

**UNIONISM AND PUBLIC SERVICE REFORM IN LESOTHO:
BETWEEN LEGISLATIVE CONSTRAINTS AND APATHY**

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ABSTRACT

The study focuses on Lesotho's Public Service. The aims of this study were to examine the factors that led to the repeal of the Public Service Act No.13 of 1995. This study looks at the legislative constraints and attitudes of civil servants towards unionisation in the Public Service. It also outlines the relevant provisions of the Public Service Act No.1 of 2005; the changes that have occurred since its inception. Findings show that the Public Service Act No.13 of 1995 was repealed in order to reform the Public Service. The Ministry of the Public Service implemented five-year strategic plans to reform the public service. Changes have occurred in the public service since the inception of the 2005 Act; however, they differ from ministry to ministry. The respondents included public officers from the Ministry of the Public Service, Ministry of Justice, Law Office, Ministry of Employment and Labour, Ministry of Planning, the Ombudsman Office, Parliament, different ministries, the International Labour Organisation (ILO), the Congress of the Lesotho Trade Unions (COLETU) and the Lesotho Public Service Staff Association (LEPSSA).

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LIST OF ACRONYMS

BCP	Basotho Congress Party
BNP	Basotho National Party
COLETU	Lesotho Congress of Trade Unions
GOL	Government of Lesotho
ILO	International Labour Organisation
IMF	International Monitoring Fund
LCD	Lesotho Congress for Democracy
LEPSSA	Lesotho Public Service Staff Association
LUPE	Lesotho Public Employees Union
PSR	Public Service Reform
PSIRP	Public Sector Improvement Reform Programme
SAP	Structural Adjustment Programme

GLOSSARY

Key Concepts

- 1) **Freedom of Association:** is the freedom that an individual may use at his or her own advantage to join or not join an organisation (Nel, 1985: 16).
- 2) **Public Policy:** is a desired course of action and interaction, which is to serve as a guideline in the allocation of resources necessary to realise societal goals and objectives, decided upon by the legislator (Hanekom, 1987: 8).
- 3) **Public Service Reform:** includes elements, such as, organisational development, legislative reform, and institutional restructuring.
- 4) **Public Officer (Civil Service):** section 154 of the Constitution of Lesotho states that a Public Officer is a person holding or acting in any office of emulent in the Public Service (CEAR, 2001).

Pseudo names were used for some of the interviews, for example “Respondent 1, 2.” Pseudo names were used because some of the respondents made it quite clear that they did not wish to be mentioned in the report.

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CHAPTER 1

INTRODUCTION

1.1 Background and context to the study

This study examines the factors that led to the repeal of the Public Service Act No.13 of 1995. The initial premise of the study was based on the notion that the Public Service Act No.13 of 1995 was repealed because of the pressure mounted by trade unions against the clause that denied the civil servants the right to form or join trade unions in the Public Service. However, upon reviewing the two Acts, it was found that both Acts had little to do with freedom of association, but more to do with Public Service Reform. However, there is a link between the two. Public Service Reform was a response by government to address the shortcomings of the 1995 Act.

The first Public Service Reform started was in 1970 when the military took over. Those reforms included Structural Adjustment Programmes. In the 1990s, the Public Service and the line ministries embarked on reform programmes. For example, the Cabinet and Parliament were reformed; the Government of Lesotho decentralised its departments and established the local government, and embarked on the Public Sector Improvement Reform Programme (PSIRP) (Setefane, not dated: 1-4). These measures were aimed at mainly improving service delivery. Between 1996 and 2006, five year Strategic Plans were developed with the aim of implementing the reforms. Furthermore, on May 1993, the Government of Lesotho established a Task Force to perform an alignment of the Public Service Act Order 1970 with the Constitution. However, the review began on 17 June 1993. As a background to the study I will provide an overview of the evolution of Lesotho's Public Service; the Acts governing the Public Service since 1970, the challenges that were brought by each one of these Acts and the changes that have occurred in the Public Service due to the political instability that occurred in the country in the early 1980s to 2002 and the challenges to the implementation of the reforms. This study reviews the Ministry of Public Service Strategic Plan 2003-2006, the Public Service Act No.13 of 1995, and the Public Service Act No.1 of 2005.

1.2 Objectives of the study

- To examine the factors that led to the repeal of the Public Service Act No.13
- To examine the amended 2005 Act and its implications for public sector unionism in Lesotho
- To examine the attitudes of civil servants towards unionism since the promulgation of the 2005 Act.

The first Public Service staff association (Lesotho Public Service Staff Association) was formed in 2004; it is of interest to find out why it took so long for its formation even though the clause allowing civil servants to join or form staff associations was passed nine years earlier. The study analyses the legislative constraints on the one hand, and the apathy of the civil servants concerning unionisation within the Public Service on the other.

1.3 An overview of the thesis

Chapter 1 is a discussion of the context of the research.

Chapter 2 provides a review of literature on Public Service Reform and issues around freedom of association, rights to organise into unions, and the evolution of these rights in the context of what it means to be in the employ of the ‘Sovereign.’

Chapter 3 provides the historical background of Lesotho’s political and industrial relations environment. It aims to show how the political upheavals between 1970 and 1998 have influenced the Industrial Relations system in Lesotho’s Public Service. The assumption is that the nature and state of legislation in the Public Service and the reasons for Public Service Reform arise from the state of affairs between the years 1970 and 1998.

Chapter 4 is the methodology section. It is a description of the research methods and techniques used in the study. The aim of the research is to get a narrative of the process leading to the promulgation of the Public Service Act No.1 of 2005. Qualitative research methods were conducted, with the use of in-depth interviews, questionnaires and secondary data. Some of the interviews were tape-recorded and field notes were taken for those

interviews that were not recorded. The interview transcripts are then analysed in the following chapter.

Chapter 5 provides a thematic presentation of the Research findings.

Chapter 6 provides the conclusion and recommendations to the study.

1.4 Historical background to Lesotho's public service

The Ministry of Public Service is responsible for the administration of the personnel in the Public Service. The Ministry of Public Service's mission is "the provision of quality Human Resources Services to line Ministries, agencies and the public through legal frameworks and Human Resources Policies for the acquisition, development, utilisation and retention of Human Resources across the Public Service."¹ Lesotho's Ministry of the Public Service comprises of the following departments: Human Resources, Training and Development, Management Services, Administration, Remuneration and Benefits, Employee Relations, Information Systems, Lesotho Institute of Public Administration and Management (LIPAM) and the Organisational Development (Strategic Plan, 2003: 6). Between 1970 and 1993 the Public Service was governed by the Public Service Order 1970, 1993 to 2003 the Public Service Act No.13 of 1995 and 2005 till today, the Public Service Act No.1 of 2005. 18, 208 public officers are under the employ of the Ministry of Public Service. These include employees in the Ministry of Public Service and other line Ministries.

After Lesotho gained independence in 1966, the newly elected government inherited a small civil service. However, in the 1970s the Public Service grew as new departments and sections were established. The government became the main source of formal employment. The increase in numbers of new recruits became impossible for the newly established Cabinet Personnel Office to deal with. It lacked appropriate Human Resources Management structures, systems, procedures and policies to deal with the emerging challenges. Furthermore, there was a lack of clearly defined recruitment procedures and

¹ <http://www.lesotho.gov.ls/service> (accessed on the 19th of May 2009)
ibid

policies and an appropriate human resources information system.²

1.5 Legislative framework

Since 1970 to 1993, Lesotho's Public Service was regulated by the Public Service Act Order of 1970. Change in political leadership in Lesotho since the 1970s led to transformation in the public service in areas such as, legislative framework regulating 'public service' conditions of employment, labour relations. The Ministry of Public Service concluded that the piece of legislation governing the Public Service since 1970 had its shortcomings. On the 4th May 1993, a Task Force was established to perform the alignment of the Public Service order 1970 with the constitution of Lesotho which was put into effect on the 17th June, 1993 (Task Force Report, 1993:1). In carrying out the alignment, the Task Force found that "during the 23 years of the run of the 1970 Order the management of the Public Service and the Service itself had deteriorated so much that it required serious and concerted transformation, through entirely new legislation and other administrative reform" (Task Force Report, 1993:2).

According to the Task Force, one of the major concerns arising from the operation of the Public Service Order, 1970, was that the clarity of roles and functions in the public service was not given the attention it deserved (Government of Lesotho, 1993:3). "The Public Service Order, 1970 took away the independence and authority of the Public Service Commission and this action exposed the Public Service to arbitrariness and abuse of power in matters of appointments, promotions, discipline and removal of public servants in general" (Government of Lesotho, 1993:3). The Task Force made several recommendations on how to restructure and improve the management system of the Public Service.

The Task Force recommended that the government prepare a new Public Service Act to replace the Public Service 1970 Order (Task Force Report, 1993: 4). Second, it recommended that the Ministry of Public Service and the Heads of established cadres introduce a coherent training system to widen the experiences of civil servants. Third, it recommended that the Ministry of Public Service should provide job descriptions with clear

² The Public Service Human Resources Information Systems Project. <http://www.victoria.ac.za> (accessed on the 10th of May 2009)

career progression for all positions in the Public Service. Fourth, the personnel cadre should be improved through training in order to enable them to handle the growing responsibilities of personnel management in the Ministries. Fifth, secretaries and other supporting staff in the ministries should receive technical training, such as, computer literacy and modern office procedures to improve the efficiency of government offices. Sixth, appointments and promotions in the Public Service Commission should be authorised to make preparations for a mechanism to facilitate the introduction of a merit system. Lastly, adequate funds, more and better qualified staff, information technology equipment should be made available to the new Executive Public Service Commission (Task Force Report, 1993: 4-10).

According to Sekatle (nd: 1), “in the 1970s, Lesotho’s civil service grew and became the main source of employment. The newly established Cabinet Personnel Office could not cope with the increasing influx of new recruits. It lacked appropriate Human Resources Management structures, systems, procedures and policies to deal with the emerging challenges.” Other shortcomings included the lack of clearly defined recruitment procedures, policies and an appropriate human resources information system. Furthermore, the number of ‘ghost employees’ increased, retirees overstayed their time in the civil service and the leave record system was ineffective resulting in the government bringing in human resource experts to sort out the human resources management (Sekatle, nd: 1). To correct the shortcomings of the Public Service, the Ministry of the Public Service established a new position of Principal Secretary for Human Resources.

The main task of the Principal Secretary for Human Resources was to establish an effective and efficient human resources function across the Public Service. The Principal Secretary of Human Resources embarked on a strategic process that was participatory and consultative; involving senior human resources officers, senior management and Principal Secretaries in other government ministries. The strategic process identified the underlying causes of the problem and possible solutions. The underlying causes that were stipulated included lack of appropriate organisational structures, clearly defined roles, lack of trained staff and suitable training and development programmes, lack of accurate human resources

information and the use of obsolete technology.³ The project experienced problems such as lack of commitment; the IT Experts did not have a background in Human Resources, compatibility and rapid technological advancement and funding problems.⁴ Positive results from the process included the introduction of a clearly defined management system, the performance assessment and recruitment tools were put in place to improve labour relations in the public service (Sekatle, nd: 2).

Provisions of the Public Service Act No.13 of 1995

In 1995, the Public Service Act, No.13 was promulgated to replace the Public Service Order of 1970. This piece of legislation was promulgated as an attempt to bridge the gap between its laws and international standards after the failure of the Public Service Order of 1970. The main purpose of the 1995 Act was “to develop and maintain a stable and disciplined public service that will impartially administer the business of the Government of Lesotho under the general direction and control of the Ministers of Government, and under the supervision of Principal Secretaries” (Government of Lesotho, 1995: 5). Part 1 of the Act outlines the functions of the different parties that will govern the Act. Part 2 outlines the conduct of public officers. Part 3 outlines the disciplinary procedures. Part 4 outlines the retirement of public officers and Public Service Staff Association and Part 5 outlines the Public Service Staff Association and Public Service Joint Advisory Council (Government of Lesotho, 1995: 1).

The overall objective of the Public Service Act of No.13 of 1995 was to ensure the smooth implementation of public service reform in the Public Service. The Public Service Act No.13 of 1995 was viewed as one of the important pieces of legislation in the history of Lesotho’s labour law because it dealt with issues such as freedom of association, trade union recognition, and unfair labour practices. The reform process in the Public Service can be located within the reform process of the Parliament of Lesotho.

³ The Public Service Human Resources Information Systems Project. <http://www.victoria.ac.za> (accessed on the 10th of May 2009)

⁴ *ibid*

Policy making and implementation

This study will make reference to the Parliament and the Ombudsman Office; how they work with the Public Service in the area of policy making and implementation.

The Parliament of Lesotho

The parliament is one of the most important bodies that work hand in hand with the Ministry of the Public Service in policy-making. It is important to highlight the constitutional role and the process of reform between 2004 and 2008 of the Parliament of Lesotho as it is the place where policy is discussed and contested. The Parliament provides constituents with access to the governance process and a voice in the process. Members of Parliament have the important responsibility of simplifying policy issues and represent views of their voters in Parliament. Parliament's intrinsic link to the citizens of the nation is central to its role in the governance process.

Parliament serves as the primary outlet for political participation and expression. Constitutionally Parliament is expected to give feedback to the people of Lesotho on the issues raised in the House (Parliamentary Reform Report, not dated: 16). Parliament with the help of the Executive and the Judiciary adopts, scrutinizes policies and makes laws through the process of deliberation. Bills may be introduced by the Executive and by Private Citizens. The procedure on passing laws is governed by Standing Orders. Debate is then permitted covering the general principles of the Bill. The Bill is then passed on to a committee of the whole House after having been read for the second time. The Bill is read clause by clause and new clauses may be proposed (Parliamentary Reform Report, nd: 17). The House proceeds to the third reading on a motion. Debate is confined to the contents of the Bill and no amendments may be moved on the motion. Once the Bill has been passed by the House, it is forwarded to the Senate with or without amendments. For a Bill to become law, it must be assented to by the crown. Constitutionally, the Bill is presented to the Crown by the speaker of the House. Upon Royal assent, the Bill is published in government gazette as law (Parliamentary Reform Report, nd: 17).

Parliament is said to ensure that Government accounts for its actions thereby achieving the goals of accountability, transparency, and responsiveness. Parliament also provides checks and balances on behalf of the people of Lesotho on actions of government through question time and committee work (Parliamentary Reform Report, nd: 17).

The Parliament of Lesotho went through some major changes since independence. In 1969, the Parliament was dissolved in preparation for the elections. After the Basutoland Congress Party won the elections, a state of emergency was declared, suspending the Constitution and political parties (Parliament Reform Report, 2004: 10). In 1973, an Interim National Assembly was established with the aim to restore democracy. It was in place till 1985. A National Constituent Assembly was established to prepare for the 1993 elections. The LCD, a break away party from the Basutoland Congress Party (BCP) won the elections (Parliament Reform Report, nd: 11). On the 28th June, 2004 it was decided that the Parliament needed reform (Parliament Reform Report, nd: 16).

Transformation of the Parliament

“A Strategic Plan was developed to give the Lesotho Parliamentary Reform Committee strategic direction and a coherent plan to guide its operations and activities for the period 2004-2008” (Parliamentary Reform Report, nd: 2). In 2004, the Government of Lesotho introduced Parliamentary reforms in accordance with the Constitution of Lesotho with the aim of making it more open to the public (Parliamentary Reform Report, nd: 15). “The...Reform process was designed to enhance its capacity to deliver effectively and efficiently on its constitutional mandate.”⁵ The Parliament Reform Committee was launched on the 15th November 2005. The plan was to highlight the areas where the donor community could assist financially. The aim of the Strategic Plan was to identify that various activities and challenges that confront the Parliament of Lesotho (Parliament Report, nd: 2).

⁵ <http://www.parliament.ls> (accessed on the 19th May 2009)

At an administrative level, the strategic plan gives priority to the following activities:

- “Building capacity for the committee and chairperson
- Prioritising activities
- Producing a budget for the reform process
- Establishing structures to drive the reform process
- Identifying donor support for the project\Build capacity of support staff to the reform process to ensure sustainability
- Building capacity of support staff to reform process to ensure sustainability”

(Parliamentary Report, nd: 3).

Areas of concern for the parliamentary reform committee:

- “Increase technical and financial support to activities geared at supporting the reform process
- Identifying key activities and personnel
- Put in place a mechanism to manage the process
- Assess organisational strengths and gaps within Parliament
- Undertake activities that assist Parliament to increase its interface with policy makers, civil society and private sector to ensure the linkages.
- Organise public hearings to ensure the process is transparent
- Develop a monitoring mechanism to ensure timely delivery of expected outputs by the reform process, and
- Agree on how the reforms will be institutionalized” (Parliamentary Report, nd: 3).

The reform committee adopted the following strategies:

- “Human Resources and institutional development strategy to strengthen Parliament’s capacity to ensure sustainability of the process and ownership of reforms. This

strategy seeks to ensure that the Parliament is well positioned to meet its mandate. The administrative structure will also be enhanced to ensure quick decision-making and responsiveness to organisational issues.

- Develop partnerships with civil society organisations to lay the foundation for active dialogue between Parliament and civil society.
- Develop in-house capacity to manage the process and hire additional staff if need be.
- Solicit support from the donor community in Lesotho.
- Work closely with identified consultants on the content, process and output of the reform process.
- Monitoring of the Plan” (Parliamentary Report, nd: 4).

The Ombudsman in Lesotho

The setting up of the Ombudsman office in Lesotho was one of the efforts made by the Government to nurture and consolidate the country’s fragile democracy after 1993. It was formed in terms of Sections 134 and 135 of the constitution. The Ombudsman is mandated to investigate allegations of injustice between the government and the governed and also to provide an avenue for aggrieved persons to seek redress. It makes written reports of each case investigated and submits annual reports of his activities to Parliament (Ombudsman, 2001: 4).

The mission statement of the Ombudsman is to “protect the rights of citizens against encroachments. The Ombudsman visits all the districts and holds public gatherings (pitso) with the effort of promoting the work it does.” In order to fulfill the above, it will strive to “create and maintain, among citizens and the general public, a high level of awareness of their rights to just, fair and reasonable management...” (Ombudsman in Lesotho, 2001: 28). “It further holds regular consultations with Principal Secretaries, Heads of Departments and Corporations. The purpose of these consultations was to establish areas of concern and to explore strategies of improving administration in the various agencies” (Ombudsman in Lesotho, 2001: 7).

“The Ombudsman is an office provided for in the constitution or by action of the legislation or parliament and headed by an independent, high level public official who is responsible to the legislature or parliament, who receives complaints from aggrieved persons against government agencies, officials and employees or who acts on his own motion, who has the power to investigate, recommend corrective action and issue reports” (Ombudsman, 2001: 31).

The Ombudsman assists the members of Parliament by highlighting areas in administrative action that are either weak or strong. The Ombudsman annual reports indicated a number of complaints made by the public with regards to the Government of Lesotho. A large number of these complaints refer to the operation of the Public Service Act 1995 or other statutory bodies relating to the control of the Army, Police or Teaching Service. Complaints are generally about payment of salaries/wages, gratuities (including death gratuities), pensions, severance pay and unfair or unlawful dismissal. In the villages, people complain about land tenure, which is still governed by customary law (Laws of Lerotholi), statutory law and judgments of the courts (local, Magistrate, High Court/or Appellate Division). Other complaints concern congestion and delays in the court system at all levels (Ombudsman Office in Lesotho, 2001: 27). In order to improve the administration of the Public Service, the Ministry of Public Service agreed to make substantive amendments to the Public Service Act of 1995 and the Pension Regulations of 1964 as amended (Ombudsman, 2001: 27).

These institutional reforms are an indication that developing states are opening up to a public policy environment which is designed to facilitate or empower the social partners to play a more decisive role in the labour and management relationship through collective bargaining and workplace relations (Fashoyin, 1998: 58). The public officers’ involved in policy making in Government of Lesotho will give us an idea of what was entailed in promulgating the 2005 Act. Hyden (cited in Camay, 2004: 19) thinks that ‘good governance’ requires citizen influence and oversight, responsive and responsible leadership... By citizen influence and oversight, he refers to the means by which individual citizens can participate in the political process and therefore express their preferences regarding public policy; ...a responsible leadership means the degree of respect for civic public realm (role as public trustees); the degree of openness of public policy-making

(readiness to share information with citizens); the degree of adherence to the rule of law.

1.6 In Conclusion

This chapter highlighted an overview of the legislative frame work of Lesotho's Public Service; the changes that have occurred since 1970. It further shows the relationship between the Ministry of Public Service and other bodies in place to promote democratic principles in the country. In this case specific reference has been made to the Parliament and the Ombudsman. The reforms taking place in the Ministry of the Public Service happened in conjunction with the reform processes of the line ministries and Parliament. It further, outlines the objectives of the study.

CHAPTER 2

LITERATURE REVIEW

2.1 Introduction

This chapter is divided into two sections, the first deals with Public Service Reform and the second, freedom of association and the right to organise into unions and the conditions under which unionisation occurs in the Public Service. This chapter focuses on these two areas because the Public Service Acts are concerned with public service reform and the issue of freedom of association, and the right to organise in the Public Service has been a burning issue between the then only existing trade union in the Public Service called the Lesotho Union of Public Employees (L.U.P.E). Since the 1980s, developing countries have been embarking on public sector management reforms resulting in the role and institutional character of the State being questioned, and the adoption of private sector orientations. International bodies, such as the World Bank “have been concerned with finding alternative ways of organising and managing public services and redefining the role of the State to give more prominence to markets and competition, and to the private and voluntary sectors” (Economic Commission for Africa, 2003: vii).

2.2 Public service reform

Reasons why public service reform is necessary

Capacity building has been the main focus of governments to meet the growing demands of services by the people. According to Keyter (cited in Forje, 2008: 4) “The main purpose of any public service globally is to promote the general welfare of the citizens of that specific country. The involvement of a government in the provision of services and products stems from two main reasons:, namely, {i} governments are of the opinion that their social and developmental objectives can best be served by government rather than other institutions such as the private sector: and {ii} why governments were involved in delivery of goods and services is that governments control those sectors of the economy that are considered to be of significant strategic importance.”

Failure of government output functions to fulfill its social contract with citizen demands usually results in pressure for reform (Forje, 2008: 11) In order to meet the emerging

challenges, new forms of administration took place.” At the same time governments were faced with problems, such as, “the expansion of ministries, with limited finances and human capital, assuming the role of the private sector, limited infrastructure, legal and institutional capacity affecting governance...” (2008: 11). Bentil (Cited in Forje, 2008: 13) agrees that “the changes to be made in the public administration system to meet the requirements of nation building together with economic development increased considerably the responsibilities of the civil service, revision of laws, rules and regulations as well as other relevant legal instruments, changes in the systems and procedures of work, staff redeployment and retraining, review and modification of international relations became essential.”

Transformation of Public Services in Africa has been prescribed by the international world as an antidote to the challenges encountered in Public Services. These reforms however, came with conditions, which had adverse effects to African countries. Forje (2008: 13) notes that International organisations, such as the World Bank, International Monetary Fund (IMF had an indirect influence on public management reform and staff participation through the dissemination of ideas and the promotion of what they call ‘good practice (Farnham, 2009: 4). For example, in the 1980s they introduced Structural Adjustment Programmes, which require that the African governments cut costs, but at the same increasing competitiveness and efficiency of the state sector to justify its claim on resources and demonstrate its added value to society (2009: 4).

