy Chairman of the Council elected from among themselves by the members nominated by the Association.

The Council is enjoined by the Regulations to, *inter alia*, consider terms and conditions of service and advise on methods of ensuring improvements in general working conditions, productivity and staff relations within the public service and on measures necessary for the furtherance of good industrial relations between government and the public service.[31]

The present consultative machinery has been in existence for more than 18 years and is the result of the successful negotiation between the National Executive Committee of the Botswana Civil Servants Association and the late President of the Republic of Botswana, Sir Seretse Khama, in February, 1970.[32]

The Public Service Consultative Machinery was established to promote better industrial relations between public servants generally as employees, and, government as

employer. This machinery enjoys both the legal backing and the political commitment of the government. The crucial question is therefore whether the present consultative machinery plays the role that collective bargaining could have played in the public service employment relationship. Can the consultative machinery impact significantly on the security of employment of public servants? Can it improve and maintain desirable industrial relations between government and public servants? If the consultative machinery can impact on security of tenure of public servants, the extent to which it can do so is obviously less than what collective bargaining can do for public servants. It is conceded that the consultative machinery can indeed to some extent improve and maintain cordial relations between government and public servants, but not to the extent that forming and belonging to trade unions, and engaging in collective bargaining could have done for them. Consequently the consultative machinery though useful sharply compromises the ability of public servants to collectively engage their employer in the protection of their interests as workers. As a result of the consultative machinery, public servants can not engage in industrial action. Indeed there is no room for industrial action in the consultative machinery. There is no ultimate weapon that public servants (other than industrial workers) wield in order to carry through their demands when negotiating with government. In the ultimate analysis, the consultative machinery legitimises governmental action and agenda.

The absence of the right to strike in the consultative machinery, which right should be seen as an essential part of the mechanism of collective bargaining through which capitalism tries to accommodate conflict between workers and employers robs the process of what could otherwise have been a good association for public servants. Otto Kahn Freund's view in *Labour and the Law* is thus approved of:

> These are the ultimate sections without which the bargaining powers of the two sides lack credibility. There can be no equilibrium in industrial relations without freedom to strike.[33]

> While this consultative arrangement is suitable for a highly developed system of negotiation and joint consultation, it has not been 100% successful. In practice and in reality there has been relatively fewer shortcomings than successes of this consultative machinery.[34]

Following Kahn[35] we may elaborate on the shortcomings of this system of negotiation in Botswana. Many ministerial consultative committees do not function effectively for a variety of reasons. The submission of agenda items for consideration at meetings does not function as smoothly as desirable at ministerial and national levels. The promotion of influential and effective members of the Central Joint Staff Consultative Council, to higher posts where they can no longer represent ordinary public servants, renders the council less effective. The reluctance of the majority of public service employees to join the Botswana Civil Servants Association devalues the bargaining power of the association and undermines the consultative machinery intended to benefit all civil servants.

The constitution of Botswana allows every individual freedom of association and of assembly in its fundamental rights and freedoms or bill of rights. This is no doubt in accordance with the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights and the African Charter. But what the constitution of Botswana gives with the right hand (freedom of association) it again takes away with the left hand (places restrictions on that freedom). The result is that legislation in Botswana does not allow all public servants to unionise and bargain collectively in order to protect their interests. The only public servants who can do so are industrial workers in public employment. The system of negotiation and joint consultation between public

employees and government does not always function effectively. Even if it did, which is rare, public servants cannot engage in industrial action—the ultimate power that private sector employees have at their disposal in solving their disputes. Not until all public servants are allowed to unionise and bargain collectively —with the threat of the use of strike action—can there be relative security of employment in the Botswana public service.

It is appropriate at this stage to consider, for purposes of comparative jurisprudence, the position in South Africa in regard to public service workers. A short account follows.

Unionisation in the South African Public Service

Freedom of Association. The constitution of the Republic of South Africa Bill of 6 May 1996 makes provision for freedom of association. This is also contained in clause 18 of the Bill of Rights in the Final Constitution. The general freedom of association is supported by provisions on Labour Relations in the Bill of Rights. The relevant provisions are reproduced below for illustrative purposes;

> 23(1) Everyone has the right to fair labour practices.
> (2) Every worker has the right— (a) to form and join a union; (b) to participate in the activities and programmes of a trade union; and (c) to strike.
> (3) Every employer has the right—(a) to form and join an employers' organisation; and (b) to participate in the activities of an employers' organisation.
> (4) Every trade union and every employers' organisation has the right—(a) to determine its own administration, programme and activities;(b) to organise, (c) to bargain collectively, and(d) to form and join a federation.
> (5) The provisions of the Bill of Rights do not prevent legislation recognising union security arrangements contained in collective agreements.[36]

The new Labour Relations Act aligns South Africa's Labour Relations framework with that of the rest of the developed world.[37] Chapter two of the Act deals with freedom of Association. It guarantees freedom of association for all workers within its scope.[38] Similar freedom of association rights are provided for an employer.

The guarantee of freedom of association by the South African Constitution and its Labour Relations Act[39] brings it into line with the Universal Declaration of Human Rights, the International Covenant on Labour Organisation Convention no. 87 and 98 on the right to form and belong to a trade union and to bargain collectively in order to protect ones interests.

