

Budeli, Mpfariseni; Kamwimbi, Theodore Kasongo

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## Diversity of practices in social dialogue in the public service in selected African countries

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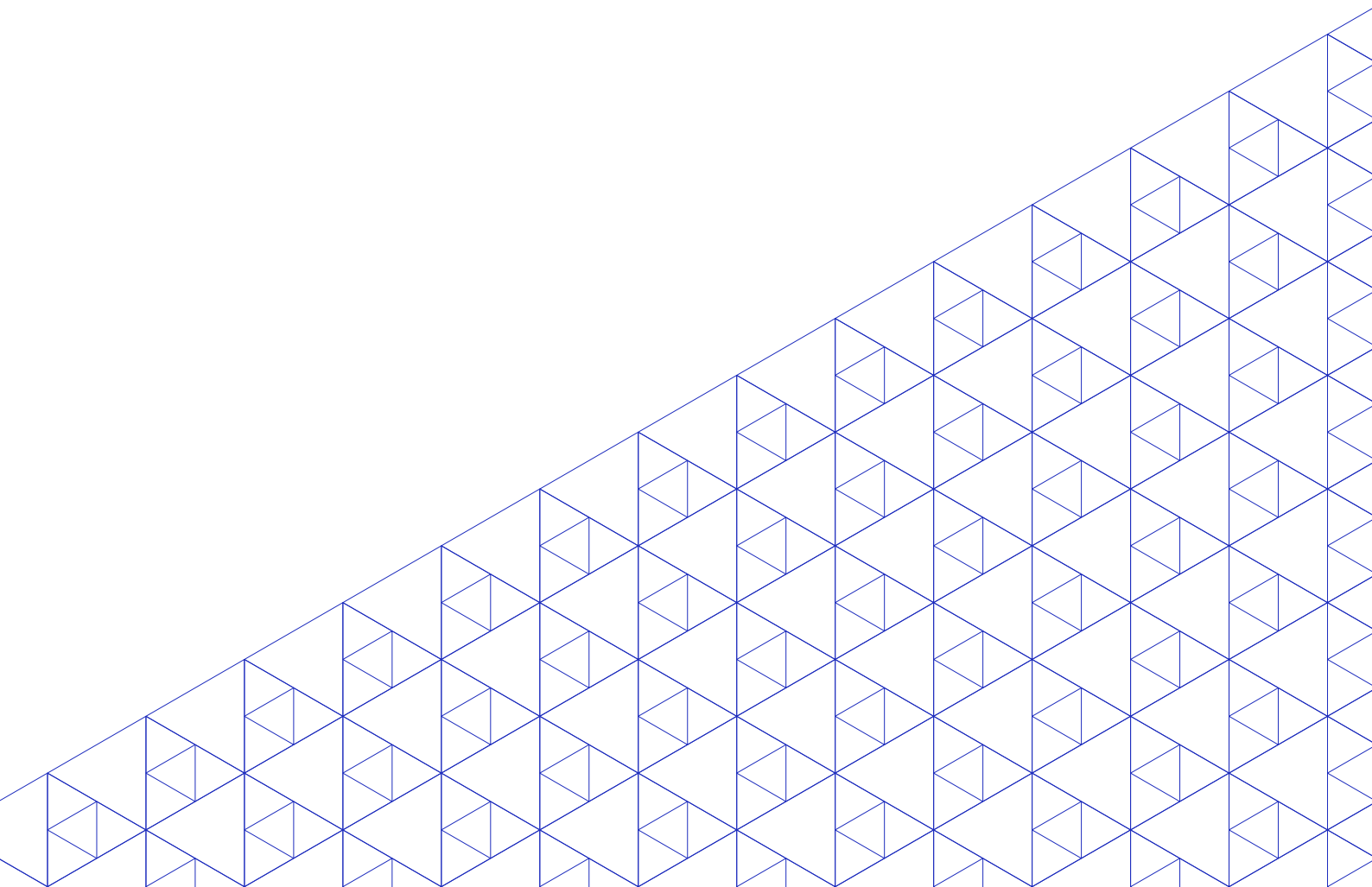
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# ► Diversity of practices in social dialogue in the public service in selected African countries

Authors / Mpfariseni Budeli, Theodore Kasongo Kamwimbi





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## Abstract

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Social dialogue, which forms part of the regulation of labour relations in the public sector, can take a variety of forms ranging from the simple act of publishing informal recommendations, or consultation and sharing information to the most formal and binding negotiated agreements, bargaining or more developed forms of consultation. Although each country has its own cultural, historical, economic, and political setting, there is a diversity of practices in social dialogue in the public service, and the common model of social dialogue for all countries seems to be freedom of association and the right to collective bargaining. It is, therefore, worth showing how different countries manage to adapt their diverse practices in social dialogue in the public service to the national situation. To this end, this report focuses on five selected African countries, namely Angola, Kenya, Tunisia, South Africa, and Ghana. These countries represent respectively the five main subregions of Africa (Central, Eastern, Northern, Southern and Western Africa) as suggested by the ILO. A thorough analysis of these countries' social dialogue mechanisms in the public service shows that the functioning and sustainability of such mechanisms may be facilitated by permanent structures or institutions, such as national tripartite consultative committees.

## About the authors

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**Professor Mpfariseni Budeli-Nemakonde**, LLB, LLM (University of the North (currently the University of Limpopo)), PhD in Commercial Law (Cape Town) is a Professor in the Department of Mercantile Law at the University of South Africa (UNISA), and currently the Director of the School of Law in the College of Law at the same University. She has also been a visiting Professor at the University of Dar-es-Salaam, Tanzania and the University of Lusaka, Zambia. Professor Budeli-Nemakonde is also an admitted Attorney of the High Court of South Africa.

**Theodore Kasongo Kamwimbi**, Gradué en droit, Licencié en droit (Kinshasa); LL M (Cape Town) is a Congolese lawyer based in Cape Town, South Africa who specialises in business and human rights law. He is attorney at law to the Kinshasa/ Matete and Tanganyika Courts of Appeal in the Democratic Republic of the Congo (DRC). He has been involved in a number of complex projects in the oil, gas and mining sectors. He has undertaken research and/ or teaching assignments at several institutions and universities, including Stellenbosch University in South Africa. He has written extensively on human rights, labour and child labour. He is also currently completing his Doctor of Laws (LL D) at the University of South Africa (UNISA).

## Table of contents

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<b>Abstract</b>	<b>01</b>
<b>About the authors</b>	<b>01</b>
<b>Acronyms</b>	<b>06</b>
<b>Executive Summary</b>	<b>07</b>
<hr/>	
<b>► Introduction</b>	<b>08</b>
<hr/>	
<b>► 1 Scope of Social Dialogue in public service</b>	<b>09</b>
Definition of social dialogue	09
Types of social dialogue	10
Public sector, public administration, and civil service	12
Previous studies related to the topic done within the ILO and elsewhere	13
Previous ILO papers	14
Recent studies in other settings	15
<hr/>	
<b>► 2 Particularities of labour relations in the public service in Africa</b>	<b>17</b>
The scale of government employment	17
The government player in the dialogue	19
Public employees and their organisations	20
Civil servants' single representation bodies	22
<hr/>	
<b>► 3 Forms of dialogue in the civil service: institutions and mechanisms</b>	<b>24</b>
The exchange of information	24
Consultation	25
Direct consultation of civil servants	26
Direct consultation with civil servants' representatives	27
Consultation with workers' representatives prior to decision making on some matters	28
Public service advisory bodies	29
Direct consultations and Collective bargaining with civil servants' organisations	30
<hr/>	
<b>► Conclusion</b>	<b>32</b>
<hr/>	
<b>References</b>	<b>34</b>

Books, articles, and reports	34
Legislation	42
Court cases	43
<b>Acknowledgements</b>	<b>44</b>

## List of Tables

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<b>The scale of government employment</b>	<b>17</b>
<b>Exchange of information</b>	<b>24</b>
<b>Consultation</b>	<b>25</b>
<b>Direct consultation with civil servants</b>	<b>26</b>
<b>Direct consultation with civil servants' representatives</b>	<b>27</b>
<b>Direct consultation with civil servants' representatives</b>	<b>28</b>
<b>Consultation with workers' representatives prior to decision-making on some matters</b>	<b>28</b>
<b>Public service advisory bodies</b>	<b>29</b>
<b>Direct consultations and collective bargaining with civil servants' organizations</b>	<b>30</b>

## List of Boxes

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<b>Public administration arrangements in selected African countries</b>	<b>19</b>
<b>Ratification and implementation of ILO Convention No. 151: Tunisia</b>	<b>20</b>
<b>Freedom of Association for members of the police force</b>	<b>21</b>
<b>Establishing social dialogue mechanisms through collective agreements</b>	<b>31</b>



## Acronyms

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CEACR	Committee of Experts on the Application of Conventions and Recommendations of the ILO
CSOs	Civil Society Organisations
NGOs	Non-governmental Organisations
NEDLAC	National Economic Development and Labour Council
OECD	Organisation for Economic Co-operation and Development
IR	Industrial Relations

## Executive Summary

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This research on the diversity of practices in social dialogue in the public service in selected African countries, namely Angola, Kenya, Tunisia, South Africa, and Ghana focuses on how the diverse practices in social dialogue, as one of the four pillars of the Decent Work approach, is reflected in the public service. In four of the selected countries, (Ghana, Kenya, South Africa and Tunisia), civil servants or workers employed in the public administration of the State, or any other government agency are covered by the general labour laws, while in Angola, civil servants are explicitly excluded from the scope of labour law. At the same time, many other countries have public administration employees with non-civil servant status who are governed by ordinary or special labour regulations.

In South Africa, Kenya, Ghana, and Tunisia, the law recognises the right of state employees to become trade union members to form and join trade unions. In these countries, the relations between public administration and civil servants have always been built within an organised and highly regulated hierarchical structure governing individual and collective relations. However, in Angola, State employees do not usually enjoy their freedom of association as Government's approval is required to form and join unions. Overall, in the selected countries, civil servants maintain collective relations with the authorities through representative bodies or contacts between civil servants' associations and/or trade unions and civil servants.

## ► Introduction

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The public service plays a crucial role in the challenging times in which we live, framed by a pandemic, increased emergencies caused by climate change and political instability. For instance, in order to deal effectively with the ongoing COVID-19 pandemic, the ILO (2020b: 4-5) has identified many key functions that public services and public servants have been and must continue to play. These form, at the same time, part of the roles that public service and public servants play in implementing the 2030 Agenda for Sustainable Development, notably “policy and strategy planning; provision of services; development of infrastructure; mobilization and utilization of resources; monitoring and evaluation; and (vi) institutional and human resource capacity development”.<sup>1</sup> Since the initial phase of the COVID-19 outbreak, social dialogue between employers, workers, and government has played a central role in managing the shaping and regulating these national policy responses, in particular in connection with protecting employment and wages, adapting workplace arrangements, and strengthening social dialogue.<sup>2</sup>

Member States can address many of the challenges related to the crisis through social dialogue: not only information exchange, but also consultations about measures that the employer will take, and negotiations about the impact of any measures on working conditions. As stated in the International Labour Organization (ILO) *Guidelines on Decent Work in Public Emergency Services* (ILO 2018a), “collective agreements and other social dialogue processes can promote collaborative labour relations based on joint problem-solving and collaboration at the national, regional or local levels”,<sup>3</sup> thus retaining skilled staff that support emergency preparedness. African countries are not the exception: as this study will show, African social dialogue institutions can make a strong contribution to public services.

The aim of the present work is to contribute to the scholarly studies exploring the diversity of practices in social dialogue in the public service from an African perspective, to provide ILO constituents with examples of country practices and responses to situations of crisis, and to illustrate the application of the principles of ILO Convention No 151. The present study intends to discuss the practice of social dialogue in the civil services of national administrations since the issues surrounding local governments will be the focus of a separate publication. The study further intends to discuss the unionization of civil servants in order to identify the players; likewise, collective bargaining will be discussed mainly as a catalyst for social dialogue. Also, for this reason, neither the causes of disputes nor the means of settling them will be discussed.

The study is divided into three main parts. After describing the scope of social dialogue in the public service, Section 2 provides some general background on the subject and section 3 discusses the diversity of practices in social dialogue in the public service in five selected African countries, namely Angola, Ghana, Kenya, South Africa and Tunisia. These countries, belonging respectively to the five main subregions of Africa (Central, Western, Eastern, Southern and Northern Africa), have been chosen because they have established public service social dialogue systems, although they do not always reflect the best practices thereof.

Although this study provides an in-depth analysis of social dialogue in the five selected countries, examples from other African countries and other regions are also provided.

<sup>1</sup> John-Mary Kauzya and Elizabeth Niland, [The role of public service and public servants during the COVID-19 pandemic](#) (UN DESA, 2020)

<sup>2</sup> ILO, [“Social dialogue one year after the outbreak of Covid-19 pandemic: Spotlight on outcomes”](#), June 2021

<sup>3</sup> ILO, [Guidelines on decent work in public emergency services](#), MEGPES/2018/4, 2018, Part 3, para. 21.