The structural adjustment reforms initiated in the mid 1980s introduced a new public administration paradigm and macroeconomic policy framework. These reforms sought to reduce the role of the State in production and service delivery and encourage deregulation of public enterprises (Economic Commission for Africa, 2003: 2). The argument is that “the absence of an effective public administration can often constrain States from participating in the global economy” (Economic Commission for Africa, 2003: 2)

In the 1990s, pressure on governments from both domestic and external forces to liberalise the political space increased. Democratic systems that were introduced, emphasised “creating an enabling environment for private sector and civil society to flourish, and establishing an effective civil service by increasing its competence, efficiency, fairness and

quality of services” (Economic Commission for Africa, 2003: 1).

The promotion of Good Governance was seen as the cornerstone to running the Public Service. Good governance for donors meant an emphasis on accountability and responsiveness to customer needs. The World Bank viewed good governance as “an efficient public service, a reliable judicial system and an administration that is accountable to the public” (Economic Commission for Africa, 2003: 5).

The spread of education and the rise in technological knowledge and the needs and aspiration of the people becoming complex has resulted in governments re-defining their objectives (Yatsin, 2008: 2) He further notes that” a few decades ago government policies of developing countries constituted for example, running the economy, creating employment, building schools. Whereas nowadays, government policies include a wide array of objectives such as, good governance, globalisation, competitiveness, inclusive economic growth, poverty alleviation, quality of life and protection of the environment” (2008: 2).

In a book titled “The Contexts of Staff Participation and Public Management Reform,” Farnham (2009: 3) explores the extent to which the staff in public services have been involved in the reform process and whether there is an alternative ‘bottom-up’ interpretation of public management reform. The book identifies and analyses some of the main contextual forces influencing governments and their strategies for public management reform. It further examines how these contexts help shape staff expectations of work and their participation in the reform process.

Farnham argues that “the contexts that have influenced public management reform and the role of staff within it are conceptualised as structural, cultural and legal variables. Structural variables include economic, social and technological changes, and cultural variables are subjective and ideological and technological include national and European laws, especially in relation to employment rights” (2009:3).

There are cultural variables and micro-social forces within society, centered on individual beliefs and values that influence behaviour. They also influence people’s understanding of

nature of public management reform and its impact on them as procedures and users of public services (Farnham, 2009: 10). Workplace restructuring should ideally incorporate the cultural dynamics of people because the success or failure of whatever will be introduced to the workplace is dependent on how the workers perceive things.

According to Farnham (2009: 13) pressures for changes in management styles and management staff relationships are also influenced by managers themselves. “In the search for competitive advantage in the private sector, and greater efficiency and effectiveness and value for money in the public sector, managers have looked for new solutions to their problems (Farnham, 2009: 13).

The MORI Social Research Institute argues that there is a need for a better understanding of what informs customer satisfaction, in order to inform public service reform (2002: 1). MORI Social Research Institute (2002: 2) puts great emphasis on highlighting priorities for improvement within an individual service; to compare different units providing the same service; to compare different services and to monitor changes in perceptions and performance over time. I think this would be relevant to this study because a customer’s expectations and rating of the public service can serve as a yard stick for any government to monitor its performance in terms of service delivery and to identify the areas that need greater attention, hence improve the quality of service provision. The employees of the Public Service are also the consumers of the very same services they provide to the rest of the people; they can also partake in the survey. However, the risk of ending up with data that is bias can happen. On the same token it can be chance for them to express how they feel about and rate their services.

2.3 Types of reforms

The following are examples of types of reforms adopted by governments:

Human capital development and institution building

“Human resources development is a crucial cardinal factor accelerating the reconstruction and reconstituting phase of civil service reform...” (Forje, 2008: 27). According to Farnham (2009: 14) there are a common set of principles characterising Human Resource Management. First, there is consensus that human resources planning should be integrated

with corporate and business planning. Second, motivated and committed staff is viewed as more productive and contribute more added value to the organisation...Third, there is a need for HR strategies to ensure employment flexibility, which would improve capacity to manage innovation. Staff must be committed to total quality to achieve and sustain competitive advantage. Fourth, 'best Practice' HRM contributes to improved organisational performance.

The following seven components have been highlighted by Pfeffer (cited in Farnham, 2009: 14) as 'best practice' HRM: employment security, extensive training, and development, employee involvement and voice, self-managed teams, high compensation based on performance and harmonisation of employment conditions. According to Mahoney and Deckop (cited in Farnham, 2009: 14) indicates that there has been a move from communication through collective channels to direct communication with employees. The aim is to increase employee identification with organisational interests and creates a supportive organisational culture.

Performance management

Forje (2008: 18) argues that what is of importance "is reconstructing and reconstituting the public service sector by ensuring that either centralisation or decentralisation operates on the golden principles of the various services functioning within the inalienable principles of transparency, accountability, responsibility, coordination, inclusiveness, social justice, rule of law and social equitability."

Farnham (2009: 14) sees Performance Management as "a rational, out-put oriented approach to management. The purpose or mission of an organisation has to be identified along with its aims and values. Corporate plans must be developed which state what the goals and objectives of the organisation are. Furthermore, these are translated into business plans setting out specific programmes, budgets, targets and standards of performance that can be systematically reviewed." Performance Management can be used as a monitoring tool, whereby the performance of the Public Service is measured against the outputs. It further, assists in improving the performance of the staff and at the end of the day good quality service has been achieved and the staff has received points.

“Performance Management establishes a culture in which managers, individuals and groups take responsibility for the continuous improvement of business processes and of their own skills, competence and contributions” (Armstrong cited in Forje, 2008: 17). African countries have therefore embarked on Public Administration System Reform (PASR) as measures to re-engineer policies focused at improving the performance of the out-put functions of the public sector to accelerate developmental and services delivery processes (Forje, 2008: 17). He further notes “the fundamental usefulness of reform and performance management is the facilitation of communication, awareness creation across the board and reinforcement of policies and actions to attain certain goals for the progressive development of society (2008:31).”

Besides looking at ‘Performance Management’ as the assessment of the performance of employees, it can also be seen as promoting worker participation. ‘Performance Management’ is complementary to ‘Worker participation’ because “Worker participation entails the involvement of the employee in the organisation and planning of the work process, in the establishment of procedures and future processes, in the decision making function at various levels and in the management and policy making bodies of the undertaking” In other words, management provides an enabling environment for employees to participate, giving them the opportunity to make decisions. The result would therefore be an improvement in the employee’s performance and targets will be met. According to the Work Foundation (2004:10) Employee involvement in decision making can be divided into three categories; communication (company reports, team briefings); participation (team meetings, suggestion schemes and representation (collective bargaining and work councils).

Organisational development entails the training of staff (Farnham, 2009: 15). The management of staff performance involves planning and setting key result areas including performance targets, behaviors and criteria for measurement. Monitoring of staff is conducted, with regular appraisals and rewards. Performance Management rests upon the unitary perspective of organisations, in which the interests of the organisation and individual employees are seen as complementary and compatible. HRM is required to be integrated within the HR function and with business strategy. Performance Management supports an organisation’s overall business goals by linking the work of each individual to

the overall mission of the work unit. This results in motivating the staff to view the success of the organisation as their own. Furthermore, targets and indicators are the major features of performance management because they are quantifiable and measurable. It is argued that because of this, they increase accountability and transparency.

Farnham (2009: 16) argues that there is however, ongoing debate “about performance management in public services and about the effects of targets and performance indicators on staff morale and the perverse effects they can have on staff behavior and motivation.” The idea behind Performance Management is great; however, it takes away the human aspect of work, that work can be enjoyable and not just market oriented. If performance in the Public Service is going to be graded, then the wage should be equated to the score of performance. However, it is also important that management in the Public Service do not lose the essence and traditional ethos of the Public Service, which is to provide good service to the people.

2.4 Constraints to public service reform

The problem with forgetting why a Public Service exists often results in what Kato (cited in Forje, 2008: 16) notes “In spite of the many institutions and programmes put in place to tackle the problem of corruption and related vices, the fact still remains that lack of ethical behaviour, transparency and accountability in the public management remains a major obstacle to development in many countries.” These problems often result in most reforms in government failing and often never get past the implementation stage...or put into effect in a half-hearted fashion Polidano (2001: 1).

Public management reform are usually ‘top down’ and focus on the role of politicians, senior civil servants and policy advisers in fashioning the change process (Farnham, 2009: 3). Staff plays a major role in the work of the state and activities of the governments. This can inculcate the spirit of apathy amongst junior and lower paid employees towards government initiatives. However, there are initiatives taken by some governments to include the bottom-up approach, which entails involving employees in decision making processes.

2.5 Trade unions and public service reform

In a study by the Work Foundation on Trade Unions and Public Service Reform, it was noted that the Government and public service trade unions have a strong, shared interest in improving public services through investment and reform. However, this shared interest is not universal across public services as a whole (2004: 7). The objectives of the study were to identify, analyse and compare examples of good practice in employee and trade union involvement in public service reform; to examine the factors that both facilitate and impede the involvement of employees and trade unions in public service reform, to highlight the lessons for public sector employers and trade unions that may guide progress toward further employee and trade union involvement in reform initiatives (Work Foundation, 2004: 7).

Trade unions and employees may be involved in service reform for a number of reasons. Those identified by the Work Foundation study included external influences; legislative requirements, for example, national service frameworks, audit and inspection, service re-organisation, national agreements between employers and unions, staff attitude surveys and internal influences, such as, changes in political or official leadership, restructuring, industrial unrest, service user's views and performance management regimes (Work Foundation, 2004: 9). "The urgency of the reform is generated by a combination of factors, but is underpinned by the desire for involvement stemming from the employee's public service ethos" (Work Foundation, 2004: 10). "The strict hierarchical organizational design still prevalent in many organizations lends itself mainly to command and request communication, filtered through narrowly structured channels" (Bendix, 1996: 331), for example, because civil servants are used to that hierarchical structure, it may be difficult to penetrate the prescribed relations.

What are the benefits?

Some of the benefits that can be achieved from trade union involvement in service delivery include an improved climate of employee relations, a reduction in turnover and sickness absence levels, representation of the workforce, dissemination of information among staff, salary increase and better service delivery (Work Foundation, 2004: 12). "The outcomes of employee involvement can be difficult to evaluate and in practice are rarely evaluated. Often other factors-principally changes in political or official leadership and funding-have a

stronger impact on service improvement” (Work Foundation, 2004: 12). “It is wrong to assume that all employees want to be more involved in the first instance. One of the factors affecting declining union membership may be a decline in trust in the collective mechanisms for redress over employment issues and difficulties of unions attracting new members” (Work Foundation, 2004: 17).

2.6 Freedom of association and the right to organise into unions

This section focuses on issues around freedom of association, rights to form unions, and the evolution of these rights in the context of what it means to be in the employ of the ‘sovereign.’ As Bendix notes labour relations systems and practices differ from country to country; however, in order to be compatible with the ethics of their time, they have to orient themselves on certain universally acceptable principles and guidelines. These guidelines are formulated and derived by the consensus of state representatives in International Labour Conventions (1984:4). Bendix further notes that International Labour Conventions are international treaties, if ratified by states concerned, become legally binding on each other. With the same respect to the International Labour Office (ILO); once it has adopted the conventions by the International Labour Conference, that is the annual general conference of ILO members, the states which have ratified the convention assume the obligation towards the ILO to submit reports on their actions aimed at the implementation of the Conventions (1984: 5).

Freedom of Association is a universally recognised civil liberty and one of the most fundamental rights of workers and employers. It has been shown that the recognition of the basic rights of workers and employers is a prerequisite for the emergence of democracy and for the overall development of national economies (Social Dialogue, updated 2001: 1). Respect for the principles of freedom of association is vital for the proper functioning of a labour relations system and, more broadly, for any democratic system of governance. In turn, freedom of association has an important role to play in the development and operation of a market economy, which generally functions most efficiently under democracy (Social Dialogue, updated 2001: 1). In the labour relations context, the right to freedom of association means that every employee has the right to participate in forming a trade union (or a federation of trade unions) and to join a trade union (Todd, 2004: 13).

Camerer (1994: 35) notes that a Freedom Charter is essential to protect the rights of the citizen against arbitrary and discriminatory use of parliamentary and political power. Roodt (2003: 29) states that the purpose of such a Constitution with a Bill of Rights is to provide guidelines to Parliament in terms of law and policy-making, to give the courts the power to decide whether laws passed by parliament are just in terms of the Constitution, but more importantly, to provide guidelines to the courts to ensure that every citizen has the right to administrative action that is lawful, reasonable and fair. Roodt (2005: 4) argues that written charters of human rights, such as Constitutions and Bill of Rights, although inspired by the “rights of man” deal to a greater extent with the rights of the citizen; the political, economic and social rights one enjoys as a member of a particular society.

The evolution of freedom of association and the right to form unions

Roodt (2005: 3) looks at the philosophical origins of the human rights phenomenon. He notes that for western liberal writers, such as Louis Henkin, individuals by virtue of them being human possess human rights. For them, the term ‘human’ embodies a number of rights that apply to all members of that species, regardless of their social position, ethnicity, nationality or gender. Henkin argued that human rights are universal moral rights that are fundamental to human existence and can neither be transferred, forfeited nor waived. Furthermore, they are demands or claims that individuals or groups make on society and are deemed essential for individual wellbeing, dignity and fulfilment. Human rights are universal and belong to every society regardless of geography, history or culture (Cited in Roodt, 2005: 3).

Manoranjan Mohanty (cited in Roodt, 2005: 4) argues the concept of human rights has evolved from a liberal humanist formulation at the time of the Universal Declaration of Human Rights in 1948, to the UN Summit on Human Rights in Vienna in 1993. It reflects the rise of democratic consciousness among people over the world. In principle it does, however the implementation of these ILO principles remains a challenge. Countries are obliged to adhere to these principles merely because they are members of the ILO. There are no strong mechanisms in place that ensure the punishment of members that do not abide by these principles.

Specific reference shall be made to the Convention on Freedom of Association and Protection of the Right to Organise No.87 of 1948 and a highlight of the Convention on the Right to Organise and Collective Bargaining No.98 of 1949. These conventions are a bridge between international labour standards and three main categories of human rights instruments developed by the United Nations. Wedderburn (1991:141) pointed out that ILO Conventions were different from other International conventions in that the ILO Conventions put emphasis on collective rights. These collective rights encompassed the right to organise, the right to bargain collectively, and the right to withdraw labour (Wedderburn, 1991: 141).

Freedom of Association and the right to organise are accepted as unalienable human rights ...they have found themselves in the industrial setting (Bendix, 1984: 1). The freedom of association and the right to organise synthesised into universal principles and entrenched in the International Labour Conventions No 87 and 98 of 1948 and 1949 respectively, represent the cornerstones of any industrial relations system. They are prerequisites to the functioning of any social system that purports to structure human relations in production with the optimum consensus of all its participants (Bendix, 1984: 2).

Freedom of Association and the right to organise are fundamental rights enshrined in the Constitution of the International Labour Organisation. “The earliest ILO Convention with the right to organise was the Right of Association (Agriculture) Convention, 1921 (No.11) followed in 1947 by the Right of Association (Non-Metropolitan Territories) Convention (No.84)” (ILO, 1994: 3). The Freedom of Association and Protection of the Right to Organise Convention was adopted in 1948 and in 1949, the Right to Organise and Collective Bargaining (No.98) to regulate freedom of association (ILO, 1994: 3).

Other instruments concerning trade union rights and collective bargaining include:

- “The Collective Agreements Recommendation, 1951 (No.91), dealing with the collective bargaining machinery, their interpretation and the supervision of their application.
- The Voluntary Conciliation and Arbitration Recommendation, 1951 (No.92), which is aimed at promoting the establishment of conciliation and arbitration machinery.

- The Collective Bargaining Convention (No.154) and Recommendation (No.163), both adopted in 1981 aimed at promoting free and voluntary collective bargaining.
- Rural Workers' Organisations Convention (No.141) and Recommendation (No.149) adopted in 1975.
- Labour Relations (Public Service) Convention (No.151) and Recommendation (No.159) adopted in 1978.
- The Workers' Representatives Convention, 1971 (No.135), and the accompanying Recommendation" (No.143) (ILO, 1994: 3).

According to the ILO Global Report (2004: 1) the fundamental principle of freedom of association and the right to collective bargaining is a guarantee to the ability of workers and employers to join and act together to defend not only their economic interests but also civil liberties, such as the right to life, security, integrity and personal and collective freedom. It guarantees protection against discrimination, interference and harassment.

The ILO (2004: 21) states, "The disturbing reality is that in many parts of the world and in a number of economic sectors, freedom of association and the right to collective bargaining are not respected. Even where they are recognised in law, those seeking to exercise their rights can face serious difficulties." It is important to note that in a process of progressive realisation of rights, the first step is ratification of international labour standards; the second, putting into place the necessary legal and administrative framework for enforcing rights; and the third, ensuring that rights are practised on the ground by empowering and strengthening the social partners through technical cooperation and policy advice (ILO, 2004; 21).

The concept *freedom* is associated with human rights and the fundamental freedom of decision of people. An individual's rights, however are always subject to his obligations toward, for example, the state; that is he has the right to be protected by the state (via legislation), but he also has the obligation to abide by the legislation. *Association* is a phenomenon whereby people are drawn together in society. Freedom of association is therefore the freedom an individual may use to his own advantage to join or not to join an

organisation and to conduct himself as he pleases but within the law of the country he lives in with regard to his association to such organisations (Nel, 1985: 16, Summers in Madame, 1993: 116).

The ILO (1994: 19) states that Freedom of association is the full exercise of trade union rights; it calls for a free flow of information, opinions and ideas, and workers, employers and their organizations should enjoy freedom of opinion and expression from their meetings, in their publications and the course of their other activities. Freedom of Association is seen in ILO industrial terms as a right to organise, leading to the right to bargain collectively, and a right to withdraw labour (Wedderburn, 1991: 141). Christianson (2002: 26) argues that there must be legal protection of the freedom of persons to join a collective entity.

Article 2 of ILO Convention No.87 states that:

Workers and employers, without distinction whatsoever, shall have the right to establish and subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization”(Odero, 1995: 24).

Article 10 states:

In this Convention the term ‘organisation’ means any organisation of workers or of employers for furthering and defending the interests of workers or employers (Bendix, 1981:6).

“What this means is that the right to organise should be considered as the general principle. The use of “employers” and “workers” in the Convention No.87 underscores that instrument that guarantees the right of association for trade union purposes...”(ILO, 1994:24). Most countries recognise the right of workers and employers as provided for in Article 2. However, in several countries, the law draws a distinction in that regard for certain categories of occupation or persons. They may apply to public servants, executive and managerial staff (ILO, 1994: 24).

2.7 Trade union rights

Trade union rights are enshrined in the ILO Conventions. Any member state that has ratified ILO Conventions regarding freedom of association and the right to organise is obliged to promote them.

“The freedom of association and the right to organise represent the core pre-requisites of free trade unionism. Free trade unionism is said to represent the core pre-requisite for a democratic order. The limitation imposed on them and their watering down in practice provides an indicator as to what extent a particular country complies with international principles and standards” (Bendix, 1984: 3).

The ILO Report “Organising for social justice” states that despite a general positive trend linked to the spread of democracy, high rates of ratification of the fundamental international labour standards, and increased transparency in global markets, serious problems still remain. For example, violations of freedom of association rights of both employers and workers persist in different forms, including murder, violence, detention and refusal to allow organisations the legal right to exist and function (2005: 2).⁶

What are trade unions for?

“A trade union is any organisation whose membership consists of employees, which seeks to organise and represent their interests both in the workplace and in society, and seeks to regulate their employment relationship through the direct process of Collective Bargaining” (Venter, 2003:67).

The historical development of trade unionism was described as a social response to the advent of industrialism and capitalism (Bendix, 1996:166). Furthermore, “Historically trade unions organised themselves according to the type of interest they represented; that is, unions were established to represent employees in certain occupations...” (Bendix, 1996: 167).

⁶ Problems range from the tragic and complex case of Columbia to obstacles to extending legislation and protection beyond the sphere of established industrial relations (ILO Report, 2004: 2).

The general overall objective of a trade union is to represent the interests of its members (Bendix, 1996: 171). They are viewed as “the worker’s mouthpiece and the vehicle through which negotiations between workers and their employers are facilitated” (Cilliers, 1983: 6).

The goals of a union can be categorised into the following: Economic gains, improved working conditions for its members and procedural controls to ensure job security for employees and freedom from arbitrary action by employers as well as political influence to drive State policies and ensure that legislation is labour friendly (Finnemore, 1996: 74).

Economic gains

Unions can assist in improving the benefits of its members. For example, maternity and paternity leave, provident funds, sick leave, health care and medical aid, housing loans, provision of transport and education bursaries (Finnemore, 1996: 76).

Employees generally join unions with the hope that their economic status will be improved. Bendix argues that if wage demands by trade unions are unrealistic, the result maybe a wage-price spiral, which has adverse inflationary effects on the economy. To resolve this unions sometimes cooperate with government and other agencies by temporarily freezing wage demands, for the purpose of improving the general economy (1996: 172).

The other objectives of unions include the promotion of job security, social welfare and job regulation of its members, and the individual development of each member (Bendix, 1996: 173).

Political influence

The historical formation of unions was based on the premise that they would bring about political transformation in society (Finnemore, 1996: 79). Clarke (cited in Finnemore, 1996: 79) states that “trade unions may have originated as organisations of working people dedicated to militantly representing their interests...,directed ultimately towards transforming Capitalist society. Today, however, the unions can be seen to have lost sight of any vision of an alternative Socialist society... unions have now become a component part of the very system” (Finnemore, 1996: 79).

“In developing countries many trade unions are still fighting for recognition under oppressive governments while others in democratic countries seek influence through political parties and through lobbying so as to ensure their members’ needs are met” (Finnemore, 1996: 80).

Methods by which unions achieve their objectives

The primary means of communication a trade union uses to promote the interests of its members is through collective bargaining. The collective bargaining rights of unions are granted by the ILO Convention No.98. Finnemore notes that other sources of power they use include; economic power, consumer power, politics power, international support, legal action, media channels and expertise.

The right to bargain collectively

“The Right to Organise and Collective Bargaining Convention, 1949 (No.98), deals with two different aspects of freedom of association. First, it seeks to protect worker’s exercise of their right to organise vis-à-vis employers and to protect workers’ and employer’s organisations against interference by each other (Articles 1 to 3). Secondly, “to ensure the promotion of collective bargaining, the Convention emphasises the autonomy of the parties and the voluntary nature of negotiation (Article 4)” (ILO, 1994: 91).

ILO Convention No.98 excludes some categories of the public servants from its scope, by providing in Article 6 that “...does not deal with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way” (ILO, 1994: 91). Article 1 of Convention No.98 provides that:

“Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment” (ILO, 1994: 93).

In the majority of countries, the right of workers to negotiate their conditions of employment through collective bargaining is recognised in law or practice. However, national legislation promotes collective bargaining in varying degrees; the main difficulties

arising in practice concern the recognition of trade union for the purposes of collective bargaining and the establishment of machinery and procedures to facilitate bargaining (ILO, 1994: 108). A trade union can only be recognised for purposes of collective bargaining if it has registered (ILO, 1994: 108).

According to Bendix (1996: 250) Collective Bargaining is a process necessitated by a conflict of needs, interests, goals, values, perceptions and ideologies, but resting on a basic commonality of interest, whereby employees/employee collective and employers/employer collectives, by the conduct of continued negotiation and the application of pressure and counter pressure, attempt to achieve some balance between the fulfilment of the needs, goals and interests of management on the one hand and employees on the other...”

