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Comparative study of contents of civil service statutes

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Preface

This is the fifth working paper in the Document Series of the Department for Government, Labour Law and Administration (GLLAD), and represents the first to focus on issues of concern in the field of labour law formulation and revision. It responds to the 2000-01 Programme and Budget work item – and operational objective (No. 4cb) of strengthening the partners to social dialogue – which calls for research and advocacy regarding the regulatory framework in which social dialogue takes place in the civil service. It is hoped that this comparative study of a number of recently adopted laws, from all the various legal systems in the world, will enable States – as employer – to realize the challenges inherent in leaving out-of-date texts on the statute book and the dangers to healthy industrial relations of not reviewing civil service laws at a time when the private sector labour laws have undergone so many changes in most countries.

Employment in the civil service at the beginning of the twenty-first century is a far cry from the classic civil service framework of the last century. While the overall objective of the civil service – the part of government machinery which is entrusted with the task of serving the people by implementing government policy – remains the same, almost all surrounding conditions have changed.

In this new environment, the role of the International Labour Organization, and GLLAD, is therefore particularly important. GLLAD's mandate is to give balanced advisory services to administrations in areas of labour relations and participatory restructuring. That mandate follows the strategic orientation of the ILO, using research, advocacy and service to achieve the ultimate aim of its constituents – decent work. The ILO's expertise in legislative reform, legal training and labour administration have been called upon regularly, during the globalization era's privatization and restructuring exercises and as part of good governance programmes.

Social dialogue is not only a key element to feature in the *content* of the laws. It is also the vital *process* through which an acceptable, workable, modern legislative framework should be reached and implemented. That is why this study forms part of a comprehensive package of GLLAD research into the processes available in the public service and dovetails with the Sectoral Activities Department's work on the public sector generally. One example of the parallel work in this field, assisting in promoting social dialogue as a means of attaining the ILO's strategic objectives, is the *Study on the use of social dialogue in the public service*. This document – soon to appear in this series – will focus on the different forms that social dialogue is taking between the central government (and its executive agencies or state authorities in federal countries) and public employees covered by civil service statutes; the role of the public authorities involved; and the outcomes and practical results of social dialogue. Another example is the publication *Labour law drafting guidelines* – available on-line through GLLAD's website – which contains practical advice on both content and drafting techniques for private and public sector laws.

This comparative study constitutes a user-friendly reference tool to guide legislative amendments, full revisions or additions to the legal framework in which the State is the employer. The chapters cover the general status and contractual situation of public servants, recruitment/appointment, remuneration, other terms and conditions of employment, training, disciplinary procedures, termination of employment at the initiative of the employer, anti-discrimination and industrial relations provisions. The paper concludes with an analysis of the major current challenges facing the public service and proposals on how the legislative framework can face up to them.

The paper was drafted by Ms. Jane Hodges Aeberhard, Senior Labour Law Specialist, of the Department. I thank her for preparing this valuable resource for policy-makers, social partners, lobbyists, researchers and public administration scholars.

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I. Introduction

1. Objective

The Department for Government, Labour Law and Administration (GLLAD) is responsible, amongst other things, for strengthening the State in its multiple roles. These roles include, on the one hand, providing the setting and securing its observance for the private sector for attaining decent work for women and men, and on the other hand, performing core State functions. GLLAD's role focuses on its functioning as an employer of a body of employees who likewise are entitled to decent work. This study represents one of the Department's work items aimed at the latter state role. Its objective is to assist policy-makers, representatives of stakeholders and lawyers/technicians charged with setting the regulatory framework for State service. In particular, it has been elaborated in order to assist the revision of existing civil service statutes or the drafting of new legal texts.

The publication is a tool for assessing current provisions against more modern texts and in the light of ratified international norms, identifying new areas for legislative attention, fine-tuning procedures and processes that may work well in practice but are not clearly laid down in regulations, and, ultimately, arriving at texts to cover the civil service that represent not only the embodiment of the ILO's objective of decent work, but also texts that are workable for the modern State.