## ► 1 Scope of Social Dialogue in public service

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### Definition of social dialogue

According to the ILO's broad working definition, the term "social dialogue" includes "all types of negotiation, consultation or simply exchange of information between, or among, representatives of governments, employers, workers and lately other civil society groups, on issues of common interest relating to economic and social policy".<sup>4</sup> In the ILO's view, social dialogue is a process involving two or more parties, notably governments, and the representative of employers' and workers' organisations so that they may set, change and apply rules concerning work and work-related issues.<sup>5</sup> It is clear from this definition that there are various types of social dialogue, which are worth discussing in some detail.

The Labour Relations (Public Service) Convention, 1978 (No.151) and the Collective Bargaining Convention, 1981 (No.154), as well as their respective Recommendations, No.159 and No.163, establish the framework for social dialogue in the public service. The Committee of Experts on the Application of Conventions and Recommendations of the ILO (CEACR) published in 2013 a comprehensive General Survey on these Conventions.<sup>6</sup> Among its recommendations, the CEACR encouraged "the use of methods of application of Convention No. 151 that are based on tripartism, social dialogue and full and frank consultations between the social partners."<sup>7</sup> The Committee expounded on this statement:

*This is particularly important with regard to legislation on industrial relations, including provisions concerning facilities to be afforded to workers' representatives, in order to ensure that the parties subscribe to the underlying principles and, thus, that the measures adopted are sustainable and are not contingent, in the civil service, on successive changes of government or administration.*<sup>8</sup>

....

*[T]he different forms of social dialogue and, in particular, collective bargaining between trade union organizations and the public service, are key to creating the necessary conditions to meet the [many] challenges [facing the public service]. In this respect, the public service needs a sufficient number of qualified staff, with access to training and promotion and a reasonable workload (this is particularly important in times of economic crisis and structural adjustment), and with fair and competitive conditions of employment with respect to those in the private sector, including in terms of remuneration.*<sup>9</sup>

*[T]he aim of Conventions Nos 151 and 154 is not to constantly challenge the stability of the fundamental rules and principles applicable to public servants (often enshrined in legal provisions) – which would not make sense – but to ensure that the determination and amendment of such rules is carried out through a process of social dialogue, as necessary, when the parties so agree.*<sup>10</sup>

<sup>4</sup> ILO, *Social dialogue and tripartism: A recurrent discussion on the strategic objective of social dialogue and tripartism, under the follow-up to the ILO Declaration on Social Justice for a Fair Globalization, 2008*, ILC.107/VI 2018, para. 6.

<sup>5</sup> ILO, *Social dialogue and tripartism*, para 6

<sup>6</sup> ILO, *Collective bargaining in the public service: A way forward. General Survey concerning labour relations and collective bargaining in the public service, ILC.102/III/(1B), 2013*.

<sup>7</sup> ILO, *Collective bargaining in the public service*, para. 155.

<sup>8</sup> ILO, *Collective bargaining in the public service*, para. 155.

<sup>9</sup> ILO, *Collective bargaining in the public service*, para. 225.

<sup>10</sup> ILO, *Collective bargaining in the public service*, para. 268.

One of the points of consensus adopted by the 2014 Global Dialogue Forum on Challenges to Collective Bargaining in the Public Service underlined that “social dialogue is key to addressing several matters regarding the public service”. Moreover, considering the role of collective bargaining in addressing the challenges facing the public service as well as the impact of the economic and financial crisis, the points of consensus added that “collective bargaining is a concrete form of social dialogue, as it sets out in agreement the rights and responsibilities of public employers and public workers”. This is important not so much because of the economic crisis provoked by the pandemic, but because the pandemic has required changes in the organization of work, which require consultation and negotiation between the parties.

## Types of social dialogue

The social dialogue prevailing in most countries, including on the African continent, can be divided into three basic types.

Types of social dialogue	Key characteristics	Example
“Bipartite social dialogue” or “bilateral process”	Usually involves two principal parties, notably the workers’ and the employers’ organizations.	The social dialogue directly between workers’ and employers’ organizations encompasses the institutions of collective bargaining, the resolution of disputes and strikes, and the modes of labour-management cooperation.
“Tripartite social dialogue” or “three-legged mechanism” –	It involves three parties, notably workers’ and employers’ organizations plus the State.	Any type of a platform in which the State, the worker, and the employer (or their representatives) are included.
“Multilateral social dialogue” “Tripartite plus” social dialogue	In this model, other interest groups in society are involved, in addition to the workers’ unions, employers’ organizations and State parties, all of which form the three pillars of social dialogue. This type of social dialogue may also include traditional social partners, Government, and other relevant parties.	The National Economic Development and Labour Council is regarded as an example of the most elaborate “tripartite plus” social dialogue mechanisms, where civil society is the fourth partner represented in one of the four policy streams, which deals with economic and social development issues. The tripartite-plus Accord represents a comprehensive social partnership (the Government, employers, trade unions and civil society organisations) aimed at developing the green economy aspect of South Africa’s New Economic Growth Path, which targets the creation of 5 million additional jobs by 2020.

The first type usually involves two principal parties, notably the workers’ and the employers’ organisations, and is referred to as ‘bipartite social dialogue’ or ‘bilateral process’.<sup>11</sup> This type of social dialogue is directly between workers’ and employers’ organisations and it encompasses the institutions of collective bargaining, the resolution of disputes and strikes, and the modes of labour-management cooperation.<sup>12</sup> It exists only between workers’ representatives or unions, on one side, and management or employers’ organisations on the other: the government participates indirectly or does not participate at all.<sup>13</sup> However, the State’s involvement is also possible in bipartite social dialogue with employers’ organisations or workers’ organisations, particularly on other economic issues, such as taxation, trade and industrial policies.<sup>14</sup>

The second type of social dialogue involves three parties, notably workers’ and the employers’ organisations, plus the state and is commonly known as “tripartite social dialogue” (ILO 2013b, p. 1). This type of social dialogue also referred to in doctrine writings as a “three-legged mechanism” involves three participating

<sup>11</sup> ILO, Social dialogue and tripartism, para 6.

<sup>12</sup> Alby, Philip Jean-Paul Azama and Sandrine Rospabé, *Labor institutions, labor-management relations and social dialogue*, (ILO, 2005).

<sup>13</sup> Cam, Erdem, *Social dialogue and democracy in the workplace: trade union and employer perspectives from Turkey* (Singapore: Springer, 2019), 11.

<sup>14</sup> ILO and OECD, “Achieving decent work and inclusive growth: the business case for social dialogue”, 2017.

parties, notably the state, workers and employers, in the decision-making process to identify the solutions to problems in working life. It is usually carried out as a three-sided process in which the government of-  
ficially becomes a party to the dialogue.<sup>15</sup> It is, indeed, worth pointing out that “[s]ocial dialogue between governments, employers’ and workers’ organizations is essential in order to establish sound labour rela-  
tions, adapt labour laws to meet changing economic and social needs and improve labour administration” (ILO 2008b). As an example of tripartite dialogue, reference is made to any type of platform in which the state, the worker, and the employer (himself/ herself or his/ her representative) are included.<sup>16</sup> The CEACR stated, in its 2013 General Survey, that “tripartism as a method of social dialogue, which includes the public authorities, may be appropriate for addressing broader issues, such as the drafting of legislation on eco-  
nomic or social policy, or certain framework agreements.”

The third type is commonly known as ‘multilateral social dialogue’,<sup>17</sup> “tripartite plus”, “civil dialogue”, “stake-  
holders’ consultations” or “participatory governance”. In this model, other interest groups in the society are involved, in addition to the workers’ unions, employers’ organisations and state parties, all of which are the three pillars of social dialogue. The workers and employers’ organisation representatives, and representa-  
tives of other interest groups participate in the dialogue when the tripartite partners choose to open up the dialogue and engage with other social groups outside the employment relationship, such as civil so-  
ciety organisations (CSOs) and non-governmental organisations (NGOs).<sup>18</sup> This adds a wider perspective, incorporates the diverse views of other social actors and builds a wider consensus on issues beyond the world of work.<sup>19</sup> In this respect, the CEACR has stated that “it is important that consultation of these other parties should not undermine that of the main recognized social partners, let alone seek to replace it.”<sup>20</sup>

The Preamble to the 2002 Resolution of the International Labour Conference on Social Dialogue and Tripartism states that “the social partners are open to dialogue and that they work in the field with NGOs that share the same values and objectives and pursue them”. Also, the resolution recognized “forms of dialogue oth-  
er than social dialogue are most useful when all parties respect the respective roles and responsibilities of others, particularly concerning questions of representation”.

Some ILO instruments like the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159) and the HIV and AIDS Recommendation, 2010 (No. 200) request the involvement of specific civil society groups beyond the social partners. Some countries, such as South Africa, have widened the so-  
cial base of social dialogue to include representatives of young people, women, the unemployed and oth-  
er special and vulnerable groups, such as persons with disabilities.<sup>21</sup> In this regard, the National Economic Development and Labour Council (NEDLAC) is regarded as a unique example of the most elaborate “tripar-  
tite plus” social dialogue mechanisms, where civil society is the fourth partner represented in one of the four policy streams, which deals with development issues.<sup>22</sup>

It is argued that bringing in these social dialogue actors in addition to the traditional tripartite partners, no-  
tably government, employers and workers’ organizations, has the potential to make the reform of public

<sup>15</sup> Cam, Social dialogue and democracy in the workplace, 18.

<sup>16</sup> Cam, Social dialogue and democracy in the workplace, 18.

<sup>17</sup> Cam, Social dialogue and democracy in the workplace, 19.

<sup>18</sup> ILO, [Social dialogue: Recurrent discussion under the ILO Declaration on Social Justice for a Fair Globalisation](#), ILC.102/VI, 2013, para. 40.

<sup>19</sup> ILO, [National tripartite social dialogue: An ILO guide for improved governance](#), 2013, 16; Gianni Arrigo and Giuseppe Casale, eds, [Glossary on labour law and industrial relations \(with special reference to the European Union\)](#), (ILO, 2005), 238

<sup>20</sup> ILO, [Collective bargaining in the public service: A way forward](#), ILC.102/III(1B), 2013, para. 168.

<sup>21</sup> Venkata Ratnam and Shizue Tomoda, [Practical guide for strengthening social dialogue in public service reform](#), (ILO, 2005), 6; Konstantinos Papadakis, “Civil society and participatory governance in South Africa: The quest for socioeconomic equity in the post-apartheid era,” in *Changing images of civil society: from protest to governance*, ed. Bybruno Jobert and Beate Kohler-Koch (London: Routledge, 2008), 152; Fashoyin, Tayo, “Tripartite cooperation, social dialogue and national development” *International Labour Review* 143 No. 4 (2004): 367.

<sup>22</sup> Tayo Fashoyin, “[Tripartite cooperation, social dialogue and national development](#)” *International Law Review* 143, No.4 (2004): 341-371, 367; Patrick Belser, David Francis, Kim Jurgensen, and Imraan Valodia, “Minimum wages: tackling labour market inequality”, in *Inequality studies from the Global South*, ed. Francis David and Imraan Valodia (London: Routledge, 2020), 210.

services more inclusive and to increase its effectiveness.<sup>23</sup> On the one hand, CSOs “can be effective through awareness-raising and information campaigns driven by human rights concerns”.<sup>24</sup> On the other hand, CSOs can be valuable allies of employers’ and workers’ organisations, especially in the case of low density and presence of trade unions and employer organisations. In this case, CSOs can provide access to groups targeted by the social partners for organising purposes, including domestic and migrant workers or the unemployed. CSOs can also open policy space in areas going beyond the traditional scope of labour-management and socio-economic policy.<sup>25</sup> In addition, the ILO and OECD regard national tripartite-plus social dialogue as useful to align business operations with national development priorities.<sup>26</sup> From this standpoint, it is also clear that social dialogue may also take various forms in different countries or regions and sectors, depending on national circumstances, as discussed elsewhere in this paper.

However, workers and employers’ organizations have stressed that “genuine and effective social dialogue depends on the representativeness of the organizations engaging with government and with each other”. As a result, the 2002 resolution called on the ILO to “ensure that the tripartite constituents will be consulted as appropriate in the selection of and relationships with other civil society organizations with which the International Labour Organization might work.”

## Public sector, public administration, and civil service

Employees in the public sector, which is the focus of this research, can be classified into three main groups: civil servants in established posts, non-civil service or daily paid employees, and employees in local government (Colclough 1997, p. 72). The Committee of Experts on the Application of Conventions and Recommendations has stated that:

[A] distinction must therefore be drawn between, on the one hand, public servants who by their functions are directly employed in the administration of the State (for example, in some countries, civil servants in government ministries and other comparable bodies, and ancillary staff), who may be excluded from the scope of the Convention [No. 98] and, on the other hand, all other persons employed by the government, by public enterprises or by autonomous public institutions, who should benefit from the guarantees provided for in the Convention. This second category of public employees includes, for instance, employees in public enterprises, municipal employees and those in decentralized entities, public sector teachers, as well as air transport personnel, whether or not they are considered in national law as belonging to the category of public servants (ILO 2012).