“Collective action is an integral part of collective bargaining, since collective action (such as, a go-slow, a work-to rule, a strike or boycott) by which unions attempt to pressurise the employer into continued negotiation or adopting a position more favourable to the union” (Bendix, 1996: 176).

The purpose of collective bargaining with government is to represent the economic and social interests of union members at the highest level and to obtain concessions in both industrial and socio-political legislation (Bendix, 1996: 176).

Conflict is deemed an integral part of the industrial relations system. It is argued that collective bargaining would not be necessary if no conflict of interest existed. It is therefore necessary that an understanding is reached in order to contain the conflict. Bendix (1996: 251) further argues that “the agreement to bargain does not negate the presence of conflict; nor is there an attempt to eliminate conflict all together. Conflict if managed properly can stimulate growth, innovation and change in the organisation.”

What causes conflict?

The common causes of conflict in an industrial relations system include the following:

- “Scarcity of resources
- Incompatibility of needs, goals and interests

- Different attitudes to work
- Different attitudes, values and perceptions in general
- Shared work activities
- Ambiguity in responsibilities and roles
- Poor or inadequate organisational structure
- Poor communication” (Bendix, 1996: 251).

One of the sources of conflict arises when employers do not involve employees in decision making. However, the presence of trade unions has challenged this notion and governments have adopted legislative procedures that promote employee participation.

Economic Power

Unions can organise their members into collective action, such as, traditional strikes, stoppages, go-slows, overtime bans and the withdrawal of labour (Finnemore, 1996: 80).

Consumer Power

Consumer power is exercised through the tactic of a boycott. It is used to compel employers to give in to the demands of the workers (Finnemore, 1996: 80).

Political Power

Workers may use their vote to support political parties. Referendums may be called upon and campaigns, such as, stay-aways mobilised on certain topical issues, such as petrol prices. Furthermore, they can form federations (Finnemore, 1996: 80).

International Support

Local unions may seek the support (either financially or morally) of trade unions in other countries.

Legal Action

Unions can use legal action to protect their own and their member’s interests.

Media Channels

Media coverage can help promote the union's agenda. In cases, such as, strike action or campaigns. Advertisements maybe strategically placed and interviews given on radio or television. Furthermore, plays, songs, slogans, T-shirts and other memorabilia can be used to mobilise members for action (Finnemore, 1996: 80).

Despite having these channels available to unions, some are denied the right to exercise them.

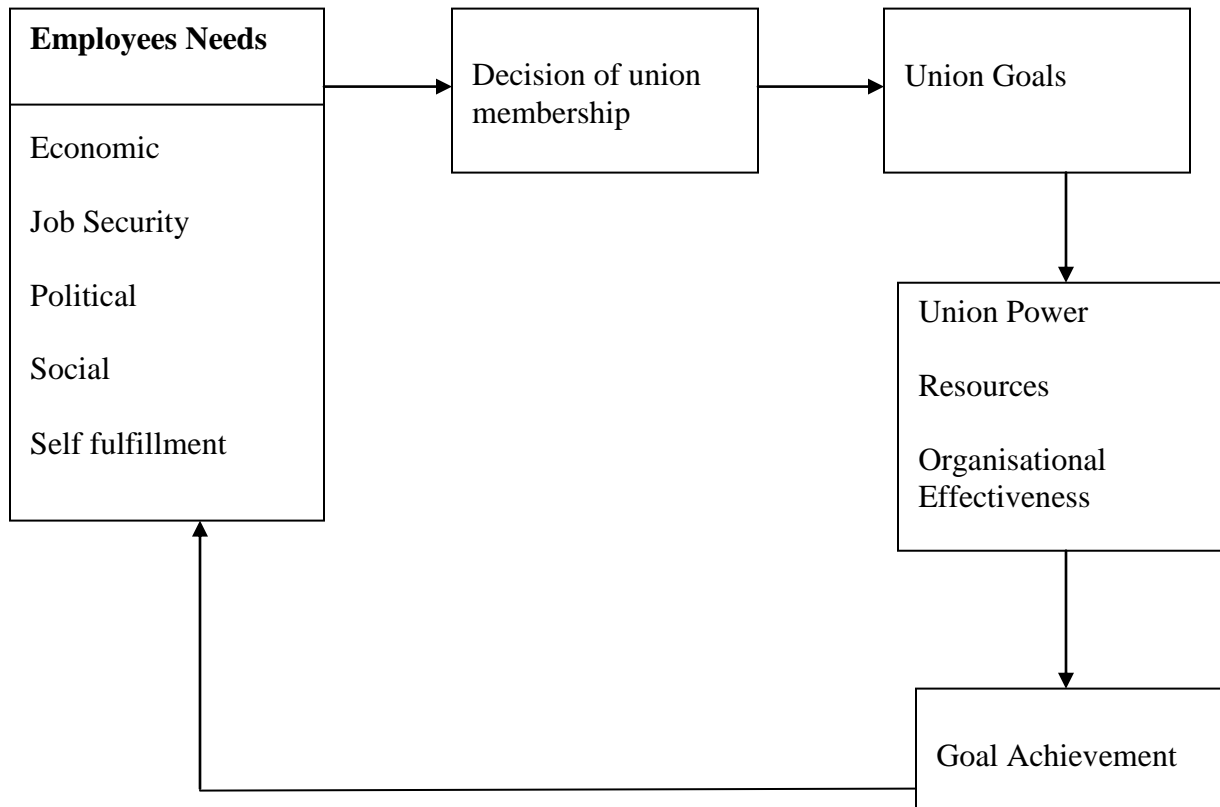
Reasons why workers join unions

Reasons for workers joining trade unions can be influenced by both internal and external factors. Finnemore (1996: 70) states that one of the main internal factors influencing workers to join unions is to fulfil their unfulfilled needs and expectations. External factors include:

- a) "The capacity of a union to assist the employee
- b) Encouragement or even pressure from co-workers
- c) The support the union enjoys in the broader society
- d) Lack of any other alternatives available to the employee" (Finnemore, 1996: 70).

Reasons why workers do not join unions

- a) "The cost of union dues
- b) Union ineffectiveness, poor recruiting methods
- c) No co-workers support or political intimidation
- d) Employer intimidation" (Finnemore, 1996: 70).



Employees Needs, union goals and achievement and union membership (Finnemore, 1996: 71).

The above diagram illustrates the reasons why employees join unions, which in turn influences the goals of unions. The employees' needs as shown by the diagram include:

- a) **Economic needs:** to improve wages and working conditions.
- b) **Job Security and Regulation:** to protect their jobs. Unions are seen as a protector from retrenchment, dismissal and unilateral action by management in changing job descriptions and working conditions (Finnemore, 1996: 72).
- c) **Political reasons:** unions are seen as vehicles for their political aspirations.
- d) **Social needs:** Peer pressure may play a major role in propelling individuals to union membership (Finnemore, 1996: 73).
- e) **Self-fulfilment:** Unions are seen as a vehicle for advancement through skills

development (Finnemore, 1996: 73).

Right to establish and join organisations in the public service

In most countries, union organisation in the Public Service is different from that of the Private Sector. Understanding unionisation in the Public Sector, with specific reference to the civil service requires sensitivity to both the particularities of industrial relations in this sector and to the way in which these have been changing in the context of economic and political developments (Macun cited in Adler, 2000: 92).

“ILO Convention No.87 emphasises that freedom of association shall be guaranteed not only to employers and workers in the private sector, but also to public employees” (ILO, 1994: 24). In some countries, public servants are not accorded the right to form trade unions, but can form associations. In some cases “the associations are accorded de facto recognition by the government in its capacity as employer for the purpose of discussing wage claims or other working conditions” (ILO, 1994: 25). “Even though the ILO Conventions are binding on those countries that have ratified them, an examination of the legislation of different countries showed that the terms used to refer to public servants varied a great deal, for example, the French word “fonctionnaire” (public servant) does not have the same meaning in all French-speaking countries” (ILO, 1994: 25). Furthermore, in some other countries legislation draws distinctions as to the status and rights of the various categories of public servant, for example, in Germany, law and practice draw distinction, based on status rather than on the nature of functions, between public servants having the status of “Beamte,” and other persons employed at various levels of public service and white collars (“Angestellte”) or normal workers, “Arbeiter” (ILO, 1994: 25). Macun (cited in Adler, 2000: 94) describes civil servants as “workers who are directly employed in the running of government departments.”

The ILO (1994: 25) notes that “for some countries it is not possible to determine from the substantive law in force the precise extent to which public servants enjoy the right of freedom of association in practice. Even if the legislation does not recognize the right to form trade union organisations, associations have in some cases been established under the terms of an act on the right of association in general, and there are cases in which such

associations are accorded de facto recognition by the government in its capacity as employer for the purpose of discussing wage claims or other working conditions” (ILO, 1994: 25).

“In many countries, the right of public servants to organise for the purpose of defending and furthering their occupational interests is guaranteed by the legislation applicable to trade unions in general. In others, the right of public servants to organise is governed by a set of provisions contained in public service statutes or regulations or in special legislation,” (ILO, 1994: 25). “Where legislation recognises the right of public servants to organise, it does not necessarily follow that they enjoy this right for the purpose of defending their economic and social interests. In this regard, ILO has emphasized the importance it attaches to the need to clear recognition in the legislation of the right of public servants to associate not only for cultural and social purposes, but also for the purpose of furthering and defending their occupational interests” (ILO, 1994: 26).

“In a number of countries, the right of public servants to organise into unions may be denied to all categories of personnel in the service of the state, to public servants engaged in the administration of the State and, in certain cases, even to workers in public undertakings and public institutions” (ILO, 1994: 26). “In other countries recognition of the right of public servants to organise, may deny this right to certain categories of public servants or subject them to particular restriction on account of their level of responsibility (senior officials) or the nature of their functions...”(ILO, 1994: 26).

With regards to senior public officials, some countries draw a distinction between personnel and management in the public service with the view to limiting the right to organise of senior officials and public servants holding managerial or supervisory positions of trust. The right to organise of senior public servants is often subject to restriction or exclusion, specifying the categories or posts. These restrictions do not necessarily constitute an outright denial of the right of these persons to organise (ILO, 1994: 28). The problem often lies with how these member states understand and prescribe the labour laws enshrined in the ILO Conventions. Do civil servants know about freedom of association and the right to organise into unions? How do they relate to the concept?

Function of the ILO and mandate of the committee on freedom of association

It is important to provide an overview of the ILO and its functions because the ILO is an important entity in the promotion of workers' rights. "The function of the International Labour Organisation in regard to freedom of association and the protection of the individual are to contribute to the effectiveness of the general principles of freedom of association, as one of the primary safeguards of peace and justice."⁷ The ILO was established "to improve working conditions and to promote freedom of association in the various countries."⁸ "While it is not for the Committee to decide upon questions concerning the occupation or administration of territories, as a member of the ILO, the Government of the occupying country is bound to respect the principle of freedom of association as contained in the ILO Constitution in respect of which the ratification of the international Conventions of freedom of association does not of itself create an obligation vis-à-vis the ILO."⁹

Governments are required to provide regular reports on the measures taken to give effect to the provision of Conventions which they have ratified (Article 22) and copies of the reports and to give regular information and unratified instruments (Article 19) (Servais, 1980: 4). Where national laws, including those interpreted by the high courts, violate the principles of freedom of association, the Committee on Freedom of Association (CFA) has always considered within its mandate to examine the laws, provide guidelines and offer the ILO's technical assistance to bring the laws in compliance with the principles of freedom of association, as set out in the Constitution of the ILO and the applicable Conventions (CFA: Digest of Decisions, 8).

The tripartite Committee on Freedom of Association publishes its reports regularly and through the governing Body requests governments to change practices that are not compatible with the two conventions (Bendix, 1984: 6).

⁷ <http://www.ilo.org/ilolex/cgi-lex> (accessed on the 30th January, 2006)

⁸ *ibid*

⁹ *ibid*

ILO supervisory bodies

The supervisory bodies involved in interpreting the texts of Conventions are the following: the Committee of Experts on the Application of Conventions and Recommendations, the Committee on Freedom of Association and the Fact-Finding and Conciliation Commission (NMC, 1990:10). The Committee on Freedom of Association (CFA) was established for the purpose of examining complaints about violations of freedom of association, whether or not the concerned country has ratified the relevant conventions. Complaints may be brought by employer's and worker's organisations.¹⁰

The Committee of Experts on the Application of Conventions and Recommendations analyses the regular reports submitted by governments, in cases where complaints are filed with ILO by a member state complaining against another state for not observing a Convention that both have ratified or where representations are received from workers' or employers' organisations alleging that a state has failed to observe a ratified Convention. The Fact-Finding and Conciliation Commission examines serious cases of infringement of trade union rights referred to it by the Governing Body (who acts on the recommendation of the Committee on Freedom of Association (National Manpower Commission, 1990: 11)).¹¹

The purpose of the procedure of the CFA is to promote respect for trade union rights in law and in fact (ILO, 1996: 8). The Mandate of the CFA consists in determining whether any given legislation or practice complies with the principles of freedom of association and collective bargaining laid down in the relevant Conventions (ILO, 1996:8). Within the terms to its mandate, the Committee is empowered to examine the extent to which the

¹⁰ [Http://www.ilo.org.za](http://www.ilo.org.za) (accessed on the 16th September, 2005)

Applying and promoting International Labour Standards (The Committee on Freedom of Association)

¹¹ [Http://www.ilo.org.za](http://www.ilo.org.za) (accessed on the 16th September, 2005) For example, in 1994 the International Confederation of Trade Unions and World Confederation of Labour (WCL) filed a complaint against the Government of Indonesia for violations of trade union rights, including the denial of worker's rights to establish organizations of their own choosing, the persistent interference by government authorities, the military and employers in trade union activities, and the ongoing restrictions in collective bargaining and strike action, as well as very serious allegations concerning the arrest and harassment of trade union leaders, together with the disappearance and assassination of worker and unionists (ILO Press release, Tuesday 26th May 1998 (ILO 98/21)).

exercise of trade union rights may be affected in cases of allegations of the infringement of civil liberties (ILO, 1996:8). Where national laws, including those interpreted by the high Courts, violate the principles of freedom of association, the committee has always considered it within its mandate to examine the laws, provide guidelines and offer the ILO's technical assistance to bring the laws into compliance with the principles of freedom of association, as set out in the constitution of the ILO and the applicable Conventions (ILO, 1996: 8).

Novitz's study on freedom of association and fairness at work assesses the impact and relevance ILO Conventions No.87; highlights the relevance and shortcomings of ILO's supervisory bodies which have played a key role in enforcement of the rights set out in Conventions No.87 and 98 (1998: 171-172). Novitz argues that there are two potential problems with the Committee's system of supervision. First, it is the difficulty of formulating universal principles, which will attract the cooperation of all ILO members and satisfy interests represented in the CFA and Conference Committee.

There are sanctions in place that may be applied for violating standards depend on whether or not a state has ratified a convention and whether or not a constitutional obligation exists to observe a certain standard (National Manpower Commission, 1990: 11). However, Novitz (1998: 172-173) argues that these sanctions are not tangible enough to deter states from violating their obligations under ILO Conventions (1998: 172-173). For example, since 1984 the UK has been reprimanded by ILO supervisory organs for failing to satisfy its obligations under Conventions No.87 and 98, but few significant changes were made to the law or practice in response to this criticism. In the absence of concrete sanctions, successive Conservative governments maintained their resistance to recommendations from the Committee of Experts and the CFA (1998: 173). However, this is not to say that the supervisory bodies are not competent, but to argue that there is need to strengthen their capacity. The ILO has in many instances succeeded in ensuring that member states adhere to ILO principles by continuous consultation with the member states. It is ILO's persistent nudging on governments that makes the members states to want to adhere to ILO Principles that has given ¹²

¹² The Committee of Experts had expressed satisfaction with the Government of Argentina for its complete consultation with the ILO. Since the beginning of the legislative process, there had been a genuine

Institutional administrative problems hindered the job of the supervisory bodies. For example, a Government representative of Guatemala acknowledged non-compliance with the obligation of sending reports to the Committee of Experts, due to the numerous institutional and personnel changes in the country. The representative requested technical assistance from the ILO Office. A representative of the Government of Lesotho argued that it was due to administrative and technical problems. She states that the fact that the ILO correspondence were sent to the Ministry of Foreign Affairs created difficulties for the Ministry of Employment and Labour in promptly replying to the questions raised in the report. She made reference to the absence of competent personnel to carry out the reporting obligation and expressed the Ministry's anticipation that participation in the training course in international labour standards in the ILO Turin Centre would help improve the situation (ILCCR: General Observation concerning Lesotho: Published in 1997).¹³

intention to adapt the law to ILO principles making it compatible with the specificities and complexities of the country, in particular of the union movement. The data showed that workers in Argentina freely enjoyed and exercised their inalienable rights to form the association which they found appropriate and could join if they wished. Furthermore, national practice demonstrated that legislation in Argentina relating to trade union associations guaranteed free and full exercise of freedom of association, whose primary purpose was social dialogue, especially the collective negotiation of employment contracts. This data demonstrated that in Argentina freedom of association was not only recognized legal right but also a right that was fully exercised to an extent that it placed the country in the leading rank of the countries of the world that were more advanced in social dialogue, unionization and collective bargaining (Document No. (ilolex): 132005ARG087).

¹³ <http://www.ilo.org/ilolex/cgi> (accessed on the 19th May, 2005).

2.8 Conclusion

Freedom of association and the right to organise into unions is fundamental to any industrial relations system. The principals guiding the application of the ILO Conventions No.87 and 98 are universal to member states, however not every member state abides by them. This remains a major challenge to the ILO Supervisory bodies. Industrial relations in the Public Service in most countries are handled differently from the Private Sector. The ILO does state that member states have the power to limit the rights of public servants to form or join trade unions. It can be argued that the different interpretation of the ILO Convention No.87 gives member states leeway for not promoting freedom of association and the protection of the right to organise.

Public Service Reform has been presented as a panacea if a government wants to improve service delivery. If implemented properly it can be beneficial to any organization, however, in many instances objectives are just drawn without a complete environmental scan or needs assessment that includes input from the public officers. Outcomes are the driving force behind the reform processes. Public Service reform also includes an aspect of the promotion of freedom of association and the right to organise. It is however important that, employees are empowered about it, so that they can make informed choices.

CHAPTER 3

THE HISTORICAL BACKGROUND TO THE POLITICAL CONTEXT OF LESOTHO (1970-2002)

3.1 Introduction

This chapter provides a historical background to Lesotho's political and industrial relations environment. It will help us understand how the political context shaped or influenced the legislative framework governing the Industrial Relations system in Lesotho's public service. Lesotho is located in Southern Africa, and is completely landlocked by South Africa. It was declared a British Colony in early 1868 (Gill, 1993:115). The aftermath of the wars fought by the Basotho against the Boers and the land invasions resulted in Britain placing Basutoland (now known as Lesotho) under the administration of the Cape Colony in 1871. Basutoland gained its independence in 1966. Gay (2000: 7) notes that Lesotho's history has been marked by conflict between two major political parties, the Basutoland Congress Party (BCP) and the Basotho National Party (BNP).

3.2 The political history of Lesotho

According to Gill (1993: 214) the both the Basutoland Congress Party (BCP) and the Basotho National Party campaigned for the restoration of the chieftainship lineage, however, the BCP wanted to preserve a classless society, while the BNP were willing to work together with the Capitalists, South Africa.

The BNP led Lesotho to Independence on the 4th October 1966 (Gill, 1993:216). Serious tensions built up over the role of the monarchy. Moshoeshoe II was adamant that the constitution was "totally unsuitable and thoroughly unpopular, "and hence should be replaced (Gill, 1993:117). The power of Local government diminished, instead the power was increasingly concentrated in the hands of the few, the prime Minister and three of his important Ministers (Gill, 1993:219). The BNP won the first election in 1965 (Gay, 2000: 7, Mothibe, 1998: 3).

Not satisfied with the verdict, the Prime Minister suspended the Constitution and declared a State of Emergency on 30 January 1970. Hundreds of BCP supporters were arrested and in the months that followed the Police Mobile Unit (PMU) and the BNP made life extremely painful for anyone who protested (Gill, 1993: 221). “The BNP forcefully ruled for 16 years” (Gay, 2000: 8). This resulted in Britain suspending aid to Lesotho in the hope that the situation would improve or that a government of national unity could be created to salvage the deteriorating situation (Gill, 1993:221). In 1974, the BCP launched an uprising against the BNP regime, which was suppressed by the “Lebotho la Khotso” (Peace Corps). Prime Minister Ntsu Mokhehle fled in to exile, where he formed the Lesotho Liberation Army (LLA) in 1979 in an attempt to topple the military regime (Mothibe, 1998: 5). The PMU responded by killing civilians and anyone who criticised the BNP government (Mothibe, 1998: 5).

In June 1979, negotiations between the opposing parties improved, resulting in Britain resuming aid. The BNP leader, Chief Leabua Jonathan declared a five year moratorium on politics, stating that the Westminster system was not in tune with Lesotho’s traditions and would need, therefore, to be adapted and modified to meet Lesotho’s special requirements (Gill, 1993:221).

Following the political uprising that occurred in 1979, the military through its Order No.1 vested nominal executive and legislative powers with King Moshoeshoe II (Mothibe, 1998: 7). The Order No.4 of 1986 suspended all party politics in the country (Mothibe, 1998: 7). On the 28th June 1990, the Military regime inaugurated the National Constituent Assembly (Mothibe, 1998: 8). It was made up of the military regime and some persons elected by the National Constituent. It was charged with reviewing the Lesotho Constitution of 1966 (Mothibe, 1998: 9). The amendments included the entrenchment of the military in the organs of civilian democratic government (Mothibe, 1998: 9). Defence Order No.17 of 1993 excluded any civilian participation in defence matters. Mothibe argues that the reason behind this was “to deprive any incoming civilian government of control over the army” (1998: 9).

The 1993 elections were won by the BCP, which resulted in tensions within the army factions and between the army and the new government. Following the outbreak of violence, the Secretary General of the Commonwealth requested the Southern African Development Community (SADC) to deploy a peacekeeping force of 200 men to Lesotho (Gay, 2000: 9). On the 28th of January 1994, the Presidents of Zimbabwe, South Africa and Botswana sent a fact-finding mission to Maseru. The Fact Finding Mission reported that there was no need for outside military intervention. However, on the 14th April 1994, four Cabinet Ministers were kidnapped and interrogated by the police (Gay, 2000: 9). This resulted in the establishment of a Commission of Enquiry, which recommended the restructuring of the security forces, the use of the army for civil works and the inclusion of members of the Liberation Army in the Defence Force. The outcome was the establishment of a new Ministry of Defence and an increase in the wages of the army and police (Gay, 2000: 10).

The first six months of 1994 were characterised by significant labour unrest which occurred shortly after the crisis in the security forces (Gay, 2000: 10). The Government struggled with resolving this problem due to the fractions within the BCP Government (Gay, 2000: 10).

On 17th August 1994, after a small demonstration led by opposition leaders, Letsie III proclaimed the dissolution of the elected Government and the suspension of significant parts of the Constitution” (Gay, 2000: 11). The King argued “the Government had governed badly, failed to listen to the nation, mishandled the army and ridiculed his father and the monarchy and was therefore unfit to govern any longer” (Gay, 2000: 11). The result was the formation of a Government of National Unity, the reinstatement of the former King Moshoeshoe II and new elections (Gay, 2000: 12).