2. Methodology

The methodology of the study is based on:

- (i) a thorough literature review (see bibliography) of existing research into the terms and conditions of government employment and other pressing issues;
- (ii) country monographs prepared by independent experts, analysing the contents of the laws governing the public service in ten countries from different legal systems around the world. The criteria for choosing the countries, with selection based on input from the ILO's field structure, included whether new civil service laws had recently been adopted, had civil service restructuring been carried out and the need for representation from all legal traditions of member States;
- (iii) government reports (and workers' organization comments where available) supplied in the framework of the ILO's supervisory mechanisms, in particular the reports made under article 22 of the ILO Constitution on Conventions Nos. 87, 98, 151 and 154 (for freedom of association and industrial relations information), Conventions Nos. 100 and 111 (on discrimination in employment issues) and Convention No. 158 (for termination at the initiative of the employer), and various comments made by the supervisory bodies on the good, or less satisfactory, aspects of the laws under their examination; and
- (iv) collection and analysis of other major new civil service statutes and constitutional provisions on the public service using the 17 countries analysed in the ATLAS database.

The countries specifically studied were Australia (Commonwealth federal jurisdiction only), Brazil, Botswana, Bulgaria, Costa Rica, Dominica, Ecuador, Jordan, Mali and Sri Lanka. The national monographs are available for direct perusal in GLLAD's secretariat. In addition, major new public service statutes and regulations from an equal number of other countries were consulted through the ILO's labour legislation database, NATLEX and the Equal Employment Opportunity database. Use was made of certain specific studies carried out by the ILO in the framework of more general research, such as civil service reform, labour relations in the public service, pay determination in the public sector generally, or equality for women in public sector employment. The materials developed by the ILO's International Training Centre, Turin, for its "Managing Civil Service Reform" course were also perused. The Study takes into consideration the important work undertaken by other international organizations, such as the Organization for Economic Cooperation and Development (OECD) and UNDP.

A note on coverage. This study focuses on statutes of the civil service, composed in most systems of budgeted or "established" posts approved by Parliament when it adopts the national budget. It does not look at the public sector broadly speaking, for example, where services are not included in the public service, such as, local government, the education and health services, the judiciary and public utilities.

There is no standard definition of civil servant or the civil service; domestic laws and practice vary considerably. Most countries recognize, at an overall level, the difference between the public sector (which includes state-owned enterprises) and the private sector, but nuances appear at the next level down. Some countries, for example, make a semantic distinction between "civil service" and "public service". In some languages, like the French "fonction publique", that generic term covers all permanent State personnel and municipal staff, whereas "le service public" describes public utilities of general benefit to the population, controlled by the administration. A trend in terminology seems to be towards the general term "public employee". The dominant characteristic – whatever the terms used – is that the State is the employer, and pays for the service from tax revenues in the form of budgeted posts. The research for this study did, however, take into account the useful guidance on definitions which exists in the only specific international labour standards on this subject, namely the Labour Relations (Public Service) Convention, 1978 (No. 151) and Recommendation (No. 159). They cover the fundamental labour rights of civil servants (the right to organize, to participate in consultations or negotiations in relation to their terms of employment and to settlement of disputes). Article 1 of the Convention states that its provisions apply to "all persons employed by public authorities" but permits exemptions for "high-level employees whose functions are normally considered as policy-making or managerial, or ... employees whose duties are of a highly confidential nature". Article 2 defines "public employee" to mean any person covered by the Convention in accordance with Article 1.

The study does not cover private sector labour laws, although, as will be seen in section II, in several countries the legal status of workers in the public service may result in certain of them being covered by the general labour law framework. It should also be noted that the study only covers statutory law, and not case law (although, here again in later sections, there are references to national courts' interpretation of certain civil service provisions where this has marked a new trend). Moreover, the study does not cover state pension and social security laws and retirement issues, since these are aspects of labour law that differ widely from system to system and the details of which are in constant flux. Another important preliminary remark is that the study examines the legislation itself, and not the practice of implementing the laws. While the final section raises questions of practical hurdles facing the regulation of civil service employment, which in many cases note problems of application, there exist other ILO procedures for assessing practical application and plotting successes (the regular supervisory mechanisms, for example,

where ILO Conventions relevant to the public service have been ratified, or the follow-up procedures for the fundamental principles contained in the 1998 Declaration on Fundamental Principles and Rights at Work).

A note on timeliness. The study is accurate up to a certain date, namely mid-2001, but has not been able, due to length constraints, to reproduce the relevant texts in full. The aim, after all, is to provide drafters and policy-makers with comparative advice and not a “model” civil service law. Such an undertaking would be impossible for 175 member States with their different legal traditions and public administration structures. The texts are available in GLLAD or through the ILO’s databases.