A further distinction is that civil servants in established posts are bound by statutes, which, for example, “cannot generally be removed or dismissed with immediate effect or after merely giving notice, but only as a result of a procedure that ensures that their rights are duly respected” (ILO 2013a, para. 94). Non-civil service staff under non-statutory legal regimes, in turn, “do not enjoy the employment security of the public service and are generally covered by the same system as private sector workers” (ILO 2013a, para. 96).

<sup>23</sup> Venkata Ratnam and Shizue Tomoda, [Practical guide for strengthening social dialogue in public service reform](#), (ILO, 2005), 6

<sup>24</sup> ILO, [Social dialogue: Recurrent discussion under the ILO Declaration on Social Justice for a Fair Globalisation](#), ILC.102/VI, 2013, para. 77.

<sup>25</sup> ILO, [Social dialogue: Recurrent discussion](#), 2013, para. 78; Alan Bogg and Tonia Novitz, “*Links between individual employment law and collective labour law: their implications for migrant workers*,” in *Migrants at work: immigration and vulnerability in labour law*, ed. Cathryn Costello and Mark Freedland (Oxford: University Press Oxford, 2014), 379.

<sup>26</sup> ILO and OECD, [Achieving decent work and inclusive growth: the business case for social dialogue](#), 2017, 10.

There is a great difference between the concepts of public sector, public administration, and civil service, which will be discussed briefly for a better understanding of the diversity of practices in social dialogue in the public service.

- The public sector is broader because it includes State-owned and State-holding enterprises or those firms that are majority-owned by the State, and this aspect marks a key difference with public administration (Daza Pérez 2002, p. 6; Guan 2015, p. 149). In most countries, labour laws applicable to the private sector cover employees working in State-run enterprises, and the legal and labour regime applicable to them is different from that applicable to workers in the public administration (Daza Pérez 2002, p. 6).
- Many jurisdictions place those working in the public administration under the category of civil servants. In most cases, applicable rules and regulations are set out either in statutes and law in the form of civil service statutes or in secondary legislation, such as administrative orders and rules (Horton 2011, p. 48; Bossaert and Demmke 2003, p. 4).

Among the countries under study, the general labour laws of Ghana, Kenya, South Africa, and Tunisia cover public servants.<sup>27</sup> Similarly, many other African countries have ordinary or special labour regulations that govern public administration employees with non-civil servant status (Daza Pérez 2002, p. 6). In contrast, Angola's labour laws explicitly exclude civil servants or workers employed in the public administration of the State or any other government agency (Daza Pérez 2008, p. 227). In all countries under study, there are statutes and acts that lay down specific principles, rights and duties and regulate the functions, structures, and behaviour of civil servants.<sup>28</sup> The civil service has a complex and mixed nature, because a civil servant is both an employee and an individual managing the public administration: therefore, constitutional, administrative, and labour law norms regulate the civil service (Petrylaité 2008, p. 331).

As employees, civil servants are bound to account to the State as their employer, and the presence of the State or one of its organs in this employment relationship is a typical feature of administrative relations (Daza Pérez 2002, p. 6). It is argued that in terms of their juridical nature, the relations between the employee and the State may be administrative, contractual or a combination of both (Blanpain 1994, p. 210). The parties quite often enter the relationship through administrative rather than contractual arrangements. Although some aspects of working conditions are the same for all categories of employees in all sectors, at least the beginning and the end of the relationship usually have different features (Daza Pérez 2002, p. 6). Government employees undertake activities, which, together with public service delivery mechanisms, significantly influence the size of the government's workforce (McCarthy 2017).

## Previous studies related to the topic done within the ILO and elsewhere

Research interest in labour relations in the public sector can be traced back to the 1970s and to a greater extent in the 1980s, but more focus was put on the sector in global terms with no distinction being made between the specific characteristics of the civil service. In other words, the civil service was usually either excluded from any specific discussion or was considered as falling within the broader public sector.<sup>29</sup>

<sup>27</sup> Ghana, Parliament of the Republic of Ghana, *Labour Act No. 651*, October 2003; Kenya, Parliament of Kenya, *Employment Act No.11*, October 2007; South Africa, Parliament of the Republic of South Africa, *Labour Relations Act No.66*, December 1995; Tunisia, The National Assembly, *Labour Code No. 66-27*, April 1966.

<sup>28</sup> Angola, Decree No. 25/91 of 29 June 1991, defining and establishing the system for establishing, modifying and terminating the legal relationship of employment in the public administration; Angola, Act No. 17/90 of 20 October 1990, relating to the legal relationship of employment in the administration as established on the basis of an administrative act (appointment) or contract; Ghana, Civil Service Act, No. 327 of 1993; Kenya, Public Service Act and Civil Servants Code of Regulations; South Africa, Public Service Act, Proclamation No. 103/1994; South Africa, Amendment, Public Service Regulations, 2001, *Gazette* No. 33171, Regulation 382; Tunisia, Civil Service Law, Act No. 83-112 of 12 December 1983, laying down the general status of civil servants employed by the State, local public authorities and public administrative institutions.

<sup>29</sup> José Luis Daza Pérez, "Social dialogue in the public service", ILO InFocus Programme on Social Dialogue, Labour Law and Labour Administration Working Paper No.11, 2002, 3.



In recent years, the International Labour Organisation (ILO), labour unions and academic scholars have conducted extensive research on labour or industrial relations.<sup>30</sup> However, studies on the African public service are scarce.

## Previous ILO papers

Over the last five decades, the ILO has published several papers focusing specifically on the use of social dialogue in the public service. In this regard, particular attention can be drawn to the studies conducted by the ILO's Commission on the Public Service beginning in 1963. The studies were conducted in three stages: 1963-1978, 1978-1998, and 2000 to the present. The first stage consisted of exploratory studies about the growth of public servant organizations and their recognition by ILO member states, which created a critical mass for adopting Convention No.151; the second, on the development of social dialogue in the public service in particular regions as ratification grew; and the third focussed on developing training materials and monitoring developments at a global and regional level.

The adoption by the International Labour Conference of Convention No.151 was a result of the scale and extent of the earlier studies conducted by the ILO on the subject.<sup>31</sup> In the decade following the adoption of the Convention, the ILO carried out a series on labour relations in the public service in selected developing countries, including in Africa.<sup>32</sup> It also drafted a report for the discussions in the Joint Meeting on Human Resource Development in the Public Service in the Context of Structural Adjustment and Transition, which was held at the ILO in Geneva from 14 to 18 December 1998.<sup>33</sup>

In this century, the ILO has conducted a significant amount of comparative research into the main features and trends in public service labour relations.<sup>34</sup> In 2001 the ILO conducted a *comparative study of contents of civil service statutes*.<sup>35</sup> In 2005, the ILO published the *Practical Guide for strengthening social dialogue in the reform of public services*. In 2008, the ILO conducted a comparative study examining the evolution of labour relations in the public service in several regions of the world.<sup>36</sup> In 2011, the ILO compiled a manual aimed at identifying approaches and practices that have enabled unions and public sector employers to engage in negotiations in respect of wages and conditions of work on a fair footing and with minimal disruption to public services.<sup>37</sup>

<sup>30</sup> For the purposes of this study, the term "labour relations" or "industrial relations" refers to the system which involves direct or indirect interaction between the government and employers, employees and their representatives with a view to setting the ground rules for the governance of work relationships. See Anne Trebilcock, A "Labour relations and human resources management: an overview," in Encyclopaedia of occupational health and safety - fourth edition, ed. Jeanne Stellman J (ILO, 1998), 278.

<sup>31</sup> Gillian S. Morris, "Changes in public employment and the provision of public services: the implications for labour law", *Industrial Relations Journal* 26, No.3 (1995), 231-232.

<sup>32</sup> Muneto Ozaki, Ali Touhami and C.P. Thakur, *Labour relations in the public service: Developing countries* (ILO, 1988); Tiziano Treu et al, *Public service labour relations: Recent trends and future prospects* (ILO, 1987); ILO Report of the Director-general 1, No. 2 (ILO, 1986), 10; Bronstein A., "The evolution of labour relations in Uruguay: achievements and challenges", *International Labour Review* 128, No.2 (1989), 212

<sup>33</sup> ILO, *Note on the proceedings: Joint Meeting on Human Resource Development in the Public Service in the Context of Structural Adjustment and Transition*, JMPS/1998/8, 1998; ILO, *Report of the Director-General: Activities of the ILO, 1998-99*, 2000, 134; José Luis Daza Pérez, "Social dialogue in the public service", IFP/Dialogue Working Paper No.11, 2002, 3.

<sup>34</sup> ILO, *Freedom of association and procedures for determining conditions of employment in the public service*, 1976; Tiziano Treu et al., *Public service labour relations: Recent Trends and Future Prospects* (ILO, 1987); Touhami Ozaki and C. P. Thakur, "Labour relations in the public service: Methods of determining employment conditions", *International Labour Review* 126, No.3 (1987): 277-299; Touhami Ozaki and C. P. Thakur, "Labour relations in the public service: Labour disputes and their settlement", *International Labour Review* 126, No.4 (1987): 405-422; Muneto Ozaki et al., *Labour relations in the public service: Developing countries* (ILO, 1988); ILO, *World Labour Report*, (ILO, 1989); Wouter van Ginneken, ed., *Government and its employers: Case studies of developing countries* (Brookfield: Avenbury, 1991); Muneto Ozaki, "Labour relations in the public service", in *Comparative labour law and industrial relations in industrialised market economies*, ed. Roger Blanpain (Kluwer, 1993); see also, Edward Yemin, "Labour relations in the public service: a comparative overview", *International Labour Review* 132, No. 4 (1993), 469.

<sup>35</sup> Jane Hodges-Aeberhard, *Comparative study of contents of civil service statutes* (ILO, 2001).

<sup>36</sup> Giuseppe Casale and John Tenkorang, "Public service labour relations: A comparative overview", ILO Social Dialogue, Labour Law and Labour Administration Working Paper No.17, 2008, 1.

<sup>37</sup> ILO, *Manual on collective bargaining and dispute resolution in the public service* (ILO, 2011).

This was followed by the General Survey conducted by the CEACR in 2013 on labour relations in the public service, and the Global Dialogue Forum on Challenges to Collective Bargaining in the Public Service was held in Geneva in 2014. As a result, the ILO prepared a compilation of collective agreements in the public service and two papers showcasing practices of social dialogue in the public service in the European Union (EU) and Latin America, published in 2015, 2018 and 2019.

Using a comparative analysis, this literature targets actors who play important roles in shaping policies on reform, including private-sector employers and workers engaged in the management and delivery of public services, as well as the users of public services and those NGOs interested in ensuring improved public service delivery.<sup>38</sup> It has also informed on the trends prevailing in public service labour relations in selected countries, focusing in particular on the impact of reforms on this sector. This literature has also allowed ILO constituents to participate in the discussions that led to and followed the adoption of Convention No 151.

From an African perspective, the ILO released a paper in 2007, which focuses on social dialogue in the public administration of member states of the West African Economic and Monetary Union (WAEMU).<sup>39</sup> This study assesses the mechanisms set out in the statutes for social dialogue and investigates the new avenues that several countries have explored for establishing a genuine social dialogue between the State and civil servants. With its focus on public administration, this paper further expands on country studies on social dialogue carried out under the ILO's Regional Programme for the Promotion of Social Dialogue in French-speaking Africa (ILO/PRODIAF).<sup>40</sup>

In 2003, the ILO commissioned a study in order to analyse the working conditions of workers in the Public Emergency Services in South Africa, including the police, firefighters and emergency medical personnel. The report seeks to help in the understanding of the role of social dialogue in the setting of these working conditions, their protection and improvement. For this purpose, it examines laws, legal frameworks and existing statistical data pertaining to working conditions, human resource planning, social dialogue and rights at work in the emergency services in South Africa.<sup>41</sup> This paper differentiates from the past work because it does not only updates information on the debate and the practices, but also establishes a new analytical framework for the discussion on social dialogue while focussing more on public service from an African perspective.

## Recent studies in other settings

There has been a significant amount of work undertaken outside the ILO framework, which focussed mostly on labour law or on human resource management in the public sector. As far as labour law is concerned, most of the studies have covered questions such as unionisation, collective bargaining, the right to strike and dispute settlement in public administrations based on the regulatory framework, trade union and bargaining structures, and the causes and forms of disputes and the methods used to settle them.<sup>42</sup>

As regards the human resource management approach, most existing studies, such as the work published by the Organisation for Economic Cooperation and Development (OECD)'s Public Management and Governance (PUMA) programme, often underreport all aspects of the relationship between the government and its employees. It is worth pointing out that this approach is usually based on the number of employees, recruitment, personnel management practice, mobility, salaries, training, restructuring, productivity, and quality.<sup>43</sup>

<sup>38</sup> Venkata Ratnam and Shizue Tomoda, *Practical guide for strengthening social dialogue in public service reform*, (ILO, 2005), 2.