The BCP and the Lesotho Council of Non-Governmental Organisations (LCN) organised two national stay-aways which brought the activities of the private and public sector to a standstill (Gay, 2000: 12). In 1995, King Moshoeshoe II was reinstated; however his term was cut short by his tragic death (Gay, 2000: 12). In 1997, there was a split in the BCP Executive Committee. In 1998, a new party called the Lesotho Congress for Democracy

(LCD) was formed by the Prime Minister's faction, which won victory of the 1998 elections. Opposition argued that the elections were rigged. The Independent Electoral Fraud (IEC) declared that the elections were free and fair (Gay, 2000: 15). Not impressed by the Langa Commission stalling, the opposition organised a Palace Coup. The LCD Government requested the assistance of the Langa Commission. Since Independence Political developments in Lesotho have impacted negatively on socio-economic development. The sole interest of the political leaders was competition between the two parties to see who would best assert power over Lesotho. Democratic principles were swept under the carpets, while selfishly destroying the country. Trade union activity experienced an upsurge. What was important was not so much about the wages, but it was a matter of showing the government that the people can build solidarity.

The victory of the Lesotho Congress for Democracy (LCD) in the 1998 elections resulted in political instability in the country. The BCP, BNP and other small parties formed an Opposition Alliance, rejecting the outcome of the 1998 elections. The Alliance organised a Palace Coup with the hope of influencing the King to nullify the election (Gay, 2000: 15). A Commission headed by South Africa, Botswana and Zimbabwe was formed to conduct an audit of the elections. The Langa Commission report indicated that the results were inconclusive. Following the report, talks were convened between the various parties to resolve the matter. But, to no avail. Matters deteriorated further as South Africa and Botswana deployed its military into Lesotho, the Alliance organised violence towards certain political leaders (Gay, 2000: 17). This led to chaos in the country; people looted commercial enterprises and destroyed government headquarters (Gay, 2000: 17). This is a period memorable in the history of Lesotho because the deployment of military by the SADC mediators into the country was a complete disaster.

The politics in Lesotho have always been a contentious issue since the early 1970s. The political instabilities that occurred in Lesotho during the 1970s threatened the future democracy of the country. The inability of the different parties to salvage peace and stability in Lesotho has questioned the credibility of the different ruling parties. The international world positively reacted to the gross violation of human rights that occurred during military rule. However, one can argue that more could have been done to curb the reoccurrence of political instabilities between 1994 and 2002. For me one thing that stands

out about the instabilities that occurred in Lesotho is the development of a political consciousness of the people. This can be seen by the labour unrests that occurred since 1994. Today's atmosphere is far different from that of the 1980s and 1990s; people are afraid to voice their concerns hence accept things as they are.

3.3 Labour relations in the public service (1970-1993)

A brief reiteration of the nature of labour relations in the Public Service during the 1970s shall be made. The 1970s ushered a change in the political system of Lesotho, which ultimately shaped the Industrial Relations system of the country, and employment conditions in the public service. At the beginning of 1970, there were several Constitutional instruments such as the Lesotho Order, No.2 of 1970, the Interim National Assembly Order of 1973, the Parliament Act of 1983 and the Lesotho Order, No.2 of 1986 (Government of Lesotho,1993:4).

The following are some of the pieces of legislations that governed industrial relations and other employment issues in Lesotho till 1993; the Trade Unions and Trade Disputes Act of 1964, the Employment Act of 1967, amended in 1977, the Regulation of Wages and Conditions of Employment Act of 1969, the Essential Services Arbitration Act of 1975, the Wages and Employment Order of 1978 (Molefi cited in Madame, 1993:30).

The legislation governing the Public Service during the 1970s was the Public Service Order of 1970, promulgated by the military government. Having realised that the 1995 Act was not serving its purpose, the Ministry of Public Service established a Task Force on the 4th May 1993, to align the Public Service order 1970 with the constitution of Lesotho, which was put into effect on the 17th June 1993 (Government of Lesotho, 1993:1). In carrying out the alignment the Task Force found that during the 23 years of the 1970 Order, the management of the Public Service and the Service itself had deteriorated so much that it required serious and concerted transformation, through an entirely new legislation and other administrative reform (Government of Lesotho, 1993:2).

According to the Task Force, one of the major concerns arising from the operation of the Public Service Order, 1970, is that the clarity of roles and functions in the public service was not given the attention it deserved (Government of Lesotho, 1993:3). These

recommendations were made in the attempt to define and demarcate the roles and functions of policy makers in matters of the Public Service structures, compensation and conditions of employment, training and staff development and the roles and functions of the implementers of the ensuing policies (Government of Lesotho, 1993:12).

The late 1980s and the 1990s ushered in a new era in the nature of industrial relations in Lesotho; it was a move away from relative stability to turbulence and/or near chaos in industrial relations (Molefi, 1990:31). In 1994, the political turmoil spilled over to the Education Sector resulting in a labour unrest over the new Education Bill. Following this, in April 1995, public servants pressurised the government to increase their pay. The government refused to be succumb to the demands. The teachers organised a nation-wide strike, resulting in a compromise by the government revising the salary structure (Gay, 2000: 12), rest period, hours of work, protective clothing, union recognition and negotiations, ignorance on the provision of the labour law (Molefi, 1990: 30).

3.4 Labour relations post 1994

Public Service Act No.13 of 1995

The political turmoil and labour unrest across the country influenced the legislation governing the Public Service. The transformation of the Public Service legislation was an attempt to regulate the Public Service. In an attempt to bridge the gap between its labour laws and international standards, the Government of Lesotho enacted the 1995 Public Service Act. The Public Service Act, No.13 of 1995 was one of the important pieces of legislation in the history of Lesotho's Labour Law. It addressed issues such as freedom of association, trade union recognition, and fair labour practices. The Act came into operation on the 9th April 1996. The date of Assent was the 28th February 1996. The objective of the Act was to develop and maintain a stable and disciplined public service that will impartially administer the business of the Government of Lesotho under the general direction and control of the Minister and the other Ministers of Government, and under the supervision of Principal Secretaries (Government of Lesotho, 1996: 4). The provisions of the Act are ancillary to the Constitution that relate to the public service and to public officers

(Government of Lesotho, 1996: 5).

The Public Service Act No.13 of 1995 included sections on Conduct of Public Officers, Disciplinary Proceedings, Retirement of Public Officers, Public Service Staff Association and the Public Service Joint Advisory Council (Government of Lesotho, 1996: 3-4).

The Public Service Joint Advisory Council

Section 32 (1) provides that:

“The Minister may establish a Council to be known as the Public Service Joint Advisory Council.”

Section 32 (2) provides that:

“The Council shall consist of equal number of members appointed by the Minister and members appointed by any registered associations representing the general body of public officers in the Public Service of Lesotho” (Government of Lesotho, 1996: 3-4).

Objectives of the Public Service Joint Advisory Council:

The objectives of the Public Service Joint Advisory Council are as follows:

- a) “To secure the greatest measure of co-operation between the Government of Lesotho, as employer and the general body of public officers in matters affecting the public service with a view to increased efficiency in the public service combined with the well-being of public officers.
- b) To provide machinery for dealing with general grievances; and generally to bring together the experience and different points of view of representatives
- c) To provide space for representatives from different departments, branches and offices of the public service to share their experiences” (Government of Lesotho, 1995: 4-6).

Despite these developments, the government restricted civil servants from engaging in any trade union activities, for example, civil servants were warned against participating in any activities organised by the Lesotho Union of Public Employees (Public Service, 1995: 1). In 1996, following the promulgation of the Public Service Act of 1995, all trade unions of public employees registered under the Labour Code Order ceased to exist. LUPE made a concerted effort to challenge the Act in the High Court. The case was dismissed (Koto,

2005: 10). The ruling of the case was based on the assertion that trade unions are historically confrontational in nature. Therefore, industrial action has no place in the public sector, taking into consideration the prevalent economic conditions in the country and increasing unemployment (Koto, 2005: 23).

3.5 The historical evolution of trade unions in Lesotho

This section provides the historical overview of the emergence of trade unionism in Lesotho; the relationship between the trade unions and the different governments that ruled in Lesotho. Literature shows that trade unionism emerged out of working class struggles during the Colonial era. The strength of unions grew toward the 1960s, inspiring political parties and churches to form trade unions (Mohlakola, 1986: 35). We shall see how the political upheavals that occurred in Lesotho between 1994 and 2002 influenced the trade unionism and the industrial relations system in Lesotho, with specific reference to the Public Service.

Lesotho ratified the following ILO Conventions that related to trade unionism: Convention No. 84 on the Right of Association and Settlement of Labour Disputes in Non-Metropolitan Territories, 1947, Convention No.87 on Freedom of Association and protection of the Right to Organise, 1948, and Convention No.98 on The Application of the Principles of the Right to Organise and to Bargain Collectively, 1949 (Makoa, 1988: 1). Makoa, (1988: 1) notes that the trends in Lesotho's Labour Relations practices there have been violation of these conventions, through suppression of trade union action and open collaboration with forces hostile to collective bargaining.

3.6 Government-trade union relations 1950-1970

The first trade union formed in Lesotho was the Basutoland Typographical Worker's Union, established at Morija Printing Works in the 1952 by Herbet Teka and Jack Mosieane (Southall, 1984: 97). Makoa (1988; 11) notes that their solidarity originated from their realisation of a common interest and the feelings they had assimilated during the Second World War. Even though, the trade union was legally recognized, they struggled with getting recognition from the employers (Makoa, 1984: 10). The Morija Printing Press

belonged to the Paris Evangelical Church which prohibited strike action (Mohlakola, 1986: 19).

The negative attitude of the church toward trade unionism did not deter the workers from organising themselves (Mahlakola, 1986: 20). On the 24th September 1952, the Basutoland Commercial Distributive Worker's Union was formed, followed by the Basutoland General Workers Union on the 14th January 1953 and registered on the 12th February 1953. "In 1955, two national trade unions the Basutoland Commercial Distributive Worker's Union and the Basutoland General Workers Union jointly registered" (Mohlakola, 1986: 21). In 1958, the General Workers Union was formed, and in 1959, the Basutoland Motor Transport Union (Southall, 1984: 95).

In 1958, the general workers in the Morija Printing Works went on strike. This strike action was in response to the in discriminatory expulsion of workers at the printing Press. They demanded a Wage Board, Trade Union Council and the representation of workers in parliament (Mohlakola, 1986: 22). Management took heed to the demands made by the general workers (Mohlakola, 1986: 22).

Political factors were believed to have caused the 1961 strike (Mohlakola, 1986: 31). The strike was, however, crushed by the colonialists (Mohlakola, 1986: 32). He further argued, "Some political leaders realised that trade unions could give them a better platform" (Mohlakola, 1986: 25). That is, the political leaders decided to be involved in trade union activities, so as to gain more clout and support. In 1962, the Basutoland Federation of Labour (BFL) was formed (Southall, 1984: 96, Mohlakola, 1986: 26). It was aligned to the Basutoland Congress Party (Southall, 1984: 96). However, in 1963, a small group broke away and established the Basutoland Congress of Trade Unions (BCTU), modeled upon the South African Congress of Trade Unions (Southall, 1984: 96).

In 1952, the Basotho National Party (BNP) formed the Printing Book binding and Allied Workers union at the Mazenod Printing Works by the Basotho National Party formed the (Mohlakola, 1986: 35). Furthermore, in 1964 unions in the Construction, textile, chemical, hotel, shop and distributive sectors, were formed, and were aligned to the Lesotho Council of workers, formed by the grandson of Chief Leabua Jonathan (Southall, 1984: 97). "The

unions aligned to the Basotho National Party, however, remained small and less effective than their rivals” (Southall, 1984: 97).

3.7 The government and trade unions after 1970

A number of legislative laws have been enacted with the attempt to promote trade unionism in Lesotho; however, their implementation has been unfavourable to trade unions. Makoa (1988: 2) highlights the key anti-union Acts, which were a result of failure by government to update the existing labour relations laws to meet the standards set by the International Labour Organisation, and their implications for the State-trade union relations. He makes note of the Essential Services Arbitration Act of 1975, which outlaws strikes in essential services, the pre-independence Trade Unions and Trade Dispute Law of 1964. According to the Ministry of Labour, “the regulative functions may entail delay and inconvenience for the unions, but this does not detract them from what is embodied in the ILO Conventions” (Makoa, 1988: 3). In disagreement with this, Makoa (1988: 3) argues that the constraint imposed by these laws outweigh the advantages it offers. The main problems facing trade unionists in Lesotho, is the stalling or refusal by employers to negotiate. He further argues that legal remedies for these problems are either not available or too costly to apply.

Conditions of repression and privation strengthened civil society in Lesotho, especially in the late 1980s till 1993 (Selinyane, 1998: 97). The two prominent figures that were actively involved in the democratization of Lesotho were the Lesotho Council of Non-Governmental Organisation (LCN) and the Lesotho Congress of Trade Unions (COLETU). Selinyane (1998: 97) notes that the LCN was actively involved in the preparation for the 1993 elections, its articulation of the agenda of reconciliation and dialogue after the elections and the prominence of its sub-committees in the campaigns for restoration of government in 1994.

3.8 Conclusion

The political developments that occurred in Lesotho since Independence have influenced, labour legislation and the nature and growth of trade unions and the attitude of the LCD toward trade unions in the country. Makoa (1988: 2) notes that the colonial administration and the post-colonial regime (BNP government) adopted legislative measures, such as the Trade Unions and Trade Disputes Law of 1964 in order to meet the requirements of the ILO Conventions; however, they were inadequately implemented. Even though the enabling environment was limited by BNP government with the implementation of legislature that was aimed at curtailing trade union participation during the 1970s and 80s, trade unions continued to strive to promote the interests of its members. Institutional reform that followed after 1995 was a direct response to the undemocratic nature of the Public Service order of 1970. The role of the state has evolved over the years, opening up avenues for the participation of labour in public policy. However, the political unrests have left a sour taste in people's mouths. The State is supposed to protect its people and not terrorise it.

CHAPTER 4

RESEARCH METHODS

4.1 Introduction

The following chapter is a description of the type of research methodology used to carry out the research and the reasons for choosing that research methodology; outlines the research design and briefly shows the limitations to the study. This research was concerned with examining the reasons for the repeal of the Public Service Act No.13 of 1995; the provisions of the 2005 Act and the attitudes of public officers toward the 2005 Act and staff association.

4.2 Why choose qualitative research methods?

Advantages of qualitative research methods

Qualitative methods were the appropriate research tool for this study because they allowed me to make sense of, and to interpret, phenomena in terms of the meanings people bring to them. “We can explore a wide array of dimensions of the social world...the understandings of our research participants, the ways that social processes, institutions, discourses or relationships work, and the significance of meanings that they generate” (Mason, 2002: 1). All this can be done qualitatively using methods that celebrate richness, depth, nuance, context, multi-dimensionality and complexity (Mason, 2002: 1).

Qualitative research is based on methods...which are both flexible and sensitive to the social context in which data are produced. It is based on methods of analysis, explanation and argument building, which involve understandings of complexity, detail and context. There is more emphasis on ‘holistic’ forms of analysis and explanation (Mason, 2002: 4). This allows the researcher to change direction in the course of his or her investigation much more easily than in quantitative research (Bryman, 2001: 280; Moore, 2006: 142).

Qualitative research techniques are suitable for investigating the employment relationship and the processes that govern the two (Whipp cited in Whitfield, 1998: 51). The reason

being that emphasis is placed on how the relationship between the employer and employee as seen by those involved. This involves describing, decoding, translating the meanings (Whipp cited in Whitfield, 1998: 53).

The advantage of using interviews in this type of study is that they are flexible in nature; hence enable interviewees to open up new dimensions of a problem or to discover clues that connect its different elements (Whipp cited in Whitfield, 1998: 54). “Interviews enable individuals to reveal the personal framework of their beliefs and the rationales that inform their actions (Whipp cited in Whitfield, 1998: 54). However, it is imperative that the researcher has good social skills; the ability to establish personal credibility and trust with target group (Whipp cited in Whitfield, 1998: 54).

Advantages of using qualitative research methods can be classified as follows:

- a) Exploration can take place
- b) Hidden features can be revealed
- c) Processes can be examined in-depth

Exploration Possible

“Qualitative research methods are ideal for opening up new topics. The relative openness of qualitative research methods allow for data and interpretations that fall outside the conventional thinking to be readily available” (Whipp cited in Whitfield, 1998: 56). It has allowed me to explore the less obvious meanings of how employees view legislation, their work and what the relations within the workplace mean for them.

Hidden Features revealed

“Qualitative techniques are also an advantage when trying to uncover the many hidden features of the employment relationship. Informal or even illicit behaviour can be examined as a result of the trust that may develop in association with interviewing” (Whipp cited in Whitfield, 1998: 56).

In-depth Examination Possible

“The open-ended and inter active character of qualitative research enables full appreciation of processes of depth” (Whipp cited in Whitfield, 1998: 56). The reasons as to why the

1995 Public Service Act was repealed; the procedure and processes taken to repeal the 1995 Public Service Act and promulgation of the 2005 Act need in-depth interrogation.

Limitations of qualitative research methods

Qualitative have been criticised for:

Generalisation

Qualitative studies are often criticised for their concern with the particular at the expense of the general.

Induction

Theory emerges from the evidence collected. The problem that arises with this is that propositions and theories that emerge from this induction are sometimes a result of “creative leaps.” These leaps are not always fully reported, or they arise from a process of constant interaction between theory, data and relevant literatures that is not written up for other author’s to replicate (Whipp cited in Whitfield, 1998: 57).

Transparency

Qualitative research methods have been criticised for the ambiguous.

Despite these limitations the study benefited from the flexibility of the research methods.

4.3 Selecting the key informants

Qualitative interviewing calls for a flexible research design where neither the number nor the type of informants needs to be specified beforehand. I started out with a general idea of which people to interview from the different ministries, Parliament, International Labour Organisation (ILO), Labour Court and High Court. As time went on the “Gate keepers” further referred me to the relevant people. This is referred to as *snowballing*. Lewis (2003:94) argues that it is a useful approach for dispersed or small populations, and where the key selection criteria are characteristics that might not be widely disclosed by individuals. The first referral was to the Policy making legal officer at the Law Office, who

then referred me to the Minister of the Public Service and the Employee Relations Manager of the Public Service. The idea was to first get an idea of whom and which departments were involved in the process leading to the promulgation of the Public Service Act No.1 of 2005. The Employee Relations Manager advised me to contact the chairperson of the Lesotho Congress of Trade Unions (COLETU) for substantial information on the topic at hand. On the 16th of May 2005, I went to the Department of Labour to find key informants within the Department of Labour. He also suggested I talk to the Chairperson of the Lesotho Congress of Trade Unions (COLETU). I made an appointment for a meeting with him.

In August 2006, a preliminary interview was conducted with the Secretary General of COLETU. I explained why I was conducting the research and he was very impressed and excited. He indicated that two students from the National University of Lesotho (NUL) previously conducted research on the topic freedom of association and the right to organise. Being the third person to contact him on the subject matter for academic purposes meant that the public can read about the complex nature of relations between trade unions and the Government of Lesotho. He made photocopies for me of the minutes of meetings and consultations between the unions and the Lesotho Congress for Democracy (LCD). Following this, I went to the international Labour Office, where the person in charge of the area of freedom of association and the right to organise into unions told me that all the information I needed, can be found on the ILO website. I resumed the interviews in January 2007 and continued with the literature review.

Profile of Respondents

RANK/CALIBRE OF RESPONDENT	NO. OF RESPONDENTS
1. Senior Officers	10
2. Middle level Officers	16
3. Other	6
Total	32

Table

The above table is a presentation of the profile of the interviewees. Ten Senior Officers; ten Middle level officers, six junior officers and the other category include trade union representatives and the Chairperson of LEPSSA. Eleven of the respondents were female, while the majority were men. Out the senior officers, seven were of the age of above forty years and three were aged between thirty-seven and forty. The age group of the middle level officers (graduates) was twenty-seven and thirty-five. While the age group the other (those who do not fall within the Ministries) were forty nine fifty and above. Most of the women in the Ministry of Public refused to let me interview them, arguing that some person went to their workplace months before and interviewed them and after two weeks their names were splattered all over the newspapers. They stated that this almost costs their jobs. The government ministries approached are the Ministry of Public Service, Ministry of Justice: Law Office, Ministry of Planning, Ministry of Finance, Ministry of Gender, Ministry of Communications, Ministry of Labour and Employment. Other institutions included the Labour Court, COLETU and former civil servants.

4.4 Conducting the in-depth interviews

In-depth interviews were used in this study because their key feature is their depth of focus on the individual. They provided an opportunity for detailed investigation of each person's personal perspective, for in-depth understanding of the personal context within which the research phenomenon is located, and for very detailed subject coverage (Lewis, 2003: 58). Lewis argues that in-depth interviews are the only way to collect data where it is important to set the perspectives heard within the context of personal history, where delicate or complex issues need to be explored at a detailed level, or where it is important to relate different issues to individual personal circumstances (2003: 58).

Thirty-two interviews were conducted (please refer to table 1); sixteen were tape-recorded and notes were taken for the fourteen, while two questionnaires were given to those respondents who did not have time to be interviewed. The interviewees were given the opportunity to choose the area in which the interviews will be conducted. The interviews were conducted at the respondent's workplaces. The time allotted for the interviews was a

minimum of one hour, but was stretched where necessary. These interviews occurred during working hours.

The interview guide

The interview guide (refer to the Appendix section) was utilised because it indicates the list of possible topic areas to be covered, accompanied by suitable questions on each of the areas identified (Harvey, 1993: 204). The questions were carefully worded in order to allow informants free expression of their ideas and feelings. The idea was to avoid leading respondents to talk about things that fitted my preconceptions (Harvey, 1993: 205). The objective is to make interviewing across a number of different people more systematic and comprehensive by delimiting the issues to be pursued (Allais, 1984: 77).

The interview guide covered areas such as, freedom of association, knowledge of the Public Service Act No.1 of 2005, changes brought about at the Public Service since the inception of the 2005 Act, reasons why the 1995 Act was repealed, establishing the main factors involved in the process leading to the Promulgation of the 2005 Public Service Act, whether the civil servants have joined the Public Service Staff Association and tried to establish why the unions have not been able to unionise the public servants.

Examples of the interview questions:

1) **Interviewer:** Why was the Public Service Act No.13 repealed?

Respondent A: “There was a need for Public Service reform; reform of the government departments and legislature governing the Public Service needed to be in line with international labour standards. Civil Servants were not allowed legal representation, cases taken care by the Public Service Commission remained unresolved and no clear demarcation on the procedures on dispute resolution.”

The respondent has indicated different reasons that can be categorised into different themes or the interviewer can choose the answer relevant to the research topic.

2) **Interviewer:** To what extent was the influence of non-state actors in the process leading to the promulgation of the Public Service Act No.1 of 2005?

Respondent A: “The chair Person of the Lesotho Congress of Trade Unions (COLETU) would know because he was the one who engaged the International Labour Organisation with regard to freedom of association and the right to organise into unions of civil servants”

The above response shows that the respondent has chosen not to answer the question, even though they could have the information. They instead refer me to another person. The response can still be used in a meaningful manner to illustrate another point.

Tape recording

Permission to record the interviews was first obtained from the respondents before the interviews were conducted. The reason why the interviews were recorded was to make it possible for me to concentrate on the topic and the dynamics of the interview (Kvale, 1996:160) and to make my job easier during analysis. 11/31 of the respondents agreed to be tape-recorded during the interviews. Those who refused argued that they did not want to get involved in the politics of the government or that they did not want to be used as propaganda by the media. In other instances, because the respondent’s offices were open plan designed; hence the traffic of people in and out of the office disrupted the interview. For example, some of the respondents would converse with some of the people going in and out of the office leaving no choice but to pause, then we’d recommence, but the mood had changed,

Notes and the use of secondary data were used to supplement the tape-recorded interviews. Some of the notes included the facial expressions and body language of the respondents during the interviews, things I found of great interest for my research during field-work, dates, places and times for the interviews or consultations.