One last comment. The fact that the study focuses on laws is not meant to suggest that the only, or even the best, means of promoting decent work are legislative. There is a tremendous scope for economic and social approaches. Having laws in the area of public employment, however, provides the portal through which the relationship of actors is structured, the framework in which the realization of democratic rights can be achieved and provides transparency and security to the individual employed.

3. Why the ILO?

The study is part of a series of working papers looking at aspects of strengthening civil service capacity. It is paralleled by a further study into the reality of decision-making on employment issues using social dialogue.

Study on the use of social dialogue in the public service

Public administration is an under-researched area of social dialogue and GLLAD is gathering information about relevant recent practices of social dialogue in the public service. The findings will be published in a “Study on good practices in the use of social dialogue in the public service”.

The study will focus on:

- the different forms of social dialogue between, on the one hand, the central government (and its executive agencies or state authorities in federal countries) and, on the other hand, public employees covered by civil service statutes;
- the role of the public authorities involved; and
- the outcomes and practical results of such social dialogue.

During the last decades, many countries have undertaken deep-rooted reforms following political changes, democratization and dramatic changes in the role of the State and its employees. Workplace pressures also play a role, whether external, such as globalization, or internal, such as structural adjustment programmes (SAPs). The reform of statutes was often accompanied by restructuring of the public administration generally. This reform usually commences with a review of the legal framework, and leads to amendments of the texts adopted in the 1950s or 1960s, or to completely new ones.¹

¹ Apart from the numerous new Constitutions (most of which include provisions on the creation of the public administration as part of the state institutions) or new Labour Codes (which might cover both private and public sector employment), a NATLEX search of new civil service laws (excluding purely pensions issues) or related regulations, decrees, orders, resolutions and rules or codes of conduct adopted during the last decade shows over 500 texts, emanating from over 70 countries

In preparing a comparative study of the contents of new statutes, it is useful to know the background to the reform. For example, emphasis on broader organizational rights for civil servants might reflect new-found democracy; changes in technical provisions on employment might be a response to new economic policies. So what are the reasons why governments decide to reform laws generally, including public service laws? The following list is, obviously, only indicative:

- to legislate into law new national policies;
- to introduce a more client-oriented public service;
- to respond to new constitutional values following democratisation or the end of repressive regimes;
- to achieve balance between rights and responsibilities when outside contexts have changed, for example due to globalization pressures;
- to smooth the way for privatization;
- to ensure a just industrial relations climate that promotes efficiency and productivity;
- to remove archaic, obsolete laws and outmoded practices;
- to remove uncertainties, or duplication, in texts;
- to introduce areas that might never have been treated in past labour laws, such as discrimination at work based on HIV/AIDS;
- to introduce user-friendly wording and streamlined presentation;
- to reflect a gender analysis and, introduce gender-neutral language;
- to codify various diverse texts thus avoiding a plethora of subtexts and amendments;
- to comply with ratified ILO Conventions, the 1998 ILO Declaration on Fundamental Principles and Rights at Work, and regional standards, such as the CARICOM example;
- to pave the way for future ratifications.

The ILO's role through various units has been to track developments through research, to advocate good practices and to provide services especially through training and assistance in drafting. Here we could list examples such as ACTRAV's work with PSI, SECTOR's support of the five meetings of the Joint Committee on the Public Service (1970, 1975, 1983, 1988, 1994), other Sectoral Meetings (1995 and 1998) and its

(bold indicates major new Acts): Albania, Antigua and Barbados, Argentina, **Australia**, Austria, Belarus, Benin, Brazil, Burkina Faso, Canada, Chad, Chile, **China**, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, **Dominican Republic**, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Gabon, Germany, **Ghana**, **Greece**, Guatemala, Hungary, Iceland, Ireland, Islamic Republic of Iran, Italy, Japan, Jordan, Kazakhstan, Kuwait, Latvia, **Lesotho**, **Liechtenstein**, Lithuania, Luxembourg, Madagascar, Malawi, Mauritania, Mali, Morocco, **Nepal**, Netherlands, Niger, Norway, Pakistan, Panama, **Poland**, Portugal, Romania, Qatar, Sao Tome and Principe, Saudi Arabia, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sudan, Sweden, Switzerland, Tunisia, **Turkey**, **Ukraine**, United States, Vanuatu, **Yemen**, **Zimbabwe**.