<sup>39</sup> Moussa Oumarou, *Le dialogue social dans l'administration publique des pays Membres de l'Union économique et monétaire ouest-africaine (UEMOA)* (ILO, 2007).

<sup>40</sup> Oumarou, *Le dialogue social dans l'administration publique des pays Membres de l'UEMOA*, 1.

<sup>41</sup> Bobby Mgijima, "Best practice in social dialogue in public service emergency services in South Africa", ILO Sectoral Activities Working Paper No. 192, 2003.

<sup>42</sup> Daza Pérez, "Social dialogue in the public service", 5.

<sup>43</sup> Daza Pérez, "Social dialogue in the public service", 5.

In 1996, the European Public Services Committee (EPSC) commissioned and released a report, which is a unique compilation of industrial relations questions specifically pertaining to the public sector. The report highlights the ever-tighter cooperation which takes place between unions in order to participate in the evolving European social dialogue and emphasises that collective bargaining at a European level is dependent on an agreed policy on the subjects of bargaining.<sup>44</sup> In Africa, some work has examined the history and the use of social dialogue in the public service,<sup>45</sup> although the mainstream literature has not adequately addressed the industrial relations (IR) problems and challenges facing the continent.<sup>46</sup> A 2006 comparative study provides an analysis of historical roots, contemporary developments and trends in industrial relations, focusing on the main actors in selected countries.<sup>47</sup>

Considering the particularly significant strong role it has played in industrial relations on the African continent, the public sector has been included in the analysis. While the available literature on IR in Africa has placed considerably more focus on certain countries such as Kenya and South Africa than on others, the study conducted by Horwitz has included some other countries from particular sub regions. For instance, in Southern Africa the discussion has included Botswana, South Africa and Zimbabwe; in North Africa, Tunisia has been considered; in East Africa, Kenya and Tanzania and in West Africa, Nigeria and Ghana have been included. The study found that many analysts tend to make broad generalisations about industrial relations in Africa ignoring the unique features of each country and the diversity of Africa cutting across many dimensions.<sup>48</sup> In an attempt to create tripartite forums and design industrial relations and dispute resolution systems, it is worth considering such particularities of labour relations, especially in the public service on the African continent. The five countries included in the present study reflect the geographical, linguistic and legal diversity of the continent, and the availability of comparable evidence.

<sup>44</sup> Torunn Olsen (ed.) *Industrial relations systems in the public sector in Europe* (Fafo Institute for Applied Social Science/EPSC, 1996).

<sup>45</sup> Shamira Huluman, *The practice of social dialogue in the South African Public Service* (PSCBC 2005); Bobby Mgijima, *Best practice in social dialogue in public service emergency services in South Africa* (ILO, 2003).

<sup>46</sup> Ken Kamoche, Stephen M. Nyambegera and Munyae M. Mulinge, "Human resource management in Kenya," in *Managing human resources in Africa*, eds. Ken Kamoche K et al. (Routledge, 2004), 95.

<sup>47</sup> Frank Horwitz, "Industrial relations in Africa", in *Global industrial relations*, eds. Michael J. Morley, Patrick Gunnigle and David Collings (Routledge, 2006), 178.

<sup>48</sup> Horwitz, "Industrial relations in Africa", 178.

## ► 2 Particularities of labour relations in the public service in Africa

### The scale of government employment

The scale of general government employment varies considerably from one region to another and from one country to another in the world. Across the OECD, for instance, the average is 18% and among its members, Scandinavian countries have the largest public workforce, with some cases, such as Norway reaching more than 30% of total employment.<sup>49</sup>

Similarly, on the African continent, there is some significant variation in the size of government workforces worldwide. As far as the countries under study are concerned, the table provided below represents better the scale of government employment.

#### ► The scale of government employment

Country	The scale of government employment
Angola	The civil service employed an estimated 345,400 individuals in 2014, which represented about 6.5 percent of the total labour force. Finally, in Angola, the civil service employed an estimated 345,400 individuals in 2014, which represented about 6.5 percent of the total labour force (ILOSTAT).
Ghana	ILO statistics show the total number of employees in public administration, defence, and compulsory social security to be 310,600 in 2019. According to government figures, the number of employees in the public service reached 700,000 in 2008 (Modern Ghana 2008). Based on 2013 data from the OECD and the ILO, the number of public sector employees is 11.0 per cent of the total workforce.
Kenya	Kenya comes second (of the countries studied), with the public service being a major employer of over 865,200 employees in 2019, of which 207,100 were in the ministries, judiciary, and parliament; 324,500 under the Teachers Service Commission; 96,200 in parastatal bodies; 47,300 in corporations controlled by the Government; and 190,000 employed by county governments (Kenya National Bureau of Statistics 2020, p. 48). The Government reported that public sector employment recorded 1.2 per cent growth from 833,100 persons in 2017 to 842,900 persons in 2018, down from the 7.5 per cent increase in 2016–17, mostly because of temporary contracts issued by the Independent Electoral and Boundaries Commission in 2017 (Kenya National Bureau of Statistics 2019, p. 40). For 2019, the government listed 41,900 government workers under agriculture, forestry and fishing, and 24,300 under manufacturing (Kenya National Bureau of Statistics 2020, page 46).  Of the study countries, Tunisia comes third in terms of the size of the public workforce, with the public sector currently including 583,000 employees in the central and regional administration and 33,000 in local authorities, as well as 180,000 employees in public companies (Brockmeyer, Khatrouch and Raballand 2015, p. 6).
South Africa	12 per cent of the total non-agricultural formal sector employment. South Africa has the largest public workforce, with the Government employing 1.3 million people (excluding local government), which represents 12 per cent of the total non-agricultural formal sector employment (Rakabe 2019).
Tunisia	Tunisia counts more than 650,000 civil servants, which represents 5 per cent of the total population of 12 million people. <sup>1</sup>

<sup>1</sup> 'Tunisia struggles to downsize public wage bill' *The North Africa Post*, 4 March 2021.

<sup>49</sup> Karin Gottschall et al., "Public Employment regimes in OECD countries," in *Public sector employment regimes: transformations of the state as an employer*, ed. Karin Gottschall et al. (London: Palgrave Macmillan, 2015), 80; OECD, "Public employment", in *Government at a glance 2019* (Paris: OECD Publishing, 2019), 84.

As an additional comment, in most African countries the number of women employed in the civil service has significantly increased in recent years, although women continue to occupy the lowest-paid jobs with the lowest status (Mannah 2005, p. 153; Goetz 2003, p. 110).

Labour or industrial relations in many African countries are often rooted in colonial era or the apartheid regime (in South Africa and Namibia).<sup>50</sup> The public service at that time accounted for the majority of the employed in these countries, where other wage work mostly extracted primary natural resources, such as gold, diamonds, and emergent manufacturing sectors, including clothing and textiles.<sup>51</sup> In fact, all the countries under study have significant natural resources, which the colonial powers started to explore and exploit systematically during the colonial era. The patterns of such resource exploitation, which European trading companies developed with the help of the colonial state apparatuses, have remained to this day.<sup>52</sup>

The colonial powers also left these African countries a legacy in terms of labour relations, in which labour relations are highly politicised and often involve high-level civil servants in some areas of the public services.<sup>53</sup> In these countries, the state has traditionally played a distinctive role in the arena of public services, being simultaneously economic regulator, employer of public personnel, legislator and provider of public services.<sup>54</sup> In this regard, the state plays a dominant role in driving industrial and economic development through institutional, state-directed industrial relations systems, investing in state-owned enterprises (SOEs).<sup>55</sup> The public sector is considered particularly significant given the strong role it has played in industrial relations and the public service continues to employ the majority of the workforce. But the trends in collective bargaining coverage and union density in the public service have remained static over the past several decades.<sup>56</sup>

Prior to the 1990s, several African countries failed to comply with the provisions of ILO Convention No. 87 on freedom of association, regarding public service employees.<sup>57</sup> Moreover, until the 1990s several African countries imposed many restrictions on the labour rights of public service employees.<sup>58</sup> Various labour laws denied some sections of employees, although the national Constitutions guaranteed freedom of association

<sup>50</sup> Tayo Fashoyin, *Industrial relations in Southern Africa: the challenge of change* (ILO, 1998), 3; John Luiz, "Human resource management in Africa," in *Managing business in Africa: practical management theory for an emerging market*, ed. John Luiz (Cape Town: Oxford University Press, 2006), 141.

<sup>51</sup> Horwitz, "Industrial relations in Africa", 179-180; Casale and Tenkorang, "Public service labour relations: A comparative overview", 65.

<sup>52</sup> John M. Mbatia, "A poor continent rich resources", in *Colonialism in Joseph Conrad's heart of darkness*, ed. Claudia Durst Johnson (Greenhaven Press, 2012), 127; Martin Heger, "Trafficking in hazardous wastes (Article 28L) and illicit exploitation of natural resources (Article 28Lbis)", in *The African Criminal Court: A Commentary on the Malabo Protocol*, eds. Gerhard Werle and Moritz Vormbaum (T.M. C. Asser Press, 2017), 127; Gardner, Leigh and Tirthankar Roy, *The economic history of colonialism* (Bristol University Press, 2020); Todd Cleveland, *Diamonds in the rough: corporate paternalism and African professionalism on the mines of colonial Angola, 1917-1975* (Ohio University Press, 2015), 289.

<sup>53</sup> Casale and Tenkorang, "Public service labour relations: A comparative overview", 65.

<sup>54</sup> Phil B. Beaumont, *Public sector industrial relations* (London: Cengage Learning Emea, 1992); Anna Mori, *Employment relations in outsourced public services: working between market and state* (Palgrave, 2020), 16.

<sup>55</sup> Frank Horwitz, "Industrial relations in Africa", in *Global industrial relations*, eds. Michael J. Morley, Patrick Gunnigle and David Collings (Routledge, 2006), 178.

<sup>56</sup> Horwitz, "Industrial relations in Africa", 178; Segun Matanmi, "Industrial relations in emerging countries", in *Management in emerging countries: International Encyclopedia of business and management*, ed. Malcolm Warner (Thomson Learning, 1999), 95-104.

<sup>57</sup> Casale and Tenkorang, "Public service labour relations: A comparative overview", 65.

<sup>58</sup> Casale and Tenkorang, "Public service labour relations: A comparative overview", 65. See also ILO, "Note on the proceedings: Joint Meeting on Human Resource Development in the Public Service in the Context of Structural Adjustment and Transition", December 1998.

for all workers in Angola,<sup>59</sup> Ghana,<sup>60</sup> Kenya,<sup>61</sup> Tanzania,<sup>62</sup> Nigeria,<sup>63</sup> South Africa,<sup>64</sup> Tunisia<sup>65</sup> and Uganda.<sup>66</sup> The rise of democracy in many African countries and the end of apartheid in South Africa brought some amendments to these policies.<sup>67</sup>

## The government player in the dialogue

In many countries, the structure of government comprises a ministry or a department that is usually in charge of public administration and the management of its human resources, but since administrations are complex, this responsibility could somehow be shared between two or more administrative entities.<sup>68</sup> Some other structures of government include ministries, which are solely in charge of the public administration itself, such as the Ministry of Public Administration.<sup>69</sup> Many countries have ministries that are responsible for public administration together with other portfolios. By virtue of the structures it sets up, the State organises the management of its own employees and in some countries, some aspects of industrial relations such as civil servants' freedom to organise allow participation by agencies of the Labour Administration, which makes the system much more complex.<sup>70</sup> Box 3.1 presents public administration arrangements in selected African countries.

### ► Public administration arrangements in selected African countries

**South Africa:** the Department of Public Service and Administration (DPSA), which is at the centre of Government, is responsible for the organisation and administration of the civil service.<sup>71</sup>

**Tunisia:** until recently, public administration was the responsibility of the Ministry of the Civil Service, Modernisation of Administration and Public Policies, which was abolished by virtue of Decree No.157 of 26 March 2020;<sup>72</sup> the ministry of public administration and governance and the presidency assumed some relevant functions,<sup>73</sup> as did the ministry of public administration and governance.<sup>74</sup>

**Angola, Guinea-Bissau and Zimbabwe:** the Ministries of labour and public administration are in the same portfolio.<sup>75</sup>

**Kenya:** the Ministry of Public Service and Gender oversees the public service.

<sup>59</sup> ILO, *The exercise of civil liberties and trade union rights in Angola, Mozambique and Guinea (Bissau)*, 1973, 6.

<sup>60</sup> Public Services International and World Congress, *Trade Union Rights are Human Rights*, 1989, 41.

<sup>61</sup> Palamagamba John Kabudi, *Human rights jurisprudence in East Africa: a comparative study of fundamental rights and freedoms of the individual in Tanzania, Kenya and Uganda* (Nomos Verlagsgesellschaft, 1995), 307.