Collected and analysed data

Data was interpreted throughout the conduct of the research. The following data had to be analysed:

- Transcriptions of the tape-recorded interviews

- Notes taken during and after the interviews
- Questionnaires
- Secondary data (newspaper articles, minutes of meetings and memos, documents, legislation in the Public Service). The main legislative laws that were used in the study were the Public Service Act No.13 of 1995, the Public Service Act No.1 of 2005, the Constitution of Lesotho; ILO Constitution and the Societies Act of 1966, Codes of Good Practice of 2005 and the Constitution of the Lesotho Public Service Staff Association (LEPSSA). Furthermore, the main documents used were the Strategic Plan of 2003-06 and the Strategic Plan of 2007-2008, 1995 Report by the Task Team, Parliament Reform Report and Ombudsman Report.

4.5 Transcribing and interpreting the tape recorded interviews

I transcribed the tape-recorded interviews myself. This was a direct translation from Sesotho to English. The transcriptions were then coded into themes. Throughout the research, I clarified and developed themes and issues I wanted to investigate. As noted by Harvey (1993: 210), after reading through the data, the researcher should be able to identify major themes. I was able to identify the major themes from the follow-up interviews I conducted. According to Harvey (1993: 210), thematic analysis involves copying ones data and rearranging it into sections (or piles) dealing with the themes. The advantage of thematising is that it is flexible; it allows one to modify and adapt your categories as the analysis proceeds and as new dimensions become apparent (Moore, 2006; 155).

4.6 Secondary data analysis

Secondary data provided the research with documented information that could otherwise be forgotten by the respondents during the interview and could be used to check on the viability of information collected via interviews. Documentary methods enable researchers to study past events and issues. Furthermore, the researchers can study the research question at any time and for as long as they wish, and ask any kind of question they can think of, without the limitations and considerations that are evident in research contexts such as interviewing or observation (Kvale, 1996: 298).

4.7 Conclusion

This chapter provided a discussion on the qualitative research methods used in the study. I gave a brief summation of what qualitative methods entail in each section. The main aim of this section was to show how the data was collected, processed and analysed. Different approaches were undertaken to collect the data. It is important to note that the different approaches used supplemented each other. The area that needs further research is an analysis of the strength and weaknesses of the Strategic Plans implemented in Lesotho's Public Service; how do the civil servants feel about the plans put in place, have there been any changes since their implementation? With regards to unionisation in the Public Service, further research needs to be done into establishing whether the civil servants made use of the right to form and join staff associations. An analysis of documentation of reports on monitoring and evaluation of the impact of the Strategic Plans could be useful. There is a need to further establish why the unions that were advocating for trade unionism in the public service during the process leading to the promulgation of the Public Service Act No.1 of 2005 have not unionised the civil servants.

CHAPTER 5

THE 1995 PUBLIC SERVICE ACT: CONTESTATION AND REPEAL

5.1 Introduction

This chapter outlines the reasons for the repeal of the Public Service Act No.13 of 1995 and the role of each stakeholder. Some of the key informants were public officers including policy makers from the different ministries, and the Secretary of the Congress of Lesotho Trade Unions (COLETU) and the Chairperson of the Lesotho Public Service Staff Association (LEPSSA).

5.2 Reasons for the repeal of the Public Service Act No.13 of 1995

This section provides an insight as to why the Public Service Act No.13 of 1995 was repealed. Contestation around Section 31 (2) of the Public Service Act No.13 of 1995 and implementation of Public Service Reform informed this study. The main reason the 1995 Act was repealed was due to its shortcomings. The need for legislative change is not unique to Lesotho. Adair (cited in Adler, 2000: 118) argues that change in law must be the starting point for all transformation. That is, the law should guide the public service managers. Adair (cited in Adler, 2000: 124) further argues “legislation is the necessary enabling tool to effect change in the public service. Any new legislation would need to be premised on the uniqueness of the public service. Legislation needs to take into account and must follow sufficient management flexibility to ensure accountable and output-oriented service delivery.”

5.3 Shortcomings of the 1995 Act

Public Service Reform was a necessary tool used by the Government of Lesotho to address the shortcomings of the 1995 Act. The following problems were listed as having influenced the repeal of the 1995 Act:

- Lack of accountability and transparency
- Lack of clearly defined disciplinary, grievance and dispute settlement mechanisms

- Inefficiency and poor service delivery
- Poor management of the Public Service
- Autocratic practices
- The expansion of the civil service
- The need to improve public financial management

In order to address these problems, the first step was the transformation of the legal framework of the public service, followed by restructuring management and personnel. According to Adair (cited in Adler 2000: 118) if the law is not synchronised with proposals, managers lack the power to implement policy proposals as their power and authority is derived from legislation. Adair (2000: 120) argues that legislation needs to set out the powers and duties of a central authority, such as the Minister of Public Service and Administration, Cabinet Ministers, Members of Executive Committee and Heads of department.

5.4 Poor and unclear labour relations procedures

Under the 1995 Act, there were no clear and effective procedures to guide the labour relations as regards the disciplining of employees and raising of grievances by employees in Lesotho's Public Service. For example, senior officers who were interviewed argued that disciplinary cases and dismissals of public employees remained unresolved or unattended to. This they argued was attributed to the fact that the Public Service Commission did not have the capacity (specialists in the respective fields and time) to handle the cases (Interview, 19th March 2008). COLETU further noted that the government removed the jurisdiction of the labour courts in legal matters regarding public employees and that cases which had been lodged in 1996 were still pending ¹⁴(see CEAR: Document No. (ilolex): 092003LSO087).

Poor labour relations in the Public Service exacerbated the laziness, corruption of public officers, and misuse of government assets (such as, cars, stationery and phone) by public

¹⁴ <http://www.ilo.org/ilolex/cgi-lex> (accessed on the 18th May, 2006)

officers and the disobedience of subordinates.

Another reason given for the repeal of the 1995 Act was the attempt to harmonise and bring labour law legislation and structures into conformity with International Standards, with specific reference to the International Labour Standards to which Lesotho became a signatory to in 1966 (Interview, 2nd January 2006). This is not subject to only Lesotho. Literature shows that the need for countries to harmonise labour law standards has been influenced by external factors. (Woolfrey cited in Madame, 1993: 110) states that “subject to Southern Africa, the question has been around the need for a regional labour law and labour relations system”

The SADC Employment and Labour Sector have embraced the approach of core standards as a basis of heightening commitment to both good governance and human rights in the region. All member countries were expected to ratify the core ILO Conventions. The ratification and implementation of international is linked to the debate concerning the quest for harmonization of labour law systems of member states (Barnard, 2004: 278). Barnard (2004: 278) states that in the SADC context, harmonisation is taken to be the process of striving for common elements in labour law systems of the member states (Barnard, 2004: 279).

The findings agree with the literature on civil service reform that argue that civil service reform started to prevail in the 1980s after the realisation of poor performance of civil services due to the expansion of government size, unaccountability of civil servants. Even though the reform processes varied from country to country. In African countries civil service reforms were closely linked to structural adjustment efforts (Lukumai, 2006: 1).

The main concerns of civil service reform programmes administered in most countries were to deal with its weaknesses and inefficiencies and to make it more effectively in a dynamic environment (Lukumai, 2006: 2). The argument post in most cases is that, in African countries the influence to reform came from external pressure, such as the World Bank and IMF as one of the prerequisites to getting funding (Lukumai, 2006: 2). “An efficient and motivated civil service was critical for governance, production and distribution of public

goods and services, formulation of economic policy, and management of public expenditure (Lukumai, 2006: 2).

The process of civil service reform does come with its institutional challenges. In the 1980s civil service reform in most African countries took the form of structural adjustment programmes. The link between structural adjustment programmes and civil service reform was that governments had to cut costs by reducing the work force and strengthening the institutional capacity of governments (Lukumai, 2006: 4). This is contradictory to the fact that the Ministry of Public Service is largest employer in Lesotho and it continues to hire more graduates every year. So, what does this mean? Did the Government of Lesotho take short cuts?

Expansion of the civil service

The expansion of the Public Service in most countries resulted in the increase in responsibilities of the civil service. In order to meet these responsibilities, the civil service revised laws, rules and regulations, changes in the systems and procedures of work, staff redeployment and retraining, review and modification of international relations (Bentil cited in Forje, 2008:13). This is also the case in Lesotho's public service.

5.5 Complaints by trade union members about the 1995 Act

One of the things that the Public Service Act No.13 of 1995 is supposed to promote is the right to freedom of association. However, Section 31(2) in the Public Service No.13 of 1995 stipulated that:

“Notwithstanding any other law, public officers may not become members of any trade union registered under the Labour Code Order 1992.”

Since this clause was put in place all trade unions that existed in the Public Service prior 1995 ceased to exist. This resulted in trade unions, such as, the Lesotho Union of Public Employees (LUPE) formed and registered in 1994, by Mr. Ntsasa, the late Mr. Nkhahle and Mr. Rakuoane to organise public officers and which became an affiliate of the Lesotho Congress of Trade Unions (COLETU) contested this clause (Interview, 13th July 2009,

Maseru). As mentioned earlier the Public Service Act No.13 of 1995 still entailed some stringent rules from the Public Service Order 1970. For example, under the Public Service Order 1970, civil servants were not allowed to have any meetings organised by a union. For example, at L.U.P.E's inaugural Cabinet meeting, the BCP government sent out a memorandum to the Principal Secretaries of all the different ministries, warning the public employees not to get involved in any activities organised by L.U.P.E (Memorandum, 8th May, 1999). It challenged the constitutionality of the Act in the High Court. It however, lost its case (Koto, 2005: 9-10). The Secretary of COLETU argued that they ran out of funds in order to pursue the matter further. Following this, COLETU petitioned the ILO's Governing Body Committee on Freedom of Association (Koto, 2005: 10).

On the 2nd of August 1995, the affiliates of COLETU, namely the Lesotho Teachers Trade Union (LTTU), the Lesotho Union Public Employees (LUPE), the Lesotho Transport, Communications, Electrical and Allied Workers Union (LTCEAWU), the Lesotho University Teachers and Researchers Union (LUTARU), the Lesotho Commercial, Catering, Food and Allied Workers Union (LCCFAWU) filed a complaint arguing that the Public Service Bill was an "Oppressive Law." They made the following comments:

- "This proposed law is totally unwarranted and unjustified; but more importantly we are convinced that it is in conflict with the rights and freedoms contained in Chapter II and the principles of state policy contained in Chapter II of the Constitution of Lesotho."
- "We note with alarm also that the proposed law is in contravention of at least two conventions of the International Labour Organisation (ILO) to which Lesotho is signatory. These are Convention No.87 on Freedom of Association and Protection of the Right to Organise and Convention No.98 on Application of the Principles of the Right to Organise and to Bargain collectively" (COLETU, 1995).

The above statements show the frustrations by trade unions interested in mobilising employees in the Public Service, legislative constraints towards unionisation in the

public Service. It is important however important to note that even if the right to establish trade unions is to be accorded to public officers employed in the Public Service, the public officers do have the right to decide whether or not they join the trade union. The adherence of ILO principles differs from country to country, even though the obligation to member states is universal. The ILO notes “for some countries it is possible to determine from substantive law in force the precise extent to which public servants enjoy the right of association in practice. Even if the legislation does not recognise their right to form trade union organisation, associations have in some cases been established under the terms of an act on the right of association in general, and there are even cases in which such associations are accorded de facto recognition by the government in its capacity as employer for the purpose of discussing wage claims or other working conditions” (1994: 25). However, civil servants have the right not to join an association if it pleases them.

The complaints were based on Article 2 of ILO Convention No.87 notes that:

“All public servants and officials should have the right to establish occupational organisations, irrespective of whether they are engaged in the state administration at the central, regional or local level, are officials of bodies which provide important public services or are employed in state-owned economic undertakings” (ILO, 1994: 25).

On 16th August, 1995 The International Confederation of Free Trade Unions (ICFTU/AFRO) wrote a letter to the Prime Minister arguing that “trade union representatives should have been consulted because the trade union movement both in Africa and at the international level has for years played an important role in the campaign for the democratisation of African countries.”

The main issue arising from the complaints is that the Government of Lesotho did not consult with the Lesotho Trade Union of Employees (LUPE) about the implementation of clause 1995 Act that prohibits public officers from joining or forming a union. The Legal Officer from the Law Office argued that the non consultation of the union is one of the shortcomings of the policy making process (16th August 2006). At what stage or under circumstances does civil society get involved during policy making decision in Parliament?

5.6 The role of the international labour organisation in the repeal of the 1995 Act

“When a state becomes a member of the International Labour Organisation (ILO), it accepts the fundamental principles embodied in the Constitution and the Declaration of Philadelphia, including the principles of freedom of association” (CFA: Digest of Decisions, 1996).¹⁵ Where national laws, including those interpreted by the high courts, violate the principles of freedom of association, the Committee on Freedom of Association (CFA) has always considered within its mandate to examine the laws, provide guidelines and offer the ILO’s technical assistance to bring the laws in compliance with the principles of freedom of association, as set out in the Constitution of the ILO and the applicable Conventions (CFA: Digest of Decisions, 8).

COLETU complained to the ILO about the section in the 1995 Public Service Act that denies public servants the right to join unions. COLETU further stated that it has over the years been unsuccessful in persuading the Government of Lesotho to amend the Act and appeals to the Courts of law have been to no avail (CEACR, Ilolox No: 092003LSO087). On investigating the complaints made by the Lesotho Congress of Trade Unions (COLETU) the Committee noted the importance of public servants to associate for the purpose of furthering and defending their occupational and economic interests. The Committee asked the Government to provide clarification on the scope of the legislation, in particular, whether the adoption of this legislation would permit all civil servants, including university professors, to form organisations of their own choosing. It further, requested that the government indicate whether the reference to section 23 in section 20 may result in restrictions on the right to organise.¹⁶ Continuous consultations were made between the LCD government and the ILO on the matter; the ILO requested reports from the LCD government and upon reviewing the reports, made recommendations that the LCD government to amend the clause prohibiting public officers employed in the Public Service not to join or form trade unions (Sekoati, 2004: 7).

In 2002, the ILO noted that the Labour Code Order 1992 does not apply to public officers by virtue of the provisions of section 35 of the Public Service Act No.13 of 1995, which expressly excludes them from the application of the Code. It also made note that

¹⁵ [Http://www.ilo.org/ilolex](http://www.ilo.org/ilolex) (accessed on the 30th January, 2006). Document No. (ilolex): 2319960102

¹⁶ <http://www.ilo.org/ilolex/cgi-lex/> (accessed on the 18th May 2006)

according to section 31 of the Act, public officers may form and establish staff associations under the provisions of the Societies act 1966, but they shall not become members of any trade union registered under the Labour Code. It further noted the decision of the high Court of Lesotho confirming the constitutionality of sections 31 and 35 of the Public Service Act. The Committee on Freedom of Association (CFA) recommended that the Government of Lesotho bring its legislation fully into conformity with the Convention, allowing all public servants who are not employed in the administration of the State to bargain collectively in respect of their employment conditions. It requested that the government inform it in its next report on all measures adopted accordingly (CEAR: Document No. (ilolex): 092002LSO098, 2002).

The Committee on Freedom of Association (CFA) requested once again that the Ministry of Public Service send with its report, a copy of the Societies Act 1966 so that the Committee may ensure the Act's conformity with the principles of freedom of association. Following the request made by the National Advisory Committee on Labour (NACL) in its meeting held on the 21st September, 1999, the Committee on Freedom of Association (CFA) expressed its firm hope that the government would grant trade union rights to public servants and requested to be kept informed of any developments in that respect. The Committee then asked the government to indicate in its next report whether associations of public officers established under Section 31 can join confederations with private sector unions, in accordance with Articles 2, 5 and 6 of the Convention (see CEAR individual Direct Request: Document No. (ilolex): 092001LSO087).¹⁷

In 2003, the Committee on Freedom of Association (CFA) noted that the Government of Lesotho was in process of reviewing the legislation relating to the public service, in consultation with the social partners, including COLETU. The Committee on Freedom of Association (CFA) noted that this process led to the proposed amendments to the 1995 legislation, which set out specifically that public officers shall be entitled to freedom of

¹⁷ <http://www.ilo.org/ilolex/cgi-lex> (accessed on the 18th My, 2006)

Article 2 of the Convention No. 87 concerning Freedom of Association and the Protection of the Right to Organise provides that workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation. Article 5 provides that workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority. While Article 6 provides that the provisions of Articles 2, 3 and 4 hereof apply to federations and confederations of workers' and employers' organisations (NMC, 1990: 4-5).

association in accordance with the national Constitution and ILO Conventions No.87 and 98, and they shall be at liberty to form a public officers association or organisation for the purpose of collective bargaining (CEAR: Document No. (ilolex): 092003LSO087).

The purpose of the procedure of the CFA is to promote respect for trade union rights in law and in fact (ILO, 1996: 8). The result of this engagement was the amendment of Section 31 (2) of 1995 Act, that read as: “Notwithstanding any other law, public officers shall not become members of any trade union registered under the Labour Code Order 1992.” However, the amendment does not guarantee civil servants the right to join or form unions. They can only form a union once they have achieved 50% +1. The changes that have been introduced to the section on freedom of association and the right to organise shall be elaborated in the following chapter.

5.7 Government response to complaints made by the trade unions

In response to the complaints made by COLETU to the International Labour Organisation about the Public Service Act, No.13 of 1995 denying civil servants to join or form trade unions, the government argued “the state did not act ultra vires nor in contravention of ILO Conventions when it promulgated the Public Service Act, No.13 of 1995, and that this action was confirmed by the High Court judgment which declared the Act as Constitutional. The State further argued that COLETU acted in bad faith for not having first exhausted domestic remedies before applying for intervention from international organizations” (Sekoati, 2004: 7). The Committee on Freedom of Association (CFA) refuted this point, by stating that it has never considered that domestic remedies must be exhausted before a worker’s organisation may raise a concern before it of non-application of a ratified Convention. It argued that “while national courts are clearly the competent bodies for considering the constitutionality of national legislation, the committee is competent for examining the application in national legislation of ratified Conventions” (CEAR Individual Digest, 2003).¹⁸

When asked why trade unionism is not permitted in the Public Service, the Employee

¹⁸ <http://www.ilo.org/ilolex/cgi-lex> (accessed on the 18th May, 2006)
CEAR: Individual Direct Request concerning Convention No.87, Freedom of Association and Protection of the right to organise Convention, 1948 Lesotho (ratification: 1966) Submitted: 2003.

Relations Manager of the Public Service argued “Lesotho does not have the capacity to handle labour unrest” (Interview, April 2007). This might be attributed by the fear of a recurrence of instabilities that occurred in 1998, that had destroyed the infrastructure of Lesotho. It is a problem at the moment to get investors into the country solely because they argue that there is no guarantee that their businesses will be safe; the political instabilities that occurred in the 1990s have questioned the viability of the Government of Lesotho.

5.8 Why it took ten years for the 1995 Act to be repealed

Findings show that it took ten years to repeal the 1995 Act because of issues relating to the legislative procedure itself, fear of the Government of Lesotho of a recurrence of the 1998 political instabilities and the failure of government involving the stakeholders in the discussions. The Employee Relations Manager in the Ministry of the Public Service indicated that amending an Act and promulgating a new Act is a lengthy process in which a lot of factors need to be considered. The procedure of having an old Act amended involves a discussion of the new Bill in Parliament (Interview, 2nd January 2006). Parliament is one of the most important bodies that work hand in hand with the Ministry of the Public Service in policy-making (Parliamentary Reform Report, not dated: 16).

“Parliament serves as the primary outlet for political participation and expression. Constitutionally Parliament is expected to give feedback to the people of Lesotho on the issues raised in the House” (Parliamentary Reform Report, not dated: 16). “Parliament with the help of the Executive and the Judiciary adopts, scrutinizes policies and makes laws through the process of deliberation. Bills may be introduced by the Executive and by Private Citizens. The procedure on passing laws is governed by Standing Orders. Debate is then permitted covering the general principles of the Bill. The Bill is then passed on to a committee of the whole House after having been read for the second time. The Bill is read clause by clause and new clauses may be proposed” (Parliamentary Reform Report, nd: 17). “The House proceeds to the third reading on a motion. Debate is confined to the contents of the Bill and no amendments may be moved on the motion. Once the Bill has been passed by the House, it is forwarded to the Senate with or without amendments. For a Bill to become law, it must be assessed to by the crown. Constitutionally, the Bill is presented to the Crown by the speaker of the House. Upon Royal assent, the Bill is published in a government gazette as law” (Parliamentary Reform Report, nd: 17).

The Legal Advisor in the Law Office reiterates what the Employee Relations Manager in the Public Service for being the delay in the repeal of the 1995 Act. However, she argues that the Government of Lesotho fears change, hence the delay in the implementation of new policies. One of the Human Resource officers interviewed argued that here are certain issues discussed in Parliament that are given priority, while others are left for last minute sessions.

The Secretary of the Congress for Lesotho Trade Unions (COLETU) argued that the Government of Lesotho was delaying discussions around amending the clause that prohibited civil servants the right to join or form unions. COLETU then decided to seek international support from the International Labour Organisation (ILO). As has been mentioned in chapter two of the literature when a complaint has been filed with the ILO, certain procedures have to take place before a recommendation can be given. As mentioned earlier, the Fact-Finding and Conciliation Commission examine serious cases of infringement of trade union rights referred to it by the Governing Body (who acts on the recommendation of the Committee on Freedom of Association (National Manpower Commission, 1990: 11)).¹⁹

The purpose of the procedure of the CFA is to promote respect for trade union rights in law and in fact (ILO, 1996: 8). The Mandate of the CFA consists in determining whether any given legislation or practice complies with the principles of freedom of association and collective bargaining laid down in the relevant Conventions (ILO, 1996:8). Within the terms to its mandate, the Committee is empowered to examine the extent to which the exercise of trade union rights may be affected in cases of allegations of the infringement of civil liberties (ILO, 1996:8). Where national laws, including those interpreted by the high Courts, violate the principles of freedom of association, the committee has always considered it within its mandate to examine the laws, provide guidelines and offer the

¹⁹ [Http://www.ilo.org.za](http://www.ilo.org.za) (accessed on the 16th September, 2005) For example, in 1994 the International Confederation of Trade Unions and World Confederation of Labour (WCL) filed a complaint against the Government of Indonesia for violations of trade union rights, including the denial of worker's rights to establish organizations of their own choosing, the persistent interference by government authorities, the military and employers in trade union activities, and the ongoing restrictions in collective bargaining and strike action, as well as very serious allegations concerning the arrest and harassment of trade union leaders, together with the disappearance and assassination of worker and unionists (ILO Press release, Tuesday 26th May 1998 (ILO 98/21)).

ILO's technical assistance to bring the laws into compliance with the principles of freedom of association, as set out in the constitution of the ILO and the applicable Conventions (ILO, 1996: 8).

The member state is then asked to provide reports and upon submission of reports, the CFA makes recommendations. In this regard, it was recommended to the Government of Lesotho that it liaison with the trade unions involved in the dispute.

The Employee Relations Manager in the Public Service noted that one other reason that caused the delay in the repeal of the 1995 Act was that the parties involved in reviewing the Act were from different Ministries (namely, the Public Service, Law Office and the Principal Secretaries of the different ministries. This created tensions between the parties as they found it difficult at coming to a consensus around the appropriate times to meet to review the 1995 Act (2nd January 2006).