> In addition to freedom of association, the new Labour Relations Act provides a series of organisational rights for unions. These include trade union access to recruit, meet or ballot its members. For the public service, any recognised trade union has these access rights, even in work places where it has no members or only a few members. However, these organisational rights can be denied to minority unions if the majority union/s and government agree on the threshold of members required to qualify for certain organisational rights. In the rest of the public sector, these rights are granted to unions that have a presence at a particular workplace and all work places under the jurisdiction of a bargaining council where the union is a recognised participant.[40]

The South African Labour Relations Act applies to all workers with the exception of the National Defence Force, the National Intelligence Agency, and the South African Secret Service.[41] These institutions constitute essential services and it would be inappropriate to extend at any rate the application of the Labour Relations Act to them. For an even stronger reason public defence and safety would appear to militate against these institutions being accorded rights under the Labour Relations Act.

Collective Bargaining. Public servants in South Africa are permitted to organise themselves into unions and to bargain collectively. This is in accordance with the Labour Provisions in the new constitution and the new Labour Relations Act. The underlying thrust of the new Labour Relations Act is towards voluntary centralised collective bargaining—within an industrial sector.[42] It is argued that this will be achieved by the establishment of bargaining councils by the parties to the bargaining process. The National Economic Development and Labour Council would determine the demarcation sectors for collective bargaining purposes. In order to deal with all matters where uniform rules, norms and standards apply across public service, a coordinating council known as the Public Service Co-ordinating Council was created by the new Labour Relations Act. Other matters within its jurisdiction are terms and condition of service that apply to two or more sectors or involve an issue that falls within the jurisdiction of the state as employer not to a particular sector. Workplace forums as sites for co-determination have been created. The function of workplace forums within the public service will remain limited since most of the other issues will be handled within the bargaining arrangements and will continue to remain bargaining issues.

Public servants are not only allowed to bargain collectively, they are in the ultimate analysis allowed to use the ultimate weapon at their disposal, strike action, in order to back up their demands. The Labour Relations Act guarantees every employee in South Africa the right to strike in accordance with the constitution. The only possible exclusion remains public servants employed in services determined to be essential services. Those allowed to strike can do so provided certain procedures have been followed. The procedures are either developed by the bargaining parties or of the parties have not developed their procedures, those procedures specified in the Act have to be followed. Conciliation which is voluntary and is encouraged if the unions want to exercise their right to resort to industrial action.

Conclusion

The new Labour Relations framework in South Africa creates a single regime for all workers in South Africa. It regulates both private and public sector workers. Both sectors have been accorded freedom of association, the right to bargain collectively, granted organisational rights, bargaining councils and can resort to industrial action. These general rights in the Labour Relations Act are recognised in the country's new constitution. This is a positive development for security of employment in the South African public service. The South African public service position should provide a good and simple lesson for the public servants in Botswana. That in order to enjoy relative job security, the constitution should have a labour code enshrined in it. Amongst such rights in that code should be, the right to form and belong to a union, the right of all workers to participate in the programmes and activities of that union, to strike in order to back up demands after bargaining collectively. All workers should have a basic floor of rights in a Labour Code without distinction which should include organisational rights. In respect of all the above South Africa is indeed ahead of most countries in the region. Botswana has a lot to learn from the South African experience.

Notes & References

1. International Labour Organisation *International Labour Standards. A workers education manual* I.L.O. Geneva. 2nd edition, chap, 3, 22.
2 *ibid.*
3 *ibid.*
4 *ibid*
5 *ibid*, chap. 9, 22.
6 *ibid*, chap. 3, 25.

7 *ibid.*
8 International Labour Oganisation *Freedom of Association. A workers education manual* I.L.O. Geneva 2nd edition. chap.1, 1.
9. *ibid.*
10 International Labour Organisation *Principles, Standards and Procedures concerning Freedom of Association* Geneva: I.L.O., 2.
11 *ibid.*
12 *ibid*
13 *ibid*,4.
14 I.L.O. Geneva pg 2.
15 As note 8 above, chap.3, 23.
16 *ibid.*
17 *ibid,* 24.
18 International Labour Organisation, *Freedom of Association: an International Survey.* I.L.O., Geneva. chap. 1, 3.
19 As note 8, above, chap. 5, 35.
20 *ibid.*
21 International Labour Organisation. *Principles, Standards and Procedures concerning Freedom of Association.* I.L.O., Geneva, 1.
22 *ibid,* pg 5.
23 Sarah Christie (1993), 'Backgound Paper: Collective Bargaining in the Public Sector. First Regional Workshop on Labour Law and Industrial Relations in a Changing Southern Africa, Marine Parade Hotel, Durban, 13-15 July.
24 *ibid,* 13.
25 International Labour Organisation (1994), [Proceedings of] *Freedom of Association and Collective Bargaining International Labour Conference*, I.L.O. 81st session, Geneva. chap. 10, 117.
26 *ibid.*
27 *Laws of Botswana,* Cap 01:01: Constitution of Botswana 1966, Section 13(1) and (2).
28 *Laws of Botswana,* Cap 26:01 Section 35, Public Service Act
29 *ibid,* Section 36(1) Public Service Regulations
30 *ibid,* Section 31, Public Service Regulations
31 *ibid,* Section 32, Public Service Regulations
32 Peter Molosi (Permanent Secretary, Ministry of Health) 'Discussion notes on the Botswana Public Service Consultative Machinery, Failures and Successes', March 1988.
33 Otto Kahn Freud, *Labour and the Law* 2nd edition (Stephens), 224. 34 *ibid*, 4.
35 *ibid*, 5.
36 *Constitution of the Republic of South Africa 1996*, clause 23.
37 Emraan Patel, 'Country Report on South Africa' Regional Workshop on Public Sector Labour Relations in Southern Africa, Harare, 22-24 July 1996, 18.
38 *ibid.*
39 Republic of South Africa, Republic of, *Labour Relations Act, 1995.*
40 *ibid.*
41 *ibid,* section 2.
42 *ibid,* 19.