<sup>62</sup> Kabudi, "Human rights jurisprudence in East Africa", 307.

<sup>63</sup> Adewumi Funmi and Adebimpe Adenugba, *The state of workers' rights in Nigeria: an examination of the banking, oil and gas and telecommunication sectors* (Friedrich-Ebert-Stiftung, 2010), 48; Kenneth Amaeshi, Ifedapo Adeleye and Olufemi Amao, "Corporate social responsibility and employee relations in Africa: evidence from the Nigerian banking sector," in *The Routledge companion to business in Africa*, eds. Sonny Nwankwo and Kevin Ibeh (Routledge, 2014), 479.

<sup>64</sup> John Grogan "Freedom of association," in *Collective labour law*, ed. John Grogan (Juta, 2007), 19; Giuseppe Casale and John Tenkorang, "Public service labour relations: A comparative overview", ILO Social Dialogue, Labour Law and Labour Administration Working Paper No.17, 2008, 65.

<sup>65</sup> Howard C. Reese et al., "Labor relations and organization," in *Area Handbook for the Republic of Tunisia*, (Washington, DC: U.S. Government Printing Office, 1970), 297.

<sup>66</sup> Casale and Tenkorang, "Public service labour relations: A comparative overview", 65.

<sup>67</sup> Casale and Tenkorang, *Public service labour relations: A comparative overview*, 65.

<sup>68</sup> Daza Pérez, "Social dialogue in the public service", 9.

<sup>69</sup> Daza Pérez, "Social dialogue in the public service", 9.

<sup>70</sup> Daza Pérez, "Social dialogue in the public service", 9.

<sup>71</sup> See, [DPSA online](#).

<sup>72</sup> See Government Decree No. 2020-157 of 26 March 2020.

<sup>73</sup> MKJ, "Tunisie : Suppression du ministère de la Fonction publique", webdo. Tn, 31 March 2020

<sup>74</sup> Commonwealth Secretariat, *Key principles of public sector reforms: case studies and frameworks* (Commonwealth Secretariat, 2016), 33.

<sup>75</sup> Daza Pérez, "Social dialogue in the public service", 9.

**Ghana:** public administration falls under three key agencies, namely the Ministry of Finance, the Public Service Commission and the Office of the Prime Minister.<sup>76</sup>

## Public employees and their organisations

ILO Convention No. 87 guarantees the right of workers and employers, without distinction whatsoever, to establish and to join organisations of their own choosing without previous authorisation, subject only to the rules of the organisation concerned. A careful reading of this provision reveals that public servants are also entitled to enjoy the right to form and join organisations of their own choosing, without prior authorisation, to promote and safeguard their occupational interests. It is worth pointing out in this regard that the purpose of public service employees' organisations is to "further and defend the interests of public employees", as set out in ILO Convention No. 151. This Convention further protects public service employees' civil and political rights, which are essential for the normal exercise of freedom of association, subject only to the obligations arising from their status and the nature of their functions. It is the only ILO Convention that contains this specific guarantee. Box 3.2 presents information on the ratification and implementation of Convention No. 151, with particular focus on Tunisia.

### ► Ratification and implementation of ILO Convention No. 151: Tunisia

ILO Convention No. 151 has been ratified by 12 African member states, the first being Zambia in August 1980 and the latest Madagascar in June 2019. The southern African Development Community (SADC) has called on all its member states to ratify it since 2011.<sup>77</sup>

Tunisia ratified the Convention through Organic Law No. 2013-7 dated 1 April 2013, as part of its Constitutional revision after the 2011 revolution. In its report, the Constitutional Assembly's Committee on Social Affairs (4 August 2012) "highlighted the efforts of the country to provide the appropriate facilitates for representatives of civil services, to recognize and enable them to perform their duties in their regular activities, free of interference from the concerned authorities. The committee also underlined the importance of its continuing efforts to strengthen the independence of civil services in relation to freedom of association and non-interference from the public authorities." They also found that national legislation was "mostly consistent with the requirements" of the Convention.

In 2015, the Tunisian Dialogue quartet—composed of the Tunisian General Workers' Union, the main employers' organization UTICA and two non-governmental organizations—was awarded the Nobel prize for Peace. In April 2020, a social dialogue session focussed on monitoring local issues and the role of local authorities in the fight against the spread of Covid-19, as well as the role of the public service in managing the crisis and ensuring the continuity of public service. Despite the crisis caused by COVID-19, the Tunisian General Trade Union (UGTT) and the government signed an agreement on 6 February 2021 to activate 47 pending sectoral agreements in the public sector and the civil service.

Out of the other countries in this study, only Ghana also ratified it in 1986. In 2013, the Government of Kenya pointed to the need for technical assistance to prepare for the possible ratification of Conventions Nos 151 and 154, and South Africa has received such technical assistance since 2017.

In most Sub-Saharan African countries, the law recognises the right of state employees to become trade union members to form and join trade unions, while in some other countries it is illegal for civil servants

<sup>76</sup> Commonwealth Secretariat, *Key principles of public sector reforms: case studies and frameworks* (London: Commonwealth Secretariat, 2016), 33.

<sup>77</sup> SADC, "Promoting Decent Work for all in the SADC Region", May 2013, 16.



to become trade union members and to promote collective bargaining.<sup>78</sup> It is worth briefly discussing the position of the countries under study.

- **Angola.** The Constitution and the law guarantee the right of workers to form and join independent trade union organizations to defend their collective and individual interests.<sup>79</sup> However, in practice State employees do not usually enjoy their freedom of association, as government approval is required to form and join unions, which is hampered by membership and legalization issues (United States Department of State 2020, p. 24; ITUC 2010). As Angola's largest employer, the Government, through the Ministry of Public Administration, Employment, and Social Security, mandated government worker wages without negotiation with the unions (ITUC 2010).
- **Ghana.** All workers have the right to form or join a trade union of their choice for the promotion and protection of their economic and social interests.<sup>80</sup>
- **Kenya.** The 2010 Constitution<sup>81</sup> and the Labour Relations Act, No. 14 of 2007,<sup>82</sup> grant every person the general right to freedom of association, which includes the right to form, join or participate in the activities of an association of any kind. Section 41 of the Constitution provides for freedom of association for workers and employers.
- **South Africa.** Under the 1996 Constitution<sup>83</sup> and the 1995 Labour Relations Act,<sup>84</sup> all workers, including employees of the State, are entitled to enjoy the right to form and join trade unions, to participate in the activities of the trade union and to strike. Courts must interpret the Labour Relations Act consistently with the Constitution and binding principles of public international law, as it is intended to give effect to the rights enshrined in section 23 of the Constitution, as well as to South Africa's obligations as a Member State of the ILO (Cohen et al. 2020, p. 299).<sup>85</sup>
- **Tunisia.** under the 2014 Constitution, all employees, with the exception of the members of the national army, are entitled to enjoy the right to join and form unions, including the right to strike.<sup>86</sup> The law of 12 December 1983 governing the overall status of State employees<sup>87</sup> specifically grants civil servants the right to join trade unions, which are governed by the Labour Code of 30 April 1966 as amended to date.<sup>88</sup>

#### ► Freedom of Association for members of the police force

ILO Conventions No. 87, 98 and 151 allow member states to regulate the freedom of association of members of the armed forces and the police, but ratifying them should not be used as a pretext to withdraw protections previously granted. Several countries have indeed recognized the freedom of association of members of the police. For example:

- In Tunisia, Art.11 of Law n ° 82-70 of August 6, 1982, relating to the general statute of the internal security forces, as amended by Decree-Law No.2011-42 of May 25, 2011, states that "Internal security force agents have the right to trade union action and to form, for this purpose, professional unions independent of all other professional unions and their unions.

<sup>78</sup> Derek Robinson, *Civil service pay in Africa* (Geneva: International Labour Office, 1990), 154.

<sup>79</sup> See article 50 of Angola's Constitution of 2010; article 6 of General Labour Law No. 7/15 of 15 June 2015; and Trade Union Act No. 21-C/92 of 28 August 1992.

<sup>80</sup> See section 21 of Ghana's Constitution of 1992 with amendments through 1996, and section 79 of Labour Act No. 651, 8 October 2003.

<sup>81</sup> See section 36 of the Constitution of Kenya, 2010.

<sup>82</sup> See section 4 of Labour Relations Act, No. 14 of 2007 (revised 2012).

<sup>83</sup> See section 23(2) of the Constitution of the Republic of South Africa, 1996.

<sup>84</sup> See section 4 of Labour Relations Act No. 66 of 1995, South Africa.

<sup>85</sup> See sections 1 and 3 of Labour Relations Act.

<sup>86</sup> See article 36 of Tunisia's Constitution of 2014.

<sup>87</sup> See article 4 of Act No. 83-112 of 12 December 1983.

<sup>88</sup> See article 242-257 of Labour Code, Act No. 66-27 of 30 April 1966.



- In Kenya, "In April 2014, the Industrial Court of Kenya ruled that the police forces have the right to organize in line with Art.41 of the new Kenya Constitution .... Since the Attorney General appealed such decision, the matter is currently pending before the Court of Appeal of Kenya."<sup>89</sup>
- The government of Cabo Verde publicly acknowledged this right of police unions in 2017.<sup>90</sup>
- In Burkina Faso, Article 44 of the Organic Act on the Staff of the National Police, N°027-2018/AN, allows police officers to create and join associations, but it is "subject to the prior authorization of the minister in charge of security with the exception of sports and cultural associations and those recognized as being of public utility."
- In South Africa, members of the police have the right to collective bargaining under the umbrella of the SSSBC.
- In the Democratic Republic of the Congo, Art.45 of the Law No.13/013 of June 1, 2013 on the status of career personnel of the national police, recognizes the right of police officers "to defend the social demands of the police function within the framework of staff representation." A Decree of the Prime Minister, deliberated in the Council of Ministers, regulate the organization and functioning of representative bodies at both national and provincial level. Art.46 prohibits the strike.
- In Lesotho, the Police Regulation no. 27-2003 establishes a Police Association to represent the interests of its members.
- In Mauritius, the Police (Membership of Trade Unions) Act 2016 granted police officers the right to organize.
- In Seychelles, the Police Federation Regulations of 28th March, 1967, establishes the Federation "to enable subordinate officers to consider and bring to the notice of the Commissioner of Police and of the Government all matters affecting their welfare and efficiency, including pay, pension and conditions of service other than matters of discipline or of promotion affecting individual officers." (Sec.4)
- In Madagascar, Arts.6 and 7 of the General Autonomous Statute of the Staff of the National Police, Act No.96-026 (2 October 1996) recognizes the right to organize of officials of the National Police and creates a Joint Administrative Commission with authority to review all legislative proposals regarding personnel issues except transfers, and with other advisory powers.
  - Similarly in Mali, Arts.35-37 of the ordinance on police officers (2018) grants freedom of association to all police staff, as well as the right to elect representatives to the consultation organs.

## Civil servants' single representation bodies

As mentioned previously, in most African countries, trade union bodies and associations represent the interests of public service employees. This regime is quite different from the systems found in some European countries, such as Germany, Spain, and the Netherlands, which are based on interest intermediation by elected workers' representatives in Staff Councils, Committees or Boards.<sup>91</sup> In some other African countries, such as Mozambique, associations of civil servants rather than trade unions represent public employees, and the level of unionisation in such public-sector associations is similar to that in the private sector associations.<sup>92</sup>

<sup>89</sup> ILO, *2016 Annual Review Under the Follow-Up to the ILO 1998 Declaration: Compilation of Baseline Tables*, 2016, 145.

<sup>90</sup> Lusa, "Provedor de Justiça de Cabo Verde defende direito da polícia à greve", *Diário de Notícias*, 24 January 2018.

<sup>91</sup> Daza Pérez, "Social dialogue in the public service", 13.

<sup>92</sup> Evance Kalula and Lovemore Madhuku eds., *Public Sector Labour relations in Southern Africa: developments and trends* (Cape Town: UCT, 1997), 4-7, cited in Horwitz, "Industrial relations in Africa", 194.

Kalula and Madhuku have classified African countries in general, and those from the SADC region in particular, into two broad groups, in terms of public sector industrial relations:<sup>93</sup>

- The first group is made up of countries, such as South Africa, Kenya, Ghana, Tunisia, Namibia, Zambia, Mauritius and Malawi, where trade unions are allowed to operate freely in the public sector.<sup>94</sup> Botswana and Zimbabwe, in contrast, establish bargaining councils for public employees. Since 2019, Angola is considering a draft trade union law that would extend this right to public servants.<sup>95</sup>
- The second group comprises countries, such as Angola and Lesotho, where recognised trade unions for government employees are not formally registered.<sup>96</sup> Instead, the said government employees are permitted to form workers' associations with a view to representing their interests, but these associations do not enjoy the same rights as trade unions.<sup>97</sup> For example, Secs. 21 and 22 of the Lesotho Public Service Act 2005 recognizes associations of public officers registered under the Societies Act,<sup>98</sup> which in turn does not specify the rights attributed to the respective organizations or their representativeness.