5.9 Public service reform

This serves to show how the reform was carried out. Institutional transformation refers to creating, changing and empowering political institutions to meet contemporary challenges (Shale, not dated). Institutional transformation was done through restructuring the civil service; strengthening the Heads of Departments; improving public administration and implementing good governance practice and improving the anti-corruption unit. According to the Economic Commission for Africa (2003:2) The World Bank views good governance as an emphasis of accountability and responsiveness to customer needs.

According to Kiragu (2002: 2) public service reform in Lesotho can be broken down into four cycles; the first putting emphasis on extensive liberalisation and expansion of the civil service. The second wave of civil service reform (1980s) was based on structural adjustments. Public Service reform in the 1980s in Lesotho was similar to that of developing countries; it emerged out of the macroeconomic and fiscal reforms that were embedded in structural adjustment programmes (SAPs) sponsored by the World Bank and the International Fund (Kiragu, 2002: 2).The third cycle (early 1990s) emphasised improvement of Cabinet and Parliamentary working relations, introduction of a Disciplined

Forces Improvement Programme, Health Sector Improvement Programme, Agricultural Sector Improvement Programme, Economic and Social planning Programme, Financial Management and Revenue Administration Programme, Public Sector Improvement and Reform Programme (PSIRP) and the decentralisation and establishment of a Local Government. The fourth cycle (2000-2007) included an evaluation of the Performance Management System.²⁰

An effective public administration is deemed a prerequisite for States to participate in the global world (Economic Commission for Africa, 2003:2). So, can one argue that to some extent internal decisions to reform the public service can be influenced by external factors?

Strategic plans

Since 1996/7 Strategic Plans were developed to inform the reform process. “The activities of the Ministry were guided by five-year National Development Plans, which were usually never followed” (Ministry of the Public Service, 2003/06: 5). The Ministry of the Public Service adopted the Civil Service Reform Programme sponsored by the United Nations Development Programme (UNDP). What followed was the development of the first Strategic Plan in 1996/97. Following the restructuring of the Public Service, the 2001/03 Strategic Plan was developed. The Strategic Plan included maximizing the participation of the all members into the planning process (Ministry of the Public Service, 2003/06: 5). “The Strategic Plan was a prelude to the introduction of the Performance Management System” (Strategic Plan, 2003: 5).

In the effort to remain on a par with global trends, Lesotho’s 2003/2006 Strategic Plan was formulated within the framework of the Public Sector Improvement and Reform Programme (PSIRP). “The methodology that was used in the strategic planning process maximised participation of all members...” (Ministry of Public Service, 2003/6: 6). This entailed a three day meeting for all stakeholders to review the 2000/2003 strategic plan and suggest a way forward. The second phase of the process was a strategic plan formulation workshop that was attended by middle and top management of the ministry and selected Human Resources Officers from the line ministries. The workshop covered all important

²⁰Setefane.B.M. Revitalization of performance Management System in the Lesotho Public Service. http://www.capam.org/_documents/setefane (accessed on the 28th April 2009)

aspects that relate to strategic planning, such as the mission statement, vision, values, strategic challenges and SMART objectives for the Ministry (Ministry of Public Service, 2003-6: 6).

The objectives of the 2000-2003 Strategic Plan were:

- “The amendment of the 1995 Public Service Act;
- Review Public Service regulations and the conditions of service.
- Restructuring of the Ministry of the Public Service and the development of a strategic plan”
- Review code of conduct and establish a transparent grievance procedure for civil servants and to deal with indiscipline at the workplace” (Ministry of Public Service, 2003/6: 7-11).
- “To initiate, formulate and coordinate Human Resources policies, rules and regulations;
- To maintain up-to-date organisational structures, management systems and operational methods in the Public Service;
- To provide accurate and timely Human Resources information in the Public Service;
- To effectively coordinate training, development and other Human Resources programmes across the Public Service;
- To ensure that Public Servants are appropriately trained;
- To initiate and develop an effective and efficient information sharing system internally and externally;
- To harmonise employer/employee relations within the Public Service, including teachers, members of the Defense Force, Prisons...;
- To effectively facilitate the process of making LIPAM autonomous; and
- To ensure professional and ethical standards throughout the Public Service” (Ministry of the Public Service, 2003/06: 7).

The Reform process was carried out with the application of five year Strategic Plans. Strategic planning is a process that takes into account the internal and external dynamics of an organisation. This analysis enables one to establish whether an organisation has effectively achieved its goals and objectives. The organisation or company or government then establishes the resources available to the organisation to carry out the objectives (Geyer, 2006: 2).

“Strategic planning helps one to respond to the external environment in the most effective way. It takes place over a period of time; involving different levels of decision-making and results in a plan of action that needs to be monitored as it implemented” (Geyer, 2006: 2). Furthermore, “Strategic Planning answers questions such as, what to do, why it should be done, how it should be done and who should do it. If done properly, Strategic Planning can help one identify the causes of some of the problems in ones organization and will enable one to come up with solutions” (Geyer, 2006: 4).

The initiation, formulation and coordination of the civil service entailed the amendment of the Public Service Act, a review of Public Service Regulations and the review of the conditions of service (Ministry of Public Service, 2003/06: 7). According to the Ministry of Public Service the implementation of the objectives was hindered by the fact that the strategic planning process was a new phenomenon in the Public Service, slowing down the process of reviewing objectives (Strategic Plan, 2003: 11). However, it is also indicated that because the Strategic Plan was poorly communicated to the civil servants, the Ministry received little support from them to assist in making the changes to be effective (Ministry of Public Service, 2003: 11).

The 2003/06 Strategic Plan had been formulated within the broader framework of the Public Sector Improvement and Reform Programme (PSIRP) in which the Ministry of the Public Service was responsible for the implementation of the Human Resources component of the programme. The Public Sector Improvement and Reform Programme (PSIRP) is “a government initiative that was formulated in collaboration with development partners in response to the need to strengthen good governance as a basis o achieve accelerated growth and poverty reduction. It is a multi-dimensional reform package and its objectives are to

improve the effectiveness and efficiency of public service delivery and public financial management” (African Development Bank, 2006: 36).

The PSIRP was divided into the following three components:

- a) “**Component I:** deals with improving public financial management through (i) a shift to MTEF performance budgeting approach starting from 2005/06 financial year, the development of a macroeconomic model (ii) the replacement of the Government of Lesotho Financial Information System (GOLFIS) with the Integrated Budgeting and Financial Information System (IFMIS) and (iii) public procurement reform.
- b) **Component II:** Civil Service Reform- through activities such as, an impact assessment of HIV/AIDS for the whole public sector, monitoring and implementation in careful selected priority areas and conducting of performance appraisals and incentives for officers in top PRS priority areas.
- c) **Component III:** Decentralisation for Service Delivery- the aim is to promote public participation in the development process” (African Development Bank).

The transformation process further entailed government ministries adopting strategic thinking and management (Ministry of the public Service, 2003/06: 12). The more elaborate objectives of the strategic plan included:

- “To focus the Ministry’s attention and efforts on the most critical challenges;
- To engage stakeholders in an ongoing dialogue about the destiny and performance of the Ministry;
- To inculcate the culture of duty and service within the Ministry and within the public Service as a whole; and
- To monitor and evaluate the Ministry’s performance on strategic objectives on a regular basis” (Ministry of the Public Service, 2003/06: 12).

Based on the challenges mentioned above, the Ministry of the Public Service (2003/06: 16) felt it necessary to “develop a strategy based on the threats and opportunities that are

presented by the external environment and the strengths and weaknesses that are presented by the internal environment.” It is important that the Ministry of Public Service follows through with the SWOT analysis and further promoting the participation of the civil servants in some policy making processes. “Worker participation entails the involvement of the employee in the organisation and planning of the work process, in the establishment of procedures and future processes, in the decision making function at various levels and in the management and policymaking bodies” (Bendix, 1996: 551) for example, information sharing. Information sharing refers to “the dissemination of information or communication from management to employees and from employees to various levels of management.” This can be in the form of hands-on sessions, briefing sessions, notices, bulletins, house journals, policy statements, discussion groups, informal gatherings, grievance procedures (Bendix, 1996: 553).

Bendix (1996: 559) argues that worker participation promotes cooperation between employers and employees, which brings about greater commitment and involvement of the employees, greater motivation and higher productivity. The decision to involve civil servants in some decision making processes may be strategic, however, the challenge that remains is the commitment of management to participatory systems because some of the perceived disadvantages of participatory systems can be seen as follows:

- “Management’s view of shared decision making leads to lack of control and can be time consuming,
- Employees’ views may differ to that of management. This usually happens when employees place their preference for economic benefits and for leisure above the long-term interests of the company.
- Unionists argue that participation should be extended to all levels, but that emphasis should be placed on the representation of employee interests, against those of the employer, rather than on cooperation” (Bendix, 1996: 561).

Counter to the above points, is the notion that participation can promote a sense of responsibility, employees relating better to their work, a need for improving one’s performance. Furthermore, employers and employees have a common interest in whatever is being produced, however, the effort being put in the production or provision of a

particular service is perceived differently by both parties. The conflict of interests can be reconciled through cooperation.

The objectives of the new Performance Management System were;

- “To develop clearly stated goals and a better understanding of the roles of each Ministry.
- To encourage employees to participate in planning of work and work processes.
- To promote harmonious supervisor-supervisee relations through regular discussion and feedback.
- To encourage a climate of continuous improvement and an on-going focus on improving skills and processes.
- To help organizations design more structured and focused training programmes based on the actual needs of the organization and the individual personal needs.
- To ensure that the appraisal of Public Servants is carried out in a fair and objective manner.”²¹

The major challenges that were identified for the process of reform in the Public Service included poor communication within the Ministry and with line Ministries, poorly coordinated training in the Public Service, inaccurate Human Resources information in the Public Service, lack of effective coordination of MPS controlled cadres, challenge in Monitoring and Evaluation of systems and performance, waste and cost reduction, lack of value system within MPS and in the Civil Service, Lack of Human Resources Planning in the Public Service, unemployment in the country, HIV/AIDS in the workplace and gender imbalance in top management in the Public Service (Ministry of Public Service, 2003/6: 20).

Strengths of the Ministry of the Public Service 2003-2006 Strategic Plan

The first strength of the Ministry of Public Service 2003-2006 Strategic Plan I would point out is its attempt to regularly inform the stake holders, especially the staff about the implementation of the Strategic Plan through workshops, meetings and the notice board.

²¹Setefane.B.M. Revitalization of performance Management System in the Lesotho Public Service. http://www.capam.org/_documents/setefane (accessed on the 28th April 2009)

Second, it is the effort to implement Monitoring and Evaluation initiatives to monitor the restructuring of the Public Service. The Ministry of Public Service plans to monitor and evaluate the Ministry's performance against strategic objectives on a regular basis and monitor activities conducted in the Public Service. The Monitoring frame work shows that there has been an improvement in internal monitoring because in the past reliance was on external evaluators.

Weaknesses

The review stated that the objectives were not met due to lack of capacity, financial resources. Implementation of the plan was mainly hampered by the fact that it was poorly communicated to staff members. Hence, very few supported it (Ministry of the Public Service, 2003/6: 11). The Ministry needs to put in place a monitoring and evaluation system that will measure whether the Ministry of Public Service Strategic Plan 2003-2006 has achieved its goals; if not why?, which areas need improvement? What can be done differently in the future? How sustainable is the way in which the ministry works? The Ministry of Public Service needs to determine the possible threats and possible solutions beforehand. So far, the Ministry of Public Service has been conducting external Evaluation of its internal structures. To strengthen the M&E process, the Public Service needs to improve on its internal monitoring and evaluation for the sole purpose of improving and strengthening its staff capacity and morale. If an M&E system is in place, checks and balances can be done regularly without the expertise of an external M&E specialist.

Examples of internal evaluations are as follows:

- a) **“Self –evaluation:** the organisation assessing its progress, as a way of learning and improving practice.
- b) **Participatory evaluation:** involving staff and beneficiaries to work together on the evaluation. If an outsider is called in, it is to act as a facilitator of the process, not an evaluator.
- c) **Rapid Participatory Appraisal:** the use of qualitative techniques such as, semi-structured interviews, data review, games, diagrams, maps, calendars. It is flexible and interactive” (Civicus, 2001: 7).

These methods can promote the participation of all the civil servants, especially because they are also consumers of the very services they provide.

Their Monitoring framework seems to focus just on activities and indicators. That means they are only measuring the strategies of the ministry. They could strengthen it up by also looking at monitoring the efficiency and impact of the Strategic Plan. It is important that they state how they are going to measure all these indicators, especially because the Strategic Plan has many objectives.

The result of the review of the Ministry of the Public Service 2003-2006 Strategic Plan resulted in a new Performance Management System (PMS). The objectives of the new Performance Management System were:

- “To develop clearly stated goals and a better understanding of the roles of each Ministry.
- To encourage employees to participate in planning of work and work processes.
- To promote harmonious supervisor-supervisee relations through regular discussion and feedback.
- To encourage a climate of continuous improvement and an on-going focus on improving skills and processes.
- To help organizations design more structured and focused training programmes based on the actual needs of the organization and the individual personal needs.
- To ensure that appraisal of Public Servants is carried out in a fair and objective manner” (Setefane, not dated: 5).

The challenge noted with the implementation of the new PMS is its integration into the Ministries Strategic Plans, the promotion of the PMS to all stakeholders at all levels for their active participation and to develop policies that will guide the initiatives and achieve enhanced public service delivery (Setefane, nd: 7).

“In order for Lesotho’s Public Service to respond positively, the ministry aims to strengthen the level of commitment by the Principal Secretaries in spearheading all the processes that are geared towards improving service delivery in the Lesotho Public Service; establish a National Core Team, cascade the information about the Performance

Management System to all stakeholders at all levels for their active participation” (Setefane, nd: 6). Public Servants are expected to actively participate in the implementation of the Performance Management System. The categories that are expected to play the forefront in the implementation of the Performance Management System are: the Cabinet, Parliamentary Committees, Directors, HR practitioners, Public Servants, Public Service Associations, Media, Training Institutions, Development Partners and the general public (Setefane, not dated: 6).

These initiatives show that the Government of Lesotho is trying to open up space for public participation. It would be interesting to observe whether the different stakeholders will utilise this space, since the Government has been criticised for being autocratic.

Other initiatives implemented by the Ministry of Public Service to improve its services are by improving human capital. The Human Resource Management and Development Policy manual (2006: 5) indicates that “the Public Service has drawn up policies for the different ministries, with the aim of improving the management of human capital in the Public Service, and improving service delivery. It plans to do so by transforming the human resources management departments. One of the reasons there was a need to transform the personnel administration to human resources development and management was due to the shortcomings experienced with the old personnel administration. This was to align the function with current best Human Resource Management practices.”

The transformation process went through various phases, which involved the following:

- 1) "Development of a new human resources cadre structure
- 2) Development assessment and recruitment and training of staff into the new structure.
- 3) The final phase of the process requires development and implementation of Human Resources functions across the Public Service” (Human Resource Management and Development Policy Manual, 2006: 5). The Policy Manual containing the policies is developed pursuant to Section 10 (2) of Public Service Act 2005 (refer to Appendix).

The development of human resources in the Public Service purports the claims made by literature on human capital. According to Forje (2008: 27) human resource development is crucial for accelerating the reconstruction phase of civil service reform. To support this, I would agree with Farnham (2009: 14) when he argues that “a motivated and committed staff is viewed as more productive and contributes more added-value.”

5.10 Conclusion

The Public Service Act No.13 of 1995 was enacted to regulate the Public Service and assist in providing assistance to line ministries. Its objectives were to provide guidelines for running the Public Service; regulate employer/employee relations and the conditions of employment of the Public Service and the promotion of freedom of association and the right to organise (Refer to page 14 in chapter 1). The 1995 Act, however, fell short at meeting all these objectives. The result was a review of its regulations by the Ministry of Public Service, Ministry of Justice, Law Office, Parliament and Principal Secretaries from other line ministries. The outcome was the repeal of the 1995 Act and the promulgation of the Public Service Act No.1 of 2005.

Transforming the Public Service was deemed the only plausible remedy. This was achieved through restructuring government institutions, personnel and reviewing legislation governing the Public Service. Public Service Reform in the 1980s included the implementation of structural adjustment programmes (SAPs); the 1990s reform was an attempt to restructure government structures. Following the failure of the reform process in 1997, a review was conducted and the 2000/3 Strategic Plan was introduced, which was replaced by the 2003-2006 Ministry of Public Service Strategic Plan.

The 2000-2003 Ministry of Public Service Strategic Plan was aimed at amending the Public Service Act No.13 of 1995; reviewing Public Service regulations and conditions of service, restructuring of the Ministry of Public Service and developing a Strategic Plan, and improving performance of the civil servants, employer/employee relations, Human Resources, the IT system, monitoring and evaluation system. “The transformation process dictates that government ministries adopt strategic thinking and management. The Ministerial strategic planning process comes as an important part of strategic management, for it is a way of formulating objectives against which performance can be measured” (Ministry of the Public Service, 2003/6: 12).

CHAPTER 6

THE PUBLIC SERVICE ACT NO.1 OF 2005

6.1 Introduction

In the last twelve years (1995-2005), Lesotho has witnessed a dramatic effort to change the extent and scope of regulation of Lesotho's Public Service. The public service reform provided civil servants with the opportunity to join or form staff associations, access clear dispute and disciplinary mechanisms. These changes have provided civil servants with the opportunity to bring their conditions of service in line with industrial relations in the private sector, and to redress some of the problems of the era of military dictatorship. Because the 1995 Act failed to carry out its main objective, which was "to develop and maintain a stable and disciplined public service that will impartially administer the business of the Government of Lesotho..." (Government of Lesotho, 1995: 6), the public service underwent restructuring in order to promote good service delivery and promote good employment relations. This chapter examines the Public Service Act No.1 of 2005; the changes that have taken place since its inception and explore some of the issues that these changes have brought to the fore. The Public Service Act No.1 of 2005 was a development of the Ministry of the Public Service 2003-2006 Strategic Plan.

The first section highlights the new clauses provided for in the Public Service Act No.1 of 2005 and the Ministry of the Public Service 2003-2006 Strategic Plan. The second section is an analysis of the changes that have occurred in the Public Service since the inception of the new Act and the Strategic Plan 2003-2006. The third section provides an insight into the attitudes of the trade union representatives pressurising the government to amend the 1995 Act and the civil servants toward the new Act. The last section assesses some of the problems that have been encountered since the inception of the new Act.

6.2 The 2005 Act and some of its key provisions

This section analyses whether the 2005 Act has achieved its aims and addressed the shortcomings of the 1995 Act. The Public Service Act No.1 of 2005 came into effect in March 2005. The 2005 Act was promulgated to regulate relations and promote efficiency in Lesotho's Public Service. The 2005 Act covers The 2005 Act introduces new regulations, such as, codes of conduct (such as, disciplinary, dispute settlement procedures), revised sections of retirement age and the freedom of association and the right to organise, conditions of employment (Government of Lesotho, 2005: 19). The new Act removes the section of the 1995 Act that specifically stated that civil servants could only form staff association under the 1966 Societies Act and introduces one that says if they can reach the 50%+1 criterion in the bargaining unit, they can register as a union. Under the new Act, the powers have been transferred from the Public Service Commission to the Principal Secretaries of the different Ministries. The Principal Secretary is the chief accounting and overall supervising officer of a Ministry under his or her supervision (Government of Lesotho, 2005: 23).

Significant changes within the Public Service with regard to the new Act have been observed. However, these changes vary from Ministry to Ministry. The new regulations found in the 2005 Act include:

Codes of good practice

Codes of Good Practice are guidelines relating to the discipline and the dismissal of employees. Bendix states that Codes of Good Practice are supposed to promote uniformity of behavior amongst employees and uniformity of action against managerial representatives (1996: 354). Bendix argues that these Codes of Good Practice should be communicated to employees; ensure a clear indication of their parameters. Bendix (1996: 355) further argues that "the mere existence of rules does not signify that they are known and accepted by employees..." Communication between management and employees is an integral component to a healthy employment relationship.

Codes of conduct

Codes of Conduct are guidelines that each public officer under the employ of the Public Service has to abide by. It provides guidance on the standards of behavior required of public officers. Section 15 (6) provides that failure on the part of a public officer to follow any provision contained in a Code of Conduct shall constitute a misconduct rendering the public officer liable to proceedings and sanctions as set out in the Code of Conduct (Government of Lesotho, 2005: 26). The Code of Conduct serves as a guide to public officers in their relationships and dealings with their employer and the general public. It provides guidance on the standards of behaviour required of public officers. It supplements the Public Service Act 2005 (Codes of Good Practice, 2005: 1-2). The name is slightly different from that in the 1995 Act and the content has become more specific; however, the ideology behind the Codes of Conduct and the Conduct of Public Officers is the same. They both determine the standards of behavior at which each public officer needs to abide by.

Grievance code

The Public Service Act No.1 of 2005 provides for a clearly defined grievance code that will manage conflict within the public service (Code of Good practice, 2005: 7). Grievance procedures can be a useful means of promoting upward organisational communication between management and employees. The Codes of Good Practice defines ‘grievance’ as “a feeling of dissatisfaction or injustice which a public officer encounters in the workplace and is formally brought to the attention of the employer” (2005: 7).

Grievance procedure

Grievance Procedure can be both formal and informal.

Stage 1: Informal grievance is as follows:

- a) “An aggrieved public officer shall raise his or her grievance with his or her immediate supervisor.
- b) The immediate supervisor shall informally resolve the grievance within a reasonable

time and not exceeding 48 hours or 2 working days.

- c) If the grievance is not resolved, the aggrieved public officer shall request a formal hearing to be instituted by making an application on the appropriate grievance form.
- d) The grievance form shall be submitted to the head so section or department within 5 working days after the informal grievance hearing” (Codes of Good Practice, 2005:9).

Stage 2: Formal grievance hearing

- a) “On receipt of the grievance form, the head of the section shall arrange for a hearing within 5 working days of receipt.
- b) The aggrieved public officer and the respondent shall have a right of representation during a grievance hearing but the right to representation shall not include legal representation.
- c) The aggrieved public officer, supervisor and respondent have the right to cross examine.
- d) If still dissatisfied with the decision reached at the hearing, the aggrieved public officer has the right to appeal to the Head of the Department and shall file the appeal within (5) working days from the date the decision was made” (Codes of Good Practice, 2005: 9).

It is argued that “formal communication is more reliable, sustainable, could ensure feedback and maintain the authority structure. Whereas the informal means of communication are seen as faster, may create a more favourable climate and be met with more favourable reception, but could lead to inaccuracy or false rumours and is difficult to control” (Bendix, 1996: 332). The formal means of communication remains the preferred method, but informal communication is used to substantiate and supplement formal communication channels (Bendix, 1996: 332). Considering the nature of relations in the Public Service it is important that management improves its formal communication channels, however, leaving room for flexibility of accommodating informal means of communication.

Stage 3: Appeal hearing

If the aggrieved officer is not satisfied with the decision reached during the hearing, they can appeal. “The matter is heard within 5 working days from the date he or she received the appeal. If the officer is not satisfied with the decision of the appeal hearing and wishes to pursue the matter he or she may declare a dispute and shall within 5 working days refer the matter to the Conciliation Board or arbitration depending on the nature of the dispute” (Codes of Good Practice, 2005: 10).

Code on dispute resolution

In the past, the Public Service Commission was in charge of everything pertaining to the public service, including dispute resolution. It was argued that the Public Service Commission did not have the capacity to handle disputes. Under the new Act, disputes are handled by the Principal Secretaries of the different ministries. Section 16 of the 2005 Act provides that a party to the dispute may be represented by a legal practitioner (Government of Lesotho, 2005: 26). Public Officers have the right to be presented in front of a Conciliation Board (Government of Lesotho, 2005: 27).

Section 19 (1) of the Public Service Act No.1 of 2005 prohibits public officers from engaging in strike action. While section 19 (2) stipulates that a public officer who contravenes sub-section (1) shall be dealt with in accordance with the Disciplinary Code (Government of Lesotho, 2005: 27).

Section 20 (1) of the Public Service Act No.1 of 2005 provides for the formation of the Public Service Tribunal to deal with appeals instigated by either a public officer, registered public officers’ association, or employer arising from a grievance and disciplinary action (Government of Lesotho, 2005: 27).

One of the respondents from the Labour Court argued that because Arbitration and Conciliation are not yet in place in the Public Service, things are still the same with regard to settlement of disputes. He further argued that these cases are treated at the High Court. He sees the High Court as unfit for handling such cases because the High Court does not have the expertise to deal with industrial relations matters. The Labour Court, however, is the only court that is qualified to handle industrial relations. However, it only covers

employees employed in the private sector (18th August 2006).

The respondent further said;

“I would believe that these mechanisms of conciliation and mediation are not yet in place because the government does not want to overwhelm the system by speeding up processes” (18th August 2006).

Disciplinary code

The Act also spells out disciplinary procedures through the Disciplinary Code. The Disciplinary Code of 2005 describes “Disciplinary action” as “a formal or informal action taken by management against a public officer who fails to conform to the rule and regulations governing public officers and has committed misconduct” (Code of Good Conduct, 2005: 11).

The objectives of the disciplinary code are to:

- “Correct any unacceptable behaviour by a public officer and not necessarily to punish the public officer
- Deal with the matter as quickly and at the lowest level of management as possible;
- Ensure consistency and effectiveness within the public service” (Code of Good Conduct, 2005: 11).

The introduction of the Disciplinary Code has had a different effect on the line ministries. Some of the Human Resource Officers noted that the regulations introduced by the new Act have made a difference in the running and regulation of the line ministries. While others argued that things remain the same. For example, one of the HR Officers complained that some Principal Secretaries are still afraid to take the final decision in matters, such as, disciplining public officers. This then means that the HR officer is supposed to take the final decision and thus putting a strain on the relations between the public employees being disciplined and the HR officer. Some of the Human Resource Officers from the different departments indicated, however, that it is too soon to measure the impact that these regulations have had on the functioning of the line ministries. Contrary to this, others

argued that public officers have gained a sense of respect for their supervisors due to the successful implementation of the disciplinary procedures.

Continuous practice and implementation of the disciplinary code across the board is necessary. This will minimise problems such as favouritism and misuse of power by superiors. Furthermore, one can argue that the 2005 Act has not just added value to the Public Service, but it has also had a positive impact on the attitude of the public employees toward management and vice versa. The Public Service Act has to a certain extent empowered the Public Service rather than just regulate it.

Code on collective bargaining

This shall guide the public officers and registered public officer's associations on how to bargain collectively with the employer on matters of mutual interest without outside interference;

Code on retrenchment

This shall prescribe the procedure to be followed when retrenchment is imminent within the public service (Government of Lesotho, 2005: 25).

6.3 The 2005 Act and Lesotho's national goals

Findings show that the different ministries are trying to align the country's National goals with the 2005 Act. For example, those that deals with HIV/AIDS, gender and good governance. The Strategic Plans show a growing inclination to the promotion of good governance and labour law.

6.4. Civil servants perceptions and attitudes towards the 2005 Act

The Disciplinary Code has assisted in improving relations between management and staff. For example, the Human Resource Officer from the Parliament of Lesotho argued that in the past, there was a decline in relations between supervisors and their subordinates; however since the inception of the 2005 Act, there is an improvement in relations between

management and staff (Interview, 17th March 2008). How? The disciplinary code has helped speed up procedures (Interview, 17th March 2007). Furthermore, the Human Resource Manager from the Ministry of Communications indicated that great strides have been made with regard to disciplinary hearings. She noted that there is still a great deal to be achieved (Interview, 18th March 2007). On the other hand, two HR officers from the Education Department interviewed showed that they are still experiencing some problems even after the promulgation of the new Act. Note here their responses:

Respondent 1

“When it comes to disciplinary procedures, we are not yet familiar with the new way things are done. You know what change brings about. You find that the Heads of the Departments have not yet been empowered enough so that they can report the disciplinary cases. They still write to us and ask us why we cannot take action against them (public officers). When it is time to give the punishment or verdict, one is not allowed to ask anything about that verdict.”

“Grievances are there, but we as the HR office cannot take any action until the P.S indicates that the case needs to be attended to. At the end of the day people start saying that the HR officers are not doing their job. The problem we get with those that have been attended to is that with this new Act, there are no sanctions. With the Old Act, there were specifications as to what action should be taken against the guilty party. So, we have to think of what action we are going to take, be it as payment or punishment. We are still using the sanctions from the 1995 Act. In the end the guilty parties sometimes end up saying that ‘we were fired by the HR officers, ’even though it is the P.S who takes the final decision” (Interview, 19th March 2007).

Respondent 2

“There is a lot of resistance to change. So much that they do not know their rights. If they are being victimised, they just keep silent. Public employees are still ignorant when it comes to their rights with regards to grievance procedures” (Interview, 19th March 2007).

This further indicates that a lot of effort should go into conscientising public employees about the regulations found in the 2005 Act; which is what the Ministry of Public Service Strategic Plan 2007-2008 plans to do. That is, the application of the rules; their purpose, their rights with regards to the rules and regulations. The Human Resource Officer from the Ministry of Education and her colleagues has in this regard made attempts to empower public employees from the different ministries in the different districts about the new Act. The Human Resource officer noted that they are still going to go back to enlighten public officers about the 2005 Act.

6.5 Conclusion

This chapter outlined the provisions of the 2005 Act; the strengths and weaknesses of the new regulations. Findings show that changes in disciplinary, grievance and dispute resolutions have occurred in the different ministries since the inception of the 2005 Act. However, these changes vary from ministry to ministry. A consolidated monitoring and evaluation report has to be prepared, one that covers all the improvements that have occurred in each ministry since the inception of the 2005 Act and the areas that need to be reviewed. The Ministry of Public Service has begun reviewing the 2005 Act.

CHAPTER 7

PUBLIC SERVICE UNIONISM: THE CHALLENGE OF APATHY

7.1 Introduction

The history of trade unionism in Lesotho was characterised by a struggle between unions and government. Unions only existed in the private sector, mostly in the textile industry. The rise of unions in Lesotho was a response to colonialism. With the advent of industrialisation came capitalism and the rise of the exploitation of workers within Lesotho and South Africa in a Migrant labour system. Unions then redefined their objectives; which shifted to the improvement of the working conditions of workers (refer to chapter 3). In the Public Sector, only teachers were allowed to form or join unions. Similar to the civil servants the police, nurses and the army were prohibited to join or form unions. However, they were allowed to form staff associations.

The political instabilities that occurred in Lesotho between 1970 and 2002 had an overbearing effect on legislation on trade unionism in the Public Service (refer to pages 49-51 of Chapter 3). Findings have shown that there is a continuous fear by government of a recurrence of the events of labour unrest of 1998. The years between 1970 and 1993 were characterised by unfair treatment of workers in the country, especially the Public Service. The military government instilled fear in the people. Unfortunately in 1995 the Basotho Congress Party (BCP) inherited the legacy of the military rule. The BCP tried to redress the undemocratic policies in place by repealing the Public Service Order of 1970 and enacting the Public Service Act No.13 of 1995. The objectives of the 1995 Act can be found on page 11 of Chapter 1). Under the 1995 Act civil servants were still denied the right to form unions. Tired of the tyranny of worker's rights by the government, the Lesotho Union of Employees (L.U.P.E) contested the clause that prohibited civil servants from forming unions. The result was a slight amendment to the clause. The 2005 Act allows for the formation of a bargaining unit; collective bargaining rights will be awarded only when the staff association reaches a 50% +1 of the total Public Service work force.

7.2 Challenges of unionisation in the public service

Why have the unions, which demanded the right to unionise not yet unionised the public service workforce? This study argues that both legislative and the apathy of the public officers contribute to the inability of the staff association organising. One can argue that the negative attitude of the civil servants toward unionisation is a contributing factor to the slow progress of unionism in the Civil Service. This shall be shown in the following sections.

When interviewed, the Chairperson of the Lesotho Congress of Trade Unions (COLETU), argued “we should be aware that it took them ten years to influence the then Government of Lesotho (BCP) and the current government (LCD) to make amendments to the sections in the Public Service Act No.13 of 1995 that prohibits civil servants from joining or forming unions. Hence, it will also take time for trade union formation to take place in the Public Service.” He further said “However, trade unions will one day exist in the Public Service” (Interview, 18th May 2007).

7.3 The Lesotho Public Service Staff Association (LEPSSA)

Since the inception of the 2005, the promotion of the Lesotho Public Service Staff Association (LEPSSA) has been done by Human Resource Officers from the different ministries. In 2008, the association had recruited 4400 members from the line ministries. According to the Minister of Public Service, Mr. Semano Sekatle, there are 40, 000 public servants employed by the government; 18 208 of which are civil servants, 7450 comprises of Police, Army, Christian Health Association of Lesotho (CHAL) and Defense Administration staff and teachers with a total of 13 976 and wage staff at 476.²² Public Servants encompass everyone who is under the employ of government. These include teachers, nurses, police, army and those employees under the line ministries, known as civil servants. The Ministry of Public Service is the umbrella for all the line ministries. The members of LEPSSA are not only comprised of civil servants, but also from public servants from line ministries (for example, Ministry of Education, Ministry of Planning, Ministry of Labour). This in itself raises questions as to how many civil servants are members out of the 4400; why is the number low? The following sections will try to answer the latter

²² www.lesotho.gov.ls/articles/2007/OVER_40000_PUBLIC_SERVICE (accessed on the 14th May 2009)

question.

7.4 Attitudes of the civil servants towards the staff association

Respondents included public officers from the Ministry of Public Service, Ministry of Finance, Ministry of Planning, and Ministry of Education. The different Ministries were approached because membership of the Lesotho Public Service Staff Association (LEPSSA) encompasses employees from the different Ministries. Data from the interviews conducted in this research show that there are mixed feelings about the Lesotho Public Service Staff Association (LEPSSA). Twenty five out of thirty two respondents showed that they did not know anything about the association or couldn't care less about its existence, while the remaining six knew and were interested in it.

Given the history of the political governance in Lesotho, most public officers fear the government and feel that they cannot question it, and that they might lose their jobs as it is the main employer in Lesotho. One of the respondents noted that in the past, unionism was just a concept that existed in theory because the government feared that the 1998 strike action might erupt if trade unionism is allowed or permitted in the Public Service. Some people complained that some senior officers (those who have been in the employ of the government for more than 10 years, Supervisors, Managers) did not support the staff association; they threatened the junior civil servants if they were interested in joining it.

One can conclude that ignorance also plays a big role in the negative attitude public officer have toward the staff association. This could be attributed to the limited effort taken by the members of the staff association and the Human Resource departments to promote it or a culture of apathy towards anything being implemented in the Public Service. Some public officers argued that they would like to see tangible results before joining the union shows that they do not understand what the aspect of freedom of association and the right to organise into trade unionist entails.

“There is a culture in Lesotho’s Public Service whereby the public employees enjoy silent diplomacy, if they are not happy about something, they will continue complaining about it

amongst themselves and not do anything about it” (Interview, 13th March 2007).

This can be looked at from different angles:

- a) Ignorance of the public officers
- b) Public Officers have lost hope
- c) Fear of loss of their jobs if they go against the government. Why? In the past civil servants were threatened if they wanted to join any union. One of the interviewees asks “one wonders whether there will ever be change in our working conditions, that is, salaries and benefits. A lot of graduates are moving across the border to seek employment because in South Africa, the pay is far much better. Trade unions their work; their power is much stronger than those in Lesotho.”(Interview, 14th March 2007).

The President of the Lesotho Public Service Staff Association (LEPSSA) argued that the 2005 Act has had a positive impact on the association. However, he insists that some sections need to be reviewed. He complained that it is difficult to promote the staff association because “the public officers are generally ignorant about laws governing them and the role they can play in ensuring that they benefit from the government system.” On the other hand, “because the staff association has so far made some progress in promoting the interests of the members, public servants are gradually joining the association” (Interview, 15th August 2006).

In 2005, there were 700 members, but there are about 4,400 affiliates from the government ministries. The association also attracts membership by providing incentives such as, making loans available to its members. One of the respondents said;

“Since, public servants earn meager wages; they are forever getting loans from shark loaners and insurance brokers such as, Mammoth. So, it is in their own interest to join the staff association. The subscription fee is a mere R10 and the interest rates are very low” (Interview, 17th September 2007).

One of the teachers visiting the Human Resource Officers in the Education Department expressed her appreciation towards the work the Human Resource Officers have been doing with regard to advocating the new Act to the civil servants in the different districts. I quote:

“I am very happy that you young people from this office have made efforts to go to the district areas to promote the new Act. We would never have found out about the staff association if you hadn’t come to our district. You know these graduates they will only listen to someone their age. You must continue with your good work my child. God Bless You” (July 2007). By ‘young people’ she meant the youth (Ages between 18 and 35).

This is a positive feedback. The Human Resource Officers in the designated departments should implement feedback mechanisms, so that they can assess the impact of their promotional efforts of the 2005 Act.

The following provides direct verbatim of the reasons given by some of the interviewed civil servants for not joining the association included:

a) Lack of information

“I do not know much about it.”

“I don’t even know its name.”

“It was only in the past two, three months when I heard that we could be allowed to be members of any staff association we want in Lesotho.”

“We do not have any information about the scope of the staff association, that is, how far it can influence and negotiate with the government.

b) Limited promotion of the staff association

“It was not marketed very well.”

“It was not properly advertised.”

“Because it was not properly advertised, I just kept postponing joining it. I was not that interested; it needs more publicity.”

“The day I heard about it, I saw a pamphlet that said there is an association with not much details in it; as to what is it about, what does it entail? It just said we should join the association, without stipulating what it will do for me.”

“It is something that a lot of people do not know about. It is there. What for? Nobody knows.”

“It needs more publicity.”

“The staff association needs to be publicised more.”

“...nobody has ever approached me to tell me about the staff association.”

“I do not know what it stands for. I did not have enough information as to what I will gain from it.”

“Because it has never been there, it is only recently that I have heard about it. In the past there were too many threats. It is not active at all.”

c) Lack of interest in the staff association

“Just because.”

“There is no association I will ever join. Whatever that needs people to come together to form an association, I will never join. I once joined a society back at home, it not progress further because of corruption.”

d) Limited influence of staff associations in wage negotiations

“... Initially I thought it was a good idea, but learning that there are some things that an association cannot do like strike...I thought there was no use joining the association. In the beginning it was impressive that people can fight for their rights and voice whatever concerns they have about the civil service, but in the end when the Minister of Employment made it clear that there are some things that will never happen, like public servants going on strike and question the government about certain issues, it is the government’s policy that public servants should be in that

way. So, an association has no right to question government.”

e) **Negativity toward Government initiatives**

“It is just another scheme by the government to force them into the system and further control them.”

“That change will never occur in Lesotho.”

f) **Resistance to change**

“Public officers are not yet ready for change.”

There is a link between the lack of promotion of the staff association by members of the staff association and the Human Resource officers, ignorance and apathy of the public officers towards unionism. Data shows that the staff association was not properly advertised, however, had the public officers had that much interest to probe further into what the staff association entails, they wouldn't be complaining about not knowing about it. However, it is the job of the members of the staff association and the Human Resource Officers to advertise it in order to get the buy in of the public officers. There are numerous informal ways they could have done this. Some of the respondents suggested that advertisement could have been done by having an awareness raising week where big posters, pamphlets, badges, t-shirts and caps would be given away; a note saying what the staff association is about could be fitted in at the bottom of their salary statements, a presentation at the inaugural meeting welcoming the graduates into the Public Service to complement advertising through the media.

Counter to the claim that the staff association was not properly advertised. The Human Resource Officer from the Department of Education argued that they themselves go out to the districts to sensitise the public servants about the association. She said, “they had so far done a good job.’ The President of the Staff Association argued that the association embarked on campaigns to sensitise the public servants about freedom of association and the right to organise. For example, the President visited the ten districts of Lesotho; 15 organisers have been employed to sensitise and recruit members and district committees are being formed.

7.5 Reasons for joining the staff association

Incentives that come with joining the association

Only 6 out of the 32 civil servants interviewed have joined the Lesotho Public Service Staff Association (LEPSSA). They gave different reasons for joining the association. They stated that:

Improved Working Conditions for Members

- a) “There is need to support initiatives like these that can better our work” (Interview, 13th March 2007).

Assist the staff Association to reach its Bargaining power (50%+1)

- b) “We were told by the chairperson of the association that the association will only have bargaining power if it is representative of 50% of the general body of public officers. Hence, they should support it” (Interview, 13th March 2007).

Economic Gains

- c) “We want improvements to be made, so that we can have better lives” (Interview, 14th March 2007).
- d) “There are benefits such as, loans to members; the aim of this is to curb the problem of public employees borrowing money from loan sharks (Machonisa)” (13th March 2007).

Protection

- e) “The association organises lawyers for its members when they are in need of legal representation” (13th March 2007).
- f) “The association protects members against unfair treatment in the workplace” (13th March 2007).

Job Security

- g) “It helps promote better working conditions for members, such as, payment of salary of public officer while on sick leave” (14th March 2007).

Data does support the literature that suggests that employees join unions, in this case staff associations for purpose of advancing their economic, social and political interests. As stated by (Finnemore, 1996: 74) unions can promote the economic gains, improved working conditions for its members and procedural controls to ensure job security for employees and freedom from arbitrary action by employers as well as political influence to drive State policies and ensure that legislation is labour friendly.

7.6 Prospects for trade unionism in Lesotho's public service

Examining the nature of employment relations in the Public Service and relations between the Government of Lesotho and trade unions in general, Lesotho has a long way to go before trade unionism can exist in the Public Service. Firstly, the Public Service Reform process needs to be reviewed and strict Monitoring and Evaluation of the reform process should take place. Secondly, the government should provide an enabling space for the promotion of freedom of association and the right to organise to mushroom. On the same token public officers could try to take initiative in knowing their rights and learning about legislations governing their workplace. The challenge that stands is the promotion of worker participation by management and the receptiveness of the public officers to the idea. This will help allay the fears they have with regards to being members of the staff association. Thirdly, the Lesotho Public Service Staff Association (LEPSSA) needs to improve its promotional skills in order to attract more members. The staff association has not even organised a ¼ of the total government work force (40,000).

Enthusiasm for trade unionism in the Public Service seemed to be high. The majority of the respondents advocated for trade unionism in the Public Service. They argued that trade unions exert more power than staff associations. This they argued is attributed to the rights they have that staff associations do not, for example, “trade unions are allowed to strike and to bargain collectively” (Interview, 17th March 2007).

Others noted that only time will tell. However, there is hope that in the near future trade unionism in the Public Service will be permitted by Government. They further, argued that “we should first wait to see whether the association will succeed” (Interview, 18th March

2007). Counter to this, others feel that “the LCD government is too autocratic; it will not allow for any formation of unions in the public service. It controls everything in the country, so, trade unions will not make a difference” (Interview, August 2006).

When asked about prospects for trade unionism in the Public Service, respondent argued that “there is hope for the future”; however, “it can only happen once the public servants become enlightened, from learning from other countries, such as, South Africa or re-approaching the ILO.” He highlighted, “Because the Government of Lesotho is the main employer in Lesotho, it has an overbearing influence on trade unionism in the country.” That is, the employees of the government sector are loyal patrons to the Government of Lesotho as it is the main employer in the country; they would not defy the government by joining any union. He further argues “the culture or ideology of civil servants reinforces some form of conservatism; this makes it take longer to build trade unionism” (Interview, 9th January 2007).

Makoa (2006: 1) argues that “trade unionism is in principle a possibility in any formal place of employment, but that consciousness and suffering alone are not sufficient in propelling workers into forming trade unions, and points to the critically important determinants of trade union growth such as the employees and their psychosocial paradigm as imposed by the nature and vicissitudes of the work processes.”

Administrative challenges

Since the inception of the Public Service Act No.1 of 2005, COLETU has complained to the International Labour Organisation that the LCD government continues to violate trade union rights and liberties. They referred to rights of assembly and demonstration. The Committee on Freedom of Association noted that COLETU expressed their disapproval on the fact that the Lesotho Police denied workers permission to celebrate May Day by holding a parade on the grounds that the celebrations coincided with local government elections. The Committee communicated to the LCD government that organising public meetings and processions, particularly on May Day, constitutes an important aspect of trade unions rights and that in future the LCD government should refrain from any interference that would restrict the rights of assembly and demonstration of workers or impede its

exercise.²³

7.7 Section 31 of the 2005 Act on freedom of association

Has the clause promoting the formation of staff associations in the public service achieved its goals? This can be looked at from three angles the perspectives of the Ministry of the public Service, the civil servants themselves and the trade unions that were actively involved in the struggle for unionism in the Public Service. In analysing whether the clause permitting civil servants to join or form a staff association has addressed the complaints made by the trade unions; I would argue that little change has been made to this section because the 2005 Act specifically states that civil servants can only join or form a staff association under the 1966 Societies Act. As discussed in earlier chapters, since 1995 trade unions have been demanding that this clause be amended by allowing civil servants to join or form trade unions, instead of staff associations.

The Secretary of the Lesotho Congress for Trade Unions (COLETU) said “they were not happy with the outcome; however they will continue to pursue pressurising the LCD government until it gives in.” (Interview, 6th July 2006). They noted that change will occur with time. They made an example of South Africa; how it took South Africans decades before institutional reform took place for the good of the people COLETU has embarked on a new campaign engaging the LCD government on the issue of the right to strike and the right of organisations in the public service to establish federations and confederations (CEACR, Document No. (ilolex): 09002LSO098).

The 1995 Act provided space for the formation of staff associations; however, this space was only explored in 2004 with the formation of the Lesotho Public Service Staff Association (LEPSSA). The HR Officer from the Public Service Commission indicated that the 2005 Act attempts to promote or strengthen the existing Public Service Staff Association. According to the HR officer from the Education Department, HR officers from the different line ministries are laid with the responsibility of empowering public officers about the Public Service Staff Association.

²³ CEACR: Individual Observation concerning Freedom of Association and Protection of the Right to Organise Convention, 1948 (No.87) Lesotho (ratification: 1966) published: 2006.
<http://www.ilo.org/ilolex/cgi-lex>

7.8 Amendment of the Public Service Act No.1 of 2005

The Public Service (Amendment) Bill was presented by the Minister of the Public Service in 2007. The Minister of the Public Service indicated that the purpose of the Bill was to amend the Public Service Act of 2005. Second, the Amendment provides for the establishment of a number of panels to constitute the Public Service Tribunal; this will allow for an effective and timely dispensation of justice and to avoid any unnecessary backlog of cases. Third, it provides for the disputes that arise from cases in the Public Service to be referred to the Labour Court for appeal, which is competent to deal with labour issues. Fifth, there is a need to move towards a single labour system. Sixth, it will make provision for the Minister to have the power to set up panels for the purposes of the Public Service Tribunal and for incidental matters (Ministry of Communications, Science and Technology, Lesotho: 2007).²⁴

The Economic Review (2007: 1) describes how the reform process took place. It views the New Public Management (NPM) as “a management culture that emphasises the centrality of the citizen or customer as well as accountability for results.” The main aim of the Public Sector Reform process in Lesotho is to improve service delivery in Lesotho. The Economic Review discusses phase 1 of the process as follows:

- “Component 1: Public financial management and accountability programme
- Component 2: Improving service delivery through decentralisation; and
- Component 3: Improving public service management” (Economic Review, 2007: 1).