<sup>93</sup> Kalula and Madhuku, "Public Sector Labour relations in Southern Africa", 4–5.

<sup>94</sup> Horwitz, "Industrial relations in Africa," 193.

<sup>95</sup> "Angola, [Trade Union Bill](#), April 2019".

<sup>96</sup> Horwitz, "Industrial relations in Africa", 193; Article 2 of the General Labour Law of Angola, No. 2 of 11 February 2000..

<sup>97</sup> Horwitz, "Industrial relations in Africa," 193.

<sup>98</sup> Lesotho, "[Public Service Act No. 20](#)", 2005.

## ► 3 Forms of dialogue in the civil service: institutions and mechanisms

According to the ILO, social dialogue can take a variety of forms and shapes and operate at various levels, from highly structured national institutions to relationships in the workplace.<sup>99</sup> In fact, the various forms of social dialogue range from the simple act of publishing informal recommendations, or consultation and sharing information to the most formal and binding negotiated agreements, bargaining or more developed forms of concertation.<sup>100</sup> These processes and practices are reflected in the ILO's broad working definition of social dialogue provided above. Each country determines and describes the way in which these processes should take place at the national level. It is worth taking the time to describe each of them briefly.

### The exchange of information

The exchange of information or information-sharing is regarded as one of the most basic and indispensable elements for effectively implementing social dialogue mechanisms. Although it implies no real discussion or action on the relevant issues, it is nevertheless an essential starting point for the development of more substantive social dialogue.<sup>101</sup> In fact, beginning the process with an exchange of information and informal contacts has the potential to help build confidence and move other forms of social dialogue forward.<sup>102</sup> Most countries around the world recognise the right of workers to be informed about matters affecting them, whether directly or through their representatives, as a declaration of principle.<sup>103</sup> As a result, some civil service statutes and an EU Directive contain rules on the right to be informed, which stress at the same time that Public administration's obligation is to inform public servants and/or exchange information.<sup>104</sup> In some cases, information exchange is linked to consultation, and thus making both processes merge into one.<sup>105</sup>

#### ► Exchange of information

South Africa	Resolution 1 of 2015 of the Public Service Co-ordinating Bargaining Council commits the parties to initiate two research projects on the impact of outsourcing practices and on the principles of decent work. The ILO is currently assisting this effort, and the Council will discuss its results.
Ghana	The 2015 Human Resource Management Policy Framework foresees a health promotion programme for the public service whereby each organization will establish "an HIV/AIDS committee for the organisation with adequate representation and support from all relevant stakeholders, including trade union representatives, to facilitate the effectiveness of the programme" (Public Service Commission of Ghana 2015, p. 94).

<sup>99</sup> ILO, *Conclusions on strengthening social dialogue in the health services: A framework for practical guidance*, 2003, 31 para. 7.

<sup>100</sup> Junko Ishikawa, *Key features of national social dialogue: a social dialogue resource book* (Geneva: International Labour Office, 2003), 17; Gianni Arrigo and Giuseppe Casale eds., *Glossary on labour law and industrial relations* (Geneva: International Labour Office, 2005), 239.

<sup>101</sup> ILO, *Labour and social issues arising from problems of cross-border mobility of international drivers in the road transport sector* (Geneva: International Labour Office, 2006), 6; S. Ian Cummings and Nicole Jecks, *Skills development and productivity through social dialogue* (ILO, 2004), 8; Arrigo and Casale, *Glossary on labour law and industrial relations*, 239.

<sup>102</sup> ILO, *National tripartite social dialogue: An ILO guide for improved governance*, 2013, 50.

<sup>103</sup> José Luis Daza Pérez, "Social dialogue in the public service", ILO InFocus Programme on Social Dialogue, Labour Law and Labour Administration Working Paper No.11, 2002, 16.

<sup>104</sup> Venkata Ratnam and Shizue Tomoda, *Practical guide for strengthening social dialogue in public service reform*, (ILO, 2005), 6.

<sup>105</sup> Daza Pérez, "Social dialogue in the public service", 18.

## Consultation

The ILO defines consultation as “a means by which the social partners not only exchange information, but also exchange of views and engage in more in-depth dialogue about issues”.<sup>106</sup> Consultation does not imply joint decision-making power per se, but it can take place as part of such a process. At the same time, consultation is a major policymaking component in the national public sector, which reflects some objectives regarding economic development and the protection of employee rights.<sup>107</sup> More often, consultation goes beyond its nature and evolves into a negotiation system, mainly in events where public servants do not have the right to sign collective agreements. In the context of consultations, the dialogue partners may be the government and civil servants taken as whole or specific groups among them, their elected representatives or their associations and trade unions.<sup>108</sup> In this regard, the CEACR has stated that public servant organisations and government employers should be able to hold consultations with enough time before enacting executive orders, decrees, or legislation.<sup>109</sup>

The CEACR explained the scope of consultations contemplated under Article 7 of ILO Convention No.151. In summary, it indicated that the opportunity to express the viewpoints of all concerned makes it more likely that the measures and policies will have a more sound foundation and command greater respect and support. Consultations in permanent bodies “have the added benefit of enabling representatives to acquire a wealth of experience, which increases their ability to deal with issues . . . Consultation should be meaningful, effective and undertaken in good faith, and should not be merely a token gesture, but should be given serious attention by the competent authorities.”<sup>110</sup>

The countries under study have implemented these recommendations in specific ways.

### ► Consultation

Angola	The Government, as the largest employer in the country, sets wages yearly in consultation with unions, but without direct negotiations (ICTUR 2005).
Ghana	The Labour Act (No. 651 of 2003) contains extensive provisions on tripartite consultations and provides the legal framework for tripartite consultation in the country. <sup>1</sup> The act determines the structure of the National Tripartite Committee, as constituted by the minister, who shall be the chairperson, five representatives of government, five representatives of employers' organizations, and five representatives of organized labour. <sup>2</sup> In terms of functions, the National Tripartite Committee is responsible for consulting with partners in the labour market on matters of social and economic importance. <sup>3</sup> In this way, the unions contributed to the introduction and implementation of the public sector Single Spine Pay Policy (Asafu-Adjaye 2016, p. 36).
Kenya	Tripartite consultation has provided the social actors with an opportunity to meet and discuss formally the issues relating to the improvement of performance of State corporations on an equal footing (Nzioki 2015, p. 21). It has evolved from both the legal framework and the Industrial Relations Charter, which is a voluntary agreed tripartite code of practice and procedure between the social partners (Nzioki 2015, p. 20). Tripartite consultation has played a key role in Kenya, as it has successively helped to gather the views and advice of representatives of employers and workers, has prepared labour laws, has established national bodies responsible for employment, and has set up and implemented economic and social development plans (Nzioki 2015, p. 19).

<sup>106</sup> Graeme Buckley and Giuseppe Casale, “Indonesia: labour market governance and poverty reduction”, in *Social dialogue and poverty reduction strategies*, eds. Graeme Buckley and Giuseppe Casale (Geneva: International Labour Office, 2006), 251.

<sup>107</sup> Michael Gold and Ulke Veersma, “Public sector reform and employment relations in Europe”, in *Working for the state: employment relations in the public services*, eds. Susan Corby and Graham Symon (Palgrave Macmillan, 2011), 40.

<sup>108</sup> José Luis Daza Pérez, “*Social dialogue in the public service*”, ILO InFocus Programme on Social Dialogue, Labour Law and Labour Administration Working Paper No.11, 2002,18.

<sup>109</sup> ILO, *Collective bargaining in the public service: A way forward. General Survey concerning labour relations and collective bargaining in the public service*, ILC.102/III/(1B), 2013, para. 168.

<sup>110</sup> ILO, “*Collective bargaining in the public service: A way forward*”, para. 166.

South Africa	The formal regulatory consultation with social partners is hosted by the National Economic Development and Labour Council, which was established in 1994, as a body competent in economic and labour matters and composed, among others, of representatives of employers' and workers' organizations and of the State (Gernigon 2007, p. 68). The National Economic Development and Labour Council includes representation of South African trade unions and employer federations and provides its opinion to Parliament on draft legislation relating to matters on which it is competent (OECD 2016, p. 75). For example, in 2007 a working group set up by the Council examined government plans for the unification of the public service with a view to resolving the problems that the reform may cause for the unions. The system established by the Labour Relations Act for the public service is more bargaining than consultation (Gernigon 2007, p. 68).
Tunisia	<p>The Government has launched a series of labour laws and policies regarding tripartite consultation and related matters during the past decade (Danish Trade Union Development Agency 2020). The current legislation establishes the National Council for Social Dialogue, responsible for organizing and managing the social dialogue on social and economic matters of common interest to the three social partners, within a framework that guarantees continuity and regularity of the dialogue.<sup>4</sup></p> <p>The Council is responsible for the following:</p> <ul style="list-style-type: none"> <li>ensuring efficient tripartite social dialogue on issues of common interest;</li> <li>establishing a social climate that encourages and promotes investment and guarantees decent work conditions;</li> <li>monitoring the social climate and observing the degree of compliance with employment and labour legislation;</li> <li>advising on draft reforms presented by the Government in the economic and social sphere.<sup>5</sup></li> </ul> <p>The Council is made up of the General Assembly,<sup>6</sup> the Steering Committee of the General Assembly,<sup>7</sup> and the Management of the Board.<sup>8</sup></p>

<sup>1</sup> See part XIII of the act.

<sup>2</sup> See section 112.

<sup>3</sup> See section 113.

<sup>4</sup> Articles 1 and 2 of Act No. 2017-54 of 24 July 2017.

<sup>5</sup> Article 2 of Act No. 2017-54 of 24 July 2017.

<sup>6</sup> Articles 6–9 of Act No. 2017-54 of 24 July 2017. The General Assembly comprises an equal number of government representatives, representatives of the most representative workers' organizations and representatives of the most representative employers' organizations in the agricultural and non-agricultural sectors.

<sup>7</sup> Article 14 of Act No. 2017-54 of 24 July 2017. The Steering Committee of the General Assembly consists of nine members, including the president of the General Assembly as chairperson, two vice-presidents and two members of the General Assembly representing each social partner, selected by the interested parties.

<sup>8</sup> Article 18 of Act No. 2017-54 of 24 July 2017. The administrative and financial management of the Council is the responsibility of a director appointed by government decree from among persons renowned for their competence in the field of administrative and financial management and having a good knowledge of the social field.

Social dialogue can also take the form of negotiations that social partners can engage in or agreements that they can conclude, which can be binding (ICTUR 2005; Cazes et al. 2019, p. 260).

## Direct consultation of civil servants

The dialogue partner of the government or of specific bodies of the administration is the body of civil servants as a whole, without intermediaries.<sup>111</sup>

### ► Direct consultation with civil servants

Angola	Departmental-level consultations have taken place with workers in the process of reforming the administration (Jensen and Paulo 2011).
Ghana	Departmental-level consultations have taken place with workers in the process of reforming the administration (Ohemeng and Anebo 2012).
Kenya	Departmental-level consultations have taken place with workers in the process of reforming the administration (Commonwealth Secretariat 2016).

<sup>111</sup> José Luis Daza Pérez, "Social dialogue in the public service", ILO InFocus Programme on Social Dialogue, Labour Law and Labour Administration Working Paper No.11, 2002,19.

Mali	Departmental-level consultations have taken place with workers in the process of reforming the administration (Daza Pérez 2002).
South Africa	Departmental-level consultations have taken place with workers in the process of reforming the administration (Government of South Africa 1995).
Tunisia	Departmental-level consultations have taken place with workers in the process of reforming the administration (OECD 2015, 2017).
Philippines	The most common form of dialogue in government offices is the general meeting of employees, which, whether formally or informally organized, gives employees the opportunity to express themselves freely, sometimes with opposing viewpoints (Daza Pérez 2002, p. 19).

## Direct consultation with civil servants' representatives

In its general Survey on labour relations in the public service, the CEACR found the following:

While some countries only make use of one type of participation procedure, in the majority of countries various types of participation coexist, with negotiation being customary for some categories of personnel, for one or other specific issue, and consultation being applicable for other public service employees, or for other issues. The legislation sometimes specifies subjects that have to be covered by consultations and/or those that are to be subject to bargaining. The demarcation line between consultation and bargaining is sometimes not clear.<sup>112</sup>

This direct consultation sometimes takes the form of simple exchanges of information and takes place outside the formal framework of specific administrative procedures or of advisory bodies.<sup>113</sup>

### ► Direct consultation with civil servants' representatives

Barbados	The ineffectiveness of formal councils has led to their de facto replacement by forms of direct consultation with trade unions. The civil service reform and the Public Sector Act were the subject of exchanges of views in this way (ILO 2020; Gill 2018).
Benin	Articles 81–83 of Act 2020-16 on the police establish representative organizations by legislative action. Decree 2018-358 establishes procedures to elect the delegates.
South Africa	South Africa's government met with unions in the public service on 6 July 2021 to formally table and discuss government's latest offer in the public service wage negotiations. <sup>1</sup>
Other countries, such as New Zealand. <sup>2</sup>	Informal consultation takes the form of a simple exchange of viewpoints, a minimum expression of social dialogue, as in the context of COVID-19, where the ministers responsible for the public service have met the public sector unions to exchange views on ways to manage the crisis (ILO 2020).