It is stated that “the first component is supposed to yield critical outputs such as an integrated planning and budgeting process through Medium Term Expenditure Framework (MTEF), an integrated accounting and reporting information system called the integrated financial management information system (IFMIS) in place in the current financial management information system (GOLFIS) and an improved and transparent procurement system” (Economic Review, 2007: 2). The Second component “is targeted at creating an appropriate environment in which communities can freely and effectively participate in the

²⁴ LESOTHO NEWS: “Public Service Amendment Bill 2007 Presented in Parliament”
http://www.lesotho.gov.ls/articles/2007/PUBLIC_SERVICE_AM (accessed on the 14th May 2009)

planning and management of development as well as access to improved services through decentralized institutions” (Economic Review, 2007: 2). The end result is a conscientisation of the public about the decentralisation process, clarify the roles and functions of local authorities, determine community, municipal and district council’s areas, and develop and implement capacity-building program (Economic Review, 2007: 2). The third component seeks to formulate, coordinate and operationalise the Human Resource policies and manuals; to develop civil service capacity-building through the provision of quality training programs and creating HIV/AIDS competent public service (Economic Review, 2007: 2).

A 2007-2008 Strategic Plan was implemented in the Ministry of the Public Service. Some of the activities of the Ministry of the Public Service 2007-2008 Strategic Plan were to increase public officer’s awareness level on the Public Service Act 2005, the Codes of Good Practice (Code of Conduct, Grievance Code, Disciplinary Code and Code on Dispute Resolution) Public Service Regulations and Human Resources Policy Manual and their application (Ministry of the Public Service, 2003-2006: 33). Furthermore, develop monitoring and evaluation mechanisms for implementation of the Public Service legal framework and HR Policies, strengthen institutional capacity to support Public Service (Ministry of the Public Service, 2003-2006: 33).

7.9 Conclusion

It has been noted that the Public Service Act No.1 of 2005 replaced the 1995 Act with the aim of legislative reform, which will ultimately result in an improving of service delivery in the Public Service. Issues such as, dispute settlements, disciplinary and grievance procedures were highlighted in the new Act. The data showed that the Codes of Conduct in the new Act have brought about some substantial stability in the functioning of the Public Service. The gap between legislation and the actual practice in industrial relations needs to be addressed by all stakeholders in the industrial relations system. While the Public Service Act No.1 of 2005 promotes the rights of workers, only a few know what the act is about. The implementation of the Public Service Act No.1 of 2005 will be successful if it gets the support of the public officers because this Act is there to govern them. It should, however, not be imposed on them. It is the Ministry of the Public Service's duty to first of all, find out whether the public servants are aware of the existence of such an Act, secondly, and do they know what the act is about? Thirdly, do they feel that they are able to exercise their rights under this Act? The challenge of the Government is to empower the public servants about the Act.

Empowering civil servants' participation in policy making will work in favour of both the Government of Lesotho and the country as a whole. This can somehow motivate them to pull their weight and better provide good quality service to the people. The majority of the respondents showed some level of discontent toward the government because they felt disempowered when it comes to matters affecting their workplace and their well being. There is little room for the public to debate on issues relating to policy. Data show that, this is due to a lack of an enabling environment, lack of information and inaccessibility of forums to whatever little information there is.

It would be in the best interest of the Committee of the Lesotho Public Service Staff Association (LEPSSA) to evaluate and monitor its internal organisation and its implementation mechanisms in order to see what needs to be improved.

As in South Africa, workers in Lesotho's public service have consistently demonstrated their strong allegiance to the governing party, the Lesotho Congress of Democracy (LCD). This is one of the barriers to the efforts of the staff association organising the public officers. "How do they see their influence on government policies, and how will their dissatisfaction be expressed if the policies adopted by government do not result in their expectations being met?" (Cherry, 2006:143). In the context of Lesotho, how can organised workers ensure that their interests are accommodated by the state, is there a point in time where they can or will withdraw their support from government, or contest particular policies? And if so, how will they do this? (Cherry, 2006: 143).

Despite the problems and limitations encountered by all the players or actors in the Industrial relations system, the labour relations in the public service are evolving. "It can be said that the environment for collective bargaining in public employment is improving.

We have a law that is viewed by trade unions and the public as being restrictive towards the promotion of unionism in the Public Service and on the other hand, the ignorance of civil servants toward unionism. This study's research Findings show that the conscientisation of the civil servants around the issue of freedom of association and the right to organize is very minimal. Furthermore, the Lesotho Public Service Staff Association (LEPSSA) has been poorly advertised and promoted in the Ministry of the Public Service. Findings show that this amongst other issues has contributed to the disinterest of the civil servants in joining the association.

The major challenge that the staff association has is one of changing the mindset of the civil servants about unionism. The controversial issue here is that even if the civil servants knew about the association, their apathy may hinder prospects for unionism in the Public Service. It is also crucial that people understand that the clause in the Public Service Act No.1 of 2005 that stipulates that a bargaining unit will be recognised only if a 50%+ 1 criterion is met; is not an infringement on the right to organise but merely a criterion for recognition as is the case in South Africa. The Act further recognizes the staff association for purposes of

collective bargaining. The challenge that remains for the Human Resource office and the staff association is how then do they empower the civil servants around the issue of joining the association? As much as the ILO Convention No.87 on Freedom of Association provides that public servants may join or form unions; they are also accorded the right not to join an association.

It is an interesting matter because you will hear civil servants complaining about the conditions of employment in the Public Service and yet they have not made an effort to become members of the staff association. Some of the respondents argued that they would first like to see tangible results or impact of the Lesotho Service Staff Association (LEPSSA) before they can become members. This shows that they do not understand how a staff association works and how they can influence policy through participation. The Human Resource Officers interviewed in this study indicated that they have embarked on educating government officials about the importance of becoming members of the Staff Association. This is a starting point.

CHAPTER 8

CONCLUSION

The objectives of the research were to examine the factors that led to the repeal of the Public Service Act No.13 of 1995. Findings show that the Public Service Act No.13 of 1995 was repealed with the aim of public service. Public Service Reform was used to address the shortcomings of the 1995 Act. The Ministry of Public Service introduced Strategic Plans to review the 1995 Act and transform the Public Service. The Ministry of Public Service Strategic Plan 2003-2006 is an indication that the Public Service is making efforts to transform its institutional structures, legislation and personnel. Continuous restructuring has been going on in Lesotho's Public Service as an attempt to address the legacy of the political tyranny that existed in the Public Service during the military era. Democratic principles, such as, accountability, transparency, good governance and good labour law practices have been deemed the crucial for any government system.

Chapter 2 provides an overview of the literature covering public service reform and freedom of association. The literature shows that although public service reform is an imperative to the improvement of service delivery and advancement of its workers, it has it can also be disadvantageous because the precepts of Public Service Reform have been provided for by international bodies, such as the World Bank and the International Monitoring Bank (IMF), hence countries focus more on the outputs. Public Service reform should also emphasise the promotion of the rights to freedom of association. The ILO also has to review its laws and put in place mechanisms that can accommodate the limitations that all its member states have and those that punish gross violations trade union rights.

Chapter 3 provides an overview of Relations between trade unions and the Government of Lesotho. In the past, all efforts to build solidarity amongst employees in the Public Service failed because the government was autocratic. The rise of trade unions in Lesotho is not a peculiar one, most trade unions in Africa developed out of the liberation struggle against Colonialism and the migrant labour system developed in South Africa. The form of trade unionism developed from liberation struggles to unions organising employees in specific industries, for example in 1952, the Morija Printing works was founded at (Southall, 1984: 95). Between the late 1970s and early 1980s, there was a rise in unionism as trade unions competed to organise workers in banks, chemicals and pharmaceuticals, food and canning,

and brick makers. The motivation was economical in nature; workers demanded wage increments (Southall, 1984: 100-101). Around the 1980s, trade unions resorted to strike action. Government's response to this was an eagerness to resolve the disputes. Government was not the only threat to trade union solidarity, competition between the trade unions was a growing obstacle (Southall, 1984: 103-104). The government had to intervene, however, putting more stringent regulations within which the trade unions should work (Southall, 1984: 107).

Chapter 4 provides an explanation as to which research methods were chosen; why were they suitable for the research topic. I chose research methods because I felt they would assist me in getting to know the Public Servants; how they relate to management, how they view their working environment, how they relate to the new Act and the staff association.

Chapter 5 looked at the reasons why the 1995 Act was repealed and the reform process. Findings show that the main reason the Public Service Act No.13 of 1995 was repealed was because of a need to reform the Public Service in order to improve service delivery and to bring its legislation in line with international standards. The main document guiding this study is the Strategy Plan (2003-2006), which highlights the purpose of the Ministry of the Public Service and illustrates how the Public Service reform took place. The first Strategic Plan was developed in 1996/7. The aim of the Strategic Plan was to assist with the restructuring of the Public Service. The second Strategic Plan was developed in 1999, the third in 2001-2003, the fourth in 2003-2006. The main focus of the 2000-2003 Strategic Plan was to implement the then newly Ministerial structure and to prepare the Ministry for the implementation of the Performance Management System (Strategic Plan, 2003-2006: 7).

One of the aims of Strategic Plan 2003-2006 of great importance to this study was to initiate, formulate and coordinate Human Resources Policies, rules and regulations. This included the amendment of the Public Service Act, review of Public Service regulations and reviewing the conditions of the service (Strategic Plan, 2003-2006: 7). Other objectives include maintaining up-to-date organizational structures, management systems and operational method in the Public Service. This included the restructuring of the Ministry of the public Service and development of a Strategic Plan; restructuring of other ministries

and development of Strategic Plans, restructuring and transformation of the Personnel cadre and the introduction of Performance Management System (2003-2006 Strategic Plan: 9). Perhaps the number of objectives under the Strategic Plans can be realistic. There seemed to be too many objectives under the 2003-2006 Strategic Plan. Has the Public Service achieved all of them?

What needs to be studied further is an analysis of the implementation of the Public Service Reform; what problems were encountered during the implementation and whether the Ministry of the Public Service accomplished what it had set out to in the Strategic Plans? Are all civil servants aware of these changes occurring in the Public Service? How would they rate the efforts? Are the lower rank public officers aware of the Lesotho Public Service Staff Association (LEPSSA)?

One of the Senior Officers involved in policy making in the Ministry argued that it took the policy makers ten years to repeal the 1995 Act and promulgate the 2005 Act because an amendment of an Act is a lengthy process that requires debate within the necessary institutions, such as the Parliament and Cabinet. One of the respondents from the Parliament argued that freedom of association and the right to organise is of secondary importance to parliamentarians, that they concern themselves with issues such, land. The trade unions complained that the LCD governments took their time to resolve the matter at hand. Some of the respondents argued that the contention about trade unionism in the public service stems from the early developments of trade unionism in Lesotho and their relationship with the Military government. The Military government had inherited the legacy of the Colonial Administration, where trade unions were given a limited opportunity to influence policy. In the 1970s and 80s trade unions struggled to gain recognition due to the regulations placed by the Military government. Despite the stringent laws put in place to regulate trade unions in the country, new trade unions emerged and industrial action characterised them.

Chapter 6 provides the new regulations under the 2005 Act; changes that have occurred since the inception of the 2005 Act. Findings show that some good changes have occurred in some ministries since the inception of the 2005 Act. These changes are with regards to the discipline of public officers, the settlement of disputes and grievances. Relations

between management and public officers have improved and more public officers are joining the staff association.

Chapter 7 shows the challenges to unionism in the Public Service; legislative constraints and the negative attitudes of both management and civil servants towards it. There is a general sense of ignorance and apathy from the public officers with regards to joining the staff association. Some still fear losing their jobs and feel that joining the union would be going against the government, who is the main employer in Lesotho. Others couldn't care less about the staff association. Despite this, the Human Resource Officers have been taking up a lot of initiative to assist the staff association to get recognition. Despite these changes, the Ministry of Public Service began reviewing the 2005 Act.

Lessons Learnt

This study notes that the Ministry of Public Service has taken into account the reports reviewing on the Public Service, the legislation governing the Public Service and the 2003-2006 Strategic Plan and has learned from the review by requesting an amendment of the Public Service Act No.1 of 2005. This serves to acknowledge the shortcomings of the 2005 Act.

It can be concluded that having an Act amended or repealed is not an easy task; certain channels have to be followed. We now have a rough idea as to what is entailed in the process and what dynamics can negatively or positively influence a successful reform process. For example, the political forces, perceptions and attitudes of the employees, relations between the employers and employees, and the pressure from donors and the need for countries to follow international standards.

There is a need for civil servants to be conscientised about the Public Service Act. They need to know what it entails and how to apply those regulations? An analysis of the findings leads me to conclude that the Ministry of the Public Service is not doing enough to involve the civil servants in the decision making process. This has contributed to a culture of apathy towards issues that affect them at the work place. Instead of tackling them, all they do is complain about the issues amongst themselves. This in itself is a problem

because Management is under the impression that everything is alright when it isn't. It is true that the staff association is in plea to address the grievances of the civil servants; however, its impact is determined by the number of membership.

As Adair (cited in Adler, 2000: 110) puts it "Legislation is the necessary enabling tool to effect change in the Public Service. Any new legislation would need to be premised on the uniqueness of the public Service. Furthermore, legislation needs to take into account and must follow sufficient management flexibility to ensure accountable and output-oriented service delivery. Public Service transformation should empower and not merely regulate."

The employment relations in Lesotho's Public Service are slowly changing. Takarambude (1995:60) explains, "industrial law and labour rights have undergone major changes that have been designed to orient legal rules and procedures to the triple demands of democratisation, economic restructuring and social welfare." Takirambude further notes, "positive rights for workers and their unions have increasingly replaced tight structures under formerly single party regimes and the negative concept of immunities under pluralistic orders (1995:60).

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The Ministry of the Public Service Strategic Plan 2003-2006

ILO Convention No.87

Constitution of Lesotho

Labour Code Order 1992

Labour Code (Amendment) Act 2000

Societies Act of 1966

ANNEXURE I: INTERVIEW GUIDE

Some of the questions used during the interviews were as follows:

Ministry of Labour and Employment (Senior Civil Servants Interviewed)

Freedom of Association and the Right to Organise into unions

- 1) What role does the Ministry of Employment and Labour have in the promotion of freedom of association in the Public Service?
- 2) What role did the Ministry of Employment and Labour play in the amendment of the clause in the Public Service Act No.13 of 1995 that denies civil servants to join or form trade unions
- 3) What are the challenges facing the Ministry of Employment and Labour in its endeavour to promote ILO Core Labour standards?

Public Policy

Public policy is policy is a formally articulated goal that the legislator intends pursuing with society or with a societal group. A desired course of action and interaction which is to serve as a guideline in the allocation of resources necessary to realise societal goals and objectives, decided upon and made publicly known by the legislator (Hanekom, 1987: 8). The Ministry of Employment and Labour deals with the private sector, in the same manner, the policies adopted are for the public. That is why this study will refer to ‘Public Policy.’ This study argues that ‘Public Policy’ is a contested terrain.

- 4) To what extent can trade unions influence the drawing up and implementation of Public policy?
- 5) What kind of relationship does the Ministry have with trade unions?
- 6) What are the contestations around Public Policy?
- 7) To what extent can investors influence the drawing up and implementation of Public Policy?
- 8) What happens when consensus is not reached between the State, investors and trade unions?
- 9) To what extent do International bodies; such as the ILO influence Public Policy?
- 10) Which actors play a major role in the implementation of policy?

- 11) Does the Ministry of Employment and Labour ever work with the Ministry of the Public Service?
- 12) Does the scope of the Ministry of Employment and Labour include the public sector or does it specifically focus on the private sector?

Dispute Settlement

- 13) How does the Ministry of Employment and Labour settle disputes?
- 14) What is the role of the Labour Commissioner in dispute settlement?
- 15) Can civil servants come to the Ministry of employment and Labour to ask for mediation when there is a dispute? Give reasons for your answer.

Trade Unionism

- 16) How many trade unions are registered in Lesotho's Public Service?
- 17) What was the relationship between Public Service Trade Unions and the State pre-1995 and post-1995?
- 18) What are the problems unions encounter with regards to registration?
- 19) What are the prerequisites for registration approval?
- 20) Was/is LUPE registered as a union or an association?

Ministry of the Public Service Officials (Interview Guide)

- 21) How many people are employed in the Public Service?
- 22) What departments fall under the Public Service?
- 23) Why was the Public Service Act No.13 repealed?
- 24) How has the political environment of the 1970s and 1990s impacted/influenced the Public Service Labour Relations?
- 25) Why did it take the government 10 years to promulgate the 2005 Act?
- 26) To what extent did external factors (for example, pressure from the ILO and trade unions) influence the 1995 Act being repealed?
- 27) Who was involved in the review of the Public Service Act No.13 of 1995?
- 28) Who were the main factors involved in the process leading to the promulgation of the Public Service Act No.1 of 2005?
- 29) What problems were encountered during the process?
- 30) Is there a report/s available that can be accessed by the public to show what went on

during the process?

- 31) Is there a report available that one can get from the ministry that shows the findings and recommendations made about the 1995 Act?
- 32) What changes have occurred since the inception of the 2005 Act?
- 33) Has the Public Service Act No.1 of 2005 achieved its objectives?
- 34) Does the 2005 Act adhere to ILO principles?
- 35) Does the Public Service Act, No.1 of 2005 have the independence it should have?
Give reasons for your answer.
- 36) What is the government's stance on the issue of public servants forming or joining trade unions?
- 37) Have there been any workshops to sensitise public servants about unionism (staff association)?

Civil Servants (General Interview Guide)

Please note that these are just some of the questions asked; some of the other questions have been shown in the above section and in the Transcript section.

- 38) What are your views about the 2005 Act?
- 39) How has the new clause on freedom of association benefited public officers?
- 40) Have things changed since the promulgation of the 2005 Act?

Note: questions around membership of the Lesotho Public Service Staff Association (LEPSSA) are addressed in the section that follows.

Lesotho Congress of Trade Unions (COLETU) (Interview Guide, COLETU General Secretary)

- 41) What role did COLETU play in the process leading to the Public Service Act No.1 of 2005?
- 42) Which other non-state actors were involved in the struggle to get the clause in the 1995 Act that denies civil servants from joining or forming trade unions amended?
- 43) Why was the Public Service Act No.13 of 1995 repealed?
- 44) What constraints did the trade unions face when trying to get the clause of the 1995 Act that denies civil servants from joining or forming trade unions amended/repealed?

- 45) What was the response of the Ministry of the Public Service to the action trade unions took against the 1995 Act, especially complaints made to the ILO?
- 46) Why did COLETU get involved in the struggle for unionism in the Public Service?
- 47) What does the promulgation of the Public Service Act No.1 of 2005 mean for COLETU and other trade unions?
- 48) Is there a need for trade unionism in the Public Service?
- 49) Were the trade unions that were involved in the process satisfied with the role the ILO played?
- 50) Why do you think it took 10 years for the Public Service Act No.13 of 1995 to be repealed?
- 51) Do you think the Public Service Act No.1 of 2005 adheres to ILO principles?
- 52) Are you satisfied with the outcome of the amendment of the 1995 Act with regards to unionism?
- 53) What do you think about the relations between the State and trade unions in Lesotho?

The Lesotho Public Service Staff Association (LEPSSA)—Interview Guide Chairperson)

Freedom of Association

- 54) When was LEPSSA formed?
- 55) Why was it formed?
- 56) Under what regulation is LEPSSA formed?
- 57) Has the association been legally registered?
- 58) Who is allowed to join the staff association?
- 59) How many members does the association have?
- 60) How would you say it was organising the public servants?
 - a. Easy
 - b. Challenging
- 61) Give reasons to the answer given to question 7.
- 62) Has the staff association been properly advertised?
- 63) Has the association embarked on campaigns to sensitise the public servants about freedom of association and the right to organize?
- 64) What challenges face the association in relation to the promotion of the interests of

its members?

- 65) What impact has the promulgation of the Public Service act No.1 of 2005 had on the staff association?
- 66) What successes has LEPSSA achieved?
- 67) What impact has the 2005 Act had on the staff association?
- 68) Is LEPSSA independent from the State?
- 69) Do you think that public policy in Lesotho is a contested terrain?

Trade Unionism

- 70) Do you think there is a need for trade unionism in the Public Service?
- 71) Give reasons to the answer given to question 17.
- 72) Do you think that trade unions are as strong as trade unions?

Collective Bargaining

- 73) What is the scope of bargaining in the Public Service?
- 74) Are there any restrictions or limitations on the scope of bargaining in the Public Service?
- 75) If yes to question 21, give examples.
- 76) Would you argue that collective Bargaining in the Public Service now takes place within well-established machinery?
- 77) Give reasons to your answer to question 23.
- 78) In the advent of the 2005 Act, does the scope of collective bargaining in the Public Service still remain narrow that in the Private Sector?
- 79) How do negotiations over wages stand in the Public Service?
- 80) How is the wage policy structured?

Labour Relations

- 81) Does the prevailing state of social relations in the public service induce public to want to partake in such an enlarged scope of labour relations (Adopted from Tayo Fashoyin, 1998)
- 82) Do you think that the workers are making the appropriate readjustment in order to be able to deal with a broadened agenda for labour relations (Adopted from Tayo Fashoyin, 1998)

- 83) Do the members have the financial means to meaningfully partake in discussions of workplace issues?
- 84) Give reasons to the answer given to question 22.
- 85) What role has the association played in strengthening the capacity of their respective constituents to be able to deal with issues affecting them in the workplace?
- 86) What are the common grievances that the members bring forward?

Media (Public Eye) Interview Guide for Journalist

- 87) Can you give insight into the interviews you conducted with the LCD government and the Secretary of the Lesotho Congress of Trade Unions (COLETU) with regards to the contestation around civil servants joining or forming unions?
- 88) Was the LCD government cooperative in providing information on situation around the denial of public officers in organising into unions?

Legal Perspective: Interview Guide: Labour Court Advocate

- 89) How were disputes settled in the past?
- 90) Why was there a need to change the former industrial relations system in the Public Service?
- 91) Were there any problems encountered during the process of amending the 1995 Act?
- 92) Give reasons to the answer given in question 3.
- 93) What achievements can you say the 2005 Act has achieved?
- 94) In the advent of the enactment of the 2005 Act, is the development of procedures for settling labour disputes still slower in the Public Service than in the Private Sector?
- 95) In the advent of the new Act, are there any permanent institutions for conciliation and mediation for disputes in the Public Service?
- 96) Give reasons to the answer given in question 6.
- 97) Has the Conciliation and mediation been a successful means of settling labour disputes in the Public Service?
- 98) Give reasons for your answer.
- 99) What types of disputes dominate the Public Service?
- 100) Is the Labour Court or High Court responsible for dispute resolution in the

Public Service?

- 101) Are the judges capable of handling the labour disputes?
- 102) Would you agree with the notion that the legal framework for industrial action is said to be more restrictive for public servants than for the private sector workers?
- 103) Give reasons to the answer to question
- 104) Which disputes have financial implications?