<sup>1</sup> Magubane K, "New public wage offers a tricky but possible balance, say economists Accreditation" News24 07 July 2021.

<sup>2</sup> Hipkins C, "Government Workforce Policy Statement for the Public Sector", 8 July 2021.

In the countries under study, direct consultation with civil servants' representatives also takes place in various ways and various matters.

<sup>112</sup> ILO, *Collective bargaining in the public service: A way forward. General Survey concerning labour relations and collective bargaining in the public service*, ILC.102/III/(1B), 2013, para. 176.

<sup>113</sup> . José Luis Daza Pérez, "Social dialogue in the public service", ILO InFocus Programme on Social Dialogue, Labour Law and Labour Administration Working Paper No.11, 2002, 19.

► **Direct consultation with civil servants' representatives**

Angola	The Government has formulated responses and interventions in the face of the national emergency and public health crisis posed by the COVID-19 pandemic without consultation with relevant key stakeholders, such as civil servants' unions and employers (ITUC 2020, pp. 110, 113). The National Union of Angolan Workers (UNTA) has expressed concern about this absence of direct consultation in the formulation of policy interventions (ITUC 2020).
Ghana	Some of the economic reforms associated with public service reforms, such as the deregulation of financial controls and liberalization, are the result of direct consultations involving unions in the public service (Casale and Tenkorang 2008, p. 5).
Kenya	Direct consultation takes place between the Government and the Union of Kenya Civil Servants, for instance with regard to the voluntary early retirement scheme, new salaries for civil servants and withdrawal of allowances. <sup>1</sup> Concerning matters that were not part of the consultation, such as the terms and conditions of service for unionized civil servants, the Industrial Court of Kenya ordered the parties to initiate formal negotiations on improving terms and conditions of employment.
South Africa	The rules of the Government Employees Pension Fund require consultation with employees' organizations before a decision is made regarding actuarial interest of the members of the Public Servants Association of South Africa employed in the public service. <sup>2</sup>
Tunisia	Direct consultation has taken place between the Government and the Tunisian General Labour Union (UGTT) with a view to signing an agreement on the regularization of the situation of construction workers and the recruitment of about 31,000 of them in the public service (Agence Tunis Afrique Presse 2020; Majalat Tunisia 2020).

<sup>1</sup> Industrial Court of Kenya, Directorate of Personnel Management (GOK) v Union of Kenya Civil Servants [2005] eKLR, Case No. 78, 27 May 2005.

<sup>2</sup> See rule 14.4.2 of the Rules of the Government Employees Pension Fund; Supreme Court of Appeal of South Africa, Public Servants Association of South Africa and Others v Government Employees Pension Fund and Others, Case No 886/2019 [2020], paragraphs 57 and 58.

## Consultation with workers' representatives prior to decision making on some matters

In some countries, consultation with workers' representatives is required prior to making decisions on some matters.<sup>114</sup> In this regard, *ILO Convention No.158*, which is supplemented by *ILO Recommendation No.166*, envisages the possibility of employers consulting workers' representatives before a final decision is taken on individual cases of termination of employment.<sup>115</sup>

► **Consultation with workers' representatives prior to decision-making on some matters**

Ghana	The Labour Act, which covers most public employees, requires employers contemplating retrenchment to consult the trade union concerned on measures to be taken to avert or minimize terminations and to mitigate their adverse effects on the workers concerned, such as finding alternative employment. <sup>1</sup>
South Africa	In matters related to dismissals based on operational requirements, the Labour Relations Act (which covers public service workers) requires consultation of employers with any registered trade union whose members are likely to be affected by the proposed dismissals. <sup>2</sup> The law further requires the employer and the other consulting parties to engage in a joint consensus-seeking process to attempt to reach consensus on appropriate measures. Possible aims of this process include avoidance of dismissals, minimizing the number of dismissals, changing the timing of dismissals, mitigating the adverse effects of dismissals, and the methods for selecting the employees to be dismissed and deciding on the severance pay for dismissed employees. <sup>3</sup>
Kenya	Some collective agreements grant the employer the power to dismiss a worker only after the consultation and negotiation requirements have been met (Sommer 2003). Reference can be made to some of the collective agreements covering the National Hospital Insurance Fund, the National Social Security Fund, the Nakuru Rural Water Company and the teachers, which include such a clause for retrenchment (for example, in the Code of Regulations for Teachers 2015; <sup>4</sup> in the Nakuru Rural Water Company, they refer to the Employment Act, 2007).

<sup>114</sup> John Gennard and Graham Judge, "Employee relations: an overview," in *Employee Relations*, (CIPD, 2005), 28; Tapomoy Deb, "Participating management," in *Managing human resource and industrial relations*, ed. Tapomoy Deb (Excel Books, 2009), 572; David Farnham, Annie Hondeghem, and Sylvia Horton, "Staff participation in the public services," in *Staff participation and public management reform: some international comparisons*, eds. Farnham, Hondeghem, and Horton (Palgrave, 2005), 67.

<sup>115</sup> See Art 13 of the ILO's *Termination of Employment Convention*, 1982 (No. 158) and para. 11 of the ILO's *Termination of Employment Recommendation*, 1982 (No. 166).



Tunisia	The Labour Code covers public employees, and requires any employer who is contemplating collective dismissals to notify in advance the competent labour inspectorate for conciliation purposes (Angel-Urdinola et al. 2015). <sup>5</sup> If no conciliation is possible, the labour inspectorate or the Directorate General of Labour Inspectorate and Conciliation must refer the matter to the regional or central dismissal review committee for its opinion. <sup>6</sup> This committee is made up of a representative of the trade union organization that is the most representative of the employees concerned and who are members of the organization, and a representative of the employers' professional organization to which the employer concerned belongs as a member. In the case of a State-owned company, a representative of the ministry with supervisory responsibility over the company will represent the employer. <sup>7</sup>
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<sup>1</sup> See section 65 of the Labour Act No. 651, 2003. The act applies to all workers and to all employers except the armed forces, the police service, the prison service and the security and intelligence agencies specified under the Security and Intelligence Agencies Act No. 526 of 1996.

<sup>2</sup> See section 189 of Labour Relations Act, 1995.

<sup>3</sup> Section 189 of Labour Relations Act, 1995.

<sup>4</sup> Kenya, The Teachers Service Commission Code of Regulations for Teachers, September 2015

<sup>5</sup> Article 21 of the Labour Code, Act No. 66-27 of 30 April 1966..

<sup>6</sup> Articles 21-23 of the Labour Code.

<sup>7</sup> Articles 21-24 of the Labour Code.

## Public service advisory bodies

A large number of advisory bodies of public administrations exist with representation of civil servants. Their composition, functions, procedures and effects cover a broad spectrum.<sup>116</sup> It is argued that the advisory bodies for public employees or in which they are present along with their employing entities are usually constituted in other administrative forums, mostly in Ministries for the Civil Service, and on a bipartite if not always on an equal representation basis.<sup>117</sup> The laws that establish them, and their internal regulations, regulate the composition and powers of these permanent bodies with nation-wide coverage.

### ► Public service advisory bodies

France	France has a system of bodies for the participation of civil servants, based on equal representation, which play an advisory role.
Ghana	The 1992 Constitution of the Fourth Republic established a Public Services Commission, which shall perform such functions as assigned to it by the Constitution or by any other law. <sup>1</sup> The 1992 Constitution grants Parliament the power to legislate the powers and supervisory, regulatory and consultative functions of the Public Services Commission, which may include establishing guidelines on the terms and conditions of public service employment. <sup>2</sup> In Angola, the Government created a number of public semi-autonomous and independent bodies to enhance decentralization in public administration (Tenente 2003). These bodies possess a distinct juridical identity, as well as administrative and fiscal autonomy, and should implement specific administrative functions within the public sector (Tenente 2003). <sup>3</sup>
Kenya	The Public Service Commission of Kenya recruits and promotes staff and exercises disciplinary control in the civil service and local authorities. The Service Commissions Act, Chapter 185 of the Laws of Kenya, defines the functions of the Commission. In performing these functions, the Commission derives its powers from Chapter VIII of the Constitution. Legal notices may amend the Public Service Commission regulations periodically, to enhance effective management of the civil service and local authorities. The Commission may delegate some of its powers to authorized officers as defined in its regulations. <sup>4</sup>
Mali	The country has followed administrative practices in the French tradition and have established higher civil service councils by law (Daza Pérez 2002, p. 20).
Tunisia	Legislation has established the Higher Council for the Civil Service and Administrative Reform, which is an advisory body placed under the authority of the Prime Minister. <sup>5</sup> The Government consults this Higher Council on matters relating to the organization and functioning of public services, as well as on programmes for the reform and modernization of the administration (ILO 2013a, para. 208). <sup>6</sup>

<sup>1</sup> Article 194(1).

<sup>2</sup> Article 196.

<sup>3</sup> Legislative Decree No. 2/96 of 12 January 1996, as repealed by Legislative Decree No. 1/01 of 24 May 2001.

<sup>4</sup> Public Service Commission Act No. 4 of 2010, revised 2012.

<sup>5</sup> Decree no. 89-1957..

<sup>6</sup> Article 2 of Decree No. 2000-2128.

<sup>116</sup> José Luis Daza Pérez, "Social dialogue in the public service", ILO InFocus Programme on Social Dialogue, Labour Law and Labour Administration Working Paper No.11, 2002, 20.

<sup>117</sup> Daza Pérez, "Social dialogue in the public service", 20.



Section 196 of the *Constitution of the Republic of South Africa, 1996*, established the Public Service Commission (PSC). The Commission exercises the powers and perform the duties entrusted to the Commission by the *Public Service Commission Act (No.46 of 1997)*, the *Constitution* and the *Public Service Act*.<sup>118</sup>

## Direct consultations and Collective bargaining with civil servants' organisations

Collective bargaining is an integral and one of the most widespread forms of social dialogue, which can be a useful indicator of the capacity within a country to engage in national level tripartism as it facilitates such policy concertation.<sup>119</sup> Collective bargaining and policy concertation are the two dominant types of negotiation. It is worth pointing out that parties' involvement in collective bargaining can take place at the enterprise, sectoral, regional, national, and even multinational level.<sup>120</sup>

### ► Direct consultations and collective bargaining with civil servants' organizations

Angola	The current laws explicitly recognize the principle of freedom of association and collective bargaining, and do not require submitting collective agreements for government approval. <sup>1</sup> In addition, the Government has grasped the importance of collective bargaining agreements and encouraged the social partners to conclude collective labour agreements with a view to avoiding collective or individual labour disputes (Alby, Azama and Rospabé 2005, p. 10). Under Angolan employment law, trade unions are required to play a key role, as they can legally appoint representatives within an organization and negotiate collective bargaining agreements (FCB Sociedade de Advogados 2018). The Trade Union Act, <sup>2</sup> which covers public servants, compels employers to provide unions with facilities for meetings outside working hours, and time for union work, as well as access to necessary information and the right to post notices in the workplace. <sup>3</sup> Most importantly, they have the right to be heard when the employer drafts internal regulations regarding hours of work, organization of wages and occupational safety and health protection. <sup>4</sup> The law also prohibits unfair dismissals of workers working on union issues and the transfers of union representatives. <sup>5</sup> It also establishes fines for violators, to the benefit of the affected union's finances. <sup>6</sup> However, there has been a low level of employee unionization in industry sectors, other than the oil and gas, mining and banking sectors, where unions are consistently active. Collective bargaining exists at the undertaking or group level. The employer and union negotiate agreements: where the entity has no union structure, the trade union entity or an ad hoc committee takes its place (FCB Sociedade de Advogados 2018).
Ghana	The Public Service (Negotiating Committees) Law, 1992, PNDC Law 309, recognizes collective bargaining rights for certified unions and covers large sections of workers, mostly employees of central government, such as teachers, nurses and civil servants, who previously did not have the right to bargain with their employer – the Government (Gockel and Vormawor 2004, p. 25). Other social groups and independent government agencies may also be represented for the sake of transparency. Casale and Tenkorang have argued that the outreach of collective bargaining in the public service has extended to civil society, which can participate ex officio (Casale and Tenkorang 2008, p. 76). However, the Industrial Relations Act of 1965 does not allow public servant organizations to register (Kusi and Gyimah-Boakye 1994, p. 89), as reported to the Committee of Experts on the Application of Conventions and Recommendations (ILO 1965, para. 202).
Kenya	The Constitution embeds the right to collective bargaining. The legal and institutional framework recognizes it as one of the foundations of employment relations (Fashoyin 2010, p. 6). In fact, the main legal foundation for collective bargaining and labour relations is the Labour Relations Act, which combines two earlier pieces of legislation, namely the Trade Disputes Act and the Trade Unions Act, and includes the public sector in its entirety. The Labour Relations Act brings some substantial improvements in providing more efficient and responsive operational procedures aimed at promoting employment relations and labour peace in the country. In this regard, the Labour Relations Act encourages the parties to engage in bargaining in good faith, thus promoting the collective bargaining process.

<sup>118</sup> See section 8 of Public Service Commission Act (No. 46 of 1997).

<sup>119</sup> Junko Ishikawa, *Key features of national social dialogue: a social dialogue resource book* (Geneva: International Labour Office, 2003), 3.

<sup>120</sup> ILO, *Report for discussion at the Tripartite Meeting on Labour and Social Issues arising from Problems of Cross-border Mobility of International Drivers in the Road Transport Sector*, TMRTS/2006/9, 2006, 6; Cummings and Jecks, *Skills development and productivity through social dialogue* (Bangkok: International Labour Office, 2004), 8; Gianni Arrigo and Giuseppe Casale, eds, *Glossary on labour law and industrial relations (with special reference to the European Union)*, (ILO, 2005), 239.

South Africa	The South African Labour Relations Act sets out several forms of social dialogue: disclosure of information, consultation (oral, written or in advisory councils), and participation in regulated procedures. It establishes a number of matters for consultation, such as preparation of employment plans, training policy, improving the quality of services or civil service legislation on matters that are not subject to bargaining. <sup>7</sup> The act also gives effect to all three elements of the right to bargain. First, it “gives effect to the freedom to bargain collectively by providing the institutional infrastructure for voluntary collective bargaining at sector level and for the binding nature of collective agreements” (Cheadle 2005, p. 147). Second, it gives effect to the right to use collective economic power in the provisions relating to strikes, lockouts, replacement labour and picketing. Lastly, it imposes a positive right and structure to bargain collectively in the public sector, which it does not do in respect of the private sector (Daza Pérez 2008, p. 22).
Tunisia	The country has recognized collective bargaining as a major institution in the labour market, and the parties have systematically conducted separate bargaining sessions for the public and private sectors (Boughzala 2017, 2018). Where the public sector is concerned, national unions and the Government negotiate wage adjustments for employees in the civil service and public enterprises. For each State-owned company, collective bargaining is the backbone of social dialogue and the optimal framework for dialogue and consensus between the professional organizations of employers and employees on issues of common interest (Ahmed and Aljane 2014, p. 7). In addition, Article 11 of Law No. 82-70 of 6 August 1982, relating to the general statute of the internal security forces, as amended by Decree-Law No. 2011-42 of 25 May 2011, states that “agents have the right to trade union action and to form, for this purpose, professional unions independent of all other professional unions and their federations”.

<sup>1</sup> Angola Constitution, Article 50; Act No. 20-A/92 on the Right to Collective Bargaining; Act No. 23/92 of 16 September (Article 23); Act No. 14/91 of 11 May (Law on Associations); Act No. 23/92 of 15 June (Law on Strikes); Act No. 21-C/92 of 28 August (Trade Union Law); Presidential Decree 8/11 on Maternity Leave.

<sup>2</sup> Trade Union Act No. 21-D/92 of 28 August 1992.

<sup>3</sup> Articles 25–29.

<sup>4</sup> Article 30.

<sup>5</sup> Articles 32–33.

<sup>6</sup> Articles 35–37.

<sup>7</sup> Article 84 of the Labour Relations Act.

#### ► Establishing social dialogue mechanisms through collective agreements

Several public service collective agreements in the countries under study establish mechanisms to strengthen social dialogue. For example, the Ministry of Health also agreed with the Kenya Medical Practitioners, Pharmacists and Dentists Union (KMPDU) in 2013 to establish a Labour-Management Committee composed of three members from each of the parties. The Committee would meet every three months to monitor the progress in implementing the agreement, as well as at any time to resolve disputes in the interpretation, application or execution of the agreement. The parties also agreed that the Union would be able to access any information or data “that may be of concern to the Union’s membership.”

In South Africa, Resolution No. 1 of 2015 of the PSCBC sought to implement the conclusions of the Public Service Summit by conducting an independent impact study on the principles of Decent Work in the public service.

## ► Conclusion

### • Relations between public administration and civil servants

In most African countries,<sup>121</sup> including those under study, namely Ghana,<sup>122</sup> Kenya,<sup>123</sup> South Africa,<sup>124</sup> and Tunisia,<sup>125</sup> relations between public administration and civil servants have always been built within an organised and highly regulated hierarchical structure governing individual and collective relations.<sup>126</sup> As pointed out previously, in the countries under study, there is a clear relationship between national unions and the government as far as the public sector is concerned. Such relationship is evident in the context of negotiation, regarding for instance, wage adjustments for employees in the civil service and public enterprises. It is clear from the foregoing that in the countries under study civil servants maintain collective relations with the authorities through representative bodies or contacts between civil servants' associations and/or trade unions.

In compliance with ILO Convention No.151, public employees in the countries under study are entitled to adequate protection against acts of anti-union discrimination in respect of their employment and shall enjoy the right to organise.<sup>127</sup> However, as discussed previously not all countries under study allow civil servants to form unions or associations. Similarly, not all these countries have representative bodies, which could lead, at least in theory, to a hierarchical relationship that excludes associations, unions and representation, with no possibility of unionisation, as well as representation and unionisation.<sup>128</sup>

### • Forms of dialogue

As discussed previously, social dialogue may take different forms in all the various situations and produce different effects and outcomes as well.<sup>129</sup> The various forms of dialogue are present in African countries, including countries under study.

First, there are African countries where the law does not recognise collective representation, or the right of association or unionisation. In these countries, the authorities may carry out their relations through comprehensive surveys or consultations with civil servants, thus obtaining the input they deem necessary to take their decisions. In such a situation, there is little dialogue because there is no genuine bilateral or reciprocal exchange.

Second, many countries including the countries under discussion, have recognised freedom of association for government employees with greater or lesser restrictions for certain categories, such as members of

<sup>121</sup> Petter Langseth et al. eds., *Civil Service Reform in Anglophone Africa* (Washington DC: World Bank, 1995), 3; Joseph R. A. Ayee, "Improving the Effectiveness of the Public Sector in Africa through the Quality of Public Administration," in *Rethinking Development Challenges for Public Policy: Insights from Contemporary Africa*, eds. Hanson Kobena T. Hanson, George Kararach and Timothy M. Shaw (London: Palgrave Macmillan, 2012), 83-116.

<sup>122</sup> Mohammed Abdulai Kuyini, "Public Administration: theory versus practice in Ghana," in *Global Encyclopaedia of Public Administration, Public Policy, and Governance*, ed. Ali Farazmand (Cham: Springer, 2019); Joseph R. A. Ayee, "Civil service reform in Ghana: A case study of contemporary reform problems in Africa", *African Journal of Political Science* 6, No. 1 (2001): 1-41; Frank L. K. Ohemeng, "A 'fine line' - examining the delicate relationship between political and bureaucratic Head in the Civil Service of Ghana," in *Politics, governance, and development in Ghana*, ed. Joseph R. A. Ayee (London: Lexington Books, 2019), 215; Amishadai L. Adu, "The Public Service and the Administration of Public Affairs in Ghana" (Ghana Academy of Arts and Sciences, 1973), 10.

<sup>123</sup> John Cohen, "Importance of Public Service Reform: The Case of Kenya," *The Journal of Modern African Studies* Vol. 31, No. 3 (Sept. 1993), 449-476.

<sup>124</sup> J. S. Hans Gildenhuys, *South African Public Administration: past, present and future* (Pinetown: O. Burgess, 1988), 34; Marais D, van Wyk W J, Ströh E.C., *South African Civil Service in the New South Africa, Quo Vadis?* (Pretoria: University of South Africa, 1991), 76.

<sup>125</sup> Florence Carter, *Labour Law and Practice in Tunisia* (Washington, DC: United States Department of Labor, 1965), 26; Gaston L. Franco, *Tunisia Faces the Future* (Paris: Monde économique (Tunis), 1956), 195.

<sup>126</sup> José Luis Daza Pérez, "[Social dialogue in the public service](#)", ILO InFocus Programme on Social Dialogue, Labour Law and Labour Administration Working Paper No.11, 2002,30.

<sup>127</sup> Art. 4

<sup>128</sup> Daza Pérez, "Social dialogue in the public service", 31

<sup>129</sup> Daza Pérez, "Social dialogue in the public service", 31

the armed or security forces. In some countries, civil servants may only join public service unions, while in others they may join and/or become federated with other unions.<sup>130</sup>

Third, some African countries regard civil servants' associations as dialogue partners of the government like trade unions, although this does not necessarily mean that they are recognised as negotiators and this puts them in a weaker position.<sup>131</sup> In these cases, freedom of association has not resulted in the possibility of collective bargaining for public employees, and certainly not in the right to strike.<sup>132</sup>

Fourth, as previously pointed out in those African countries where they are authorised, civil servants' associations or trade unions undertake intermediation and defend their members' interests. The fact that they exist normally involves some degree of relationship with the Administration, at least as regards information and formal or informal consultation.<sup>133</sup> Their effects can vary considerably depending on whether there is an obligation to share information or carry out consultation, whether they are of a binding or voluntary nature, and on the scope of action of the organisations themselves.<sup>134</sup>

Fifth, in the African countries where representation bodies for public employees exist there is a formal and organised system for relations between civil servants and the State.<sup>135</sup> The systems, which vary from some countries may allow for a role by representatives of associations and unions and in theory, these bodies make possible all forms of dialogue and even the negotiation of collective agreements.<sup>136</sup>

Sixth, in many African countries public sector negotiations do not necessarily result in an agreement and the fact of reaching some kind of agreement does not always mean that it becomes formalised in an instrument, such as a collective agreement.<sup>137</sup> This procedure leaves little or no evidence of the dialogue, so it is not known how often these negotiations have resulted in other forms of unilateral instrument, like decrees or regulations.

#### • Ownership of social dialogue in the public service

All the selected countries can establish their own form of social dialogue in the public service, the functioning and sustainability of which may be facilitated by permanent structures or institutions, such as a national tripartite consultative committee.<sup>138</sup> In order to establish effective social dialogue in public services, the ILO recommends that the government makes a firm commitment by through a clear policy statement articulating its intention to engage in social dialogue, to actively support it and to champion it among the social partners and the citizens as a way of ensuring quality public services.<sup>139</sup> This has been the case in South Africa and in several African countries with strong social dialogue system. To this end, ILO Conventions require that member states establish a legal framework for social dialogue. Such a framework seeks to define, inter alia, the powers, functions and responsibilities of the heads of ministries/departments/agencies responsible for the management and delivery of public services, and of the leaders of public-service unions/associations. It further seeks to establish the rights and obligations of civil servants and the codes of conduct/discipline applicable to them at all levels to ensure good governance in the public services.<sup>140</sup>

<sup>130</sup> José Luis Daza Pérez, "Social dialogue in the public service", ILO InFocus Programme on Social Dialogue, Labour Law and Labour Administration Working Paper No.11, 2002,31.

<sup>131</sup> Daza Pérez, "Social dialogue in the public service", 31.

<sup>132</sup> Joan E. Pynes and Donald N. Lombardi, "Equal employment opportunity laws and health care human resources," in *Human resources management for health care organisations: a strategic approach* (San Francisco: Jossey-Bass, 2012), 106.

<sup>133</sup> Daza Pérez, "Social dialogue in the public service", 31.

<sup>134</sup> Daza Pérez, "Social dialogue in the public service", 31.

<sup>135</sup> Ivar Bleiklie and Svein Michelsen, "The university as enterprise and academic co-determination," in *From governance to identity: A Festschrift for Mary Henkel*, eds. Amaral A, Ivar Bleiklie I, and Christine Musselin (New York: Springer, 2008), 59.

<sup>136</sup> Daza Pérez, "Social dialogue in the public service", 31.

<sup>137</sup> Stephanie Tailby and Peter Nicholls, *Employee relations* (New York: Pearson Education, 2002), 309.

<sup>138</sup> Venkata Ratnam and Shizue Tomoda, *Practical guide for strengthening social dialogue in public service reform*, (ILO, 2005),14.

<sup>139</sup> Ratnam and Tomoda, "Practical Guide", 13.

<sup>140</sup> Ratnam and Tomoda, *Practical Guide*, 13.

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The International Labour Organization is the United Nations agency for the world of work. We bring together governments, employers and workers to improve the working lives of all people, driving a human-centred approach to the future of work through employment creation, rights at work, social protection and social dialogue.

### Contact details

#### Sectoral Policies Department (SECTOR)

International Labour Organization  
Route des Morillons 4  
1211 Geneva 22  
Switzerland  
T +41 22 799 7501  
[sector@ilo.org](mailto:sector@ilo.org)  
[www.ilo.org/sector](http://www.ilo.org/sector)



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