scheduled 2003 Sectoral Meeting on “National Social Dialogue in Public Service Reform”, LEG/REL’s studies on wages (“Civil Service Pay in Asia”, “Civil Service Pay in Africa”, “Pay Systems in 6 OECD countries”), ITC Turin’s training courses on “Human Resource Management in the Public Service” and “Managing Civil Service Reform for African countries”, and GLLAD’s legislative advice. The Nola and Rueda study, carried out in the context of the ILO’s Interdepartmental Action Programme on Privatization, Restructuring and Economic Democracy, looked at how labour laws, including civil service statutes, accommodated privatization challenges for employees. Based on ten country studies (not the ten used for the current comparative study) the authors concluded that the social dimensions in such contexts can be integrated in a number of ways: by means of existing labour law; by amendments to labour law; by means of provisions included in laws regulating privatization; and through the labour relations machinery, with emphasis on consultation and negotiation.

Special mention should be made of LIB/SYND’s supervisory activities in relation to Convention No. 151 and Recommendation No. 158, the Collective Bargaining Convention, 1981 (No. 154) which covers private sector and the public service) and the role of the International Labour Standards Department and the ILO’s supervisory system. The 2002-03 Programme and Budget, in paragraph 160, directs GLLAD to take special steps to promote Convention No. 151.

Table 1. List of ratifications

Labour Relations (Public Service) Convention, 1978 (No. 151)			
Date of entry into force: 25 February 1981 (39 ratifications)			
Country	Date	Country	Date
Albania	30 June 1999	Italy	28 February 1985
Argentina	21 January 1987	Latvia	27 January 1992
Armenia	29 July 1994	Luxembourg	21 March 2001
Azerbaijan	11 March 1993	Mali	12 June 1995
Belarus	8 September 1997	Netherlands	29 November 1988
Belgium	21 May 1991	Norway	19 March 1980
Belize	22 June 1999	Peru	27 October 1980
Botswana	22 December 1997	Poland	26 July 1982
Chad	7 January 1998	Portugal	9 January 1981
Chile	17 July 2000	San Marino	19 April 1988
Colombia	8 December 2000	Seychelles	23 November 1999
Cuba	29 December 1980	Spain	18 September 1984
Cyprus	6 July 1981	Suriname	29 September 1981
Denmark	5 June 1981	Sweden	11 June 1979
Finland	25 February 1980	Switzerland	3 March 1981
Ghana	27 May 1986	Turkey	12 July 1993
Greece	29 July 1996	United Kingdom	19 March 1980
Guinea	8 June 1982	Uruguay	19 June 1989
Guyana	10 January 1983	Zambia	19 August 1980
Hungary	4 January 1994		

Source: International Labour Standards Department, e-mail: norms@ilo.org. Listing generated by APPLIS on 30 March 2001.

Table 2. Current (2001) observations by the ILO's Committee of Experts on the Application of Conventions and Recommendations concerning Convention No. 151

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| 1. Azerbaijan |
| 2. Cyprus |
| 3. Uruguay (comments from a workers' organization) |
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Source: International Labour Conference, 89th Session, 2001, Report III (Part IA), pp. 588-590.

Other intergovernmental organizations have assisted governments in the skills and techniques of drafting civil service statutes and secondary legislation.² The checklists prepared by OECD/SIGMA were intended to give guidance when a civil service bill and secondary instruments are in preparation in a Central and Eastern European country, but they are useful for all jurisdictions. The advice on secondary instruments begins with a narrative section describing the types of instruments that are typically used for this purpose in OECD member countries and factors that are widely taken into account when such instruments are being prepared and drafted. It then contains a checklist of questions which law drafters in particular may find useful in the actual drafting process. The OECD publications make the point that final choices as to content of the laws will reflect local circumstances.

The OECD/SIGMA paper on "European Principles for Public Administration" describes the philosophy of and gives guidance to, modern democracies governed by the rule of law on principles of reliability and transparency, as well as administrative law principles.

The Commonwealth secretariat has run a number of general legal drafting courses for parliamentary counsel staff from Commonwealth member States, and the UNDP governance programmes look to this kind of support on regulatory reform as well. The World Bank's approach to reforming civil service laws generally in a context of reducing state power is described in its *World Development Report*.³ The ILO's International Training Centre, Turin, regularly runs courses on how to manage civil service reform, with training modules on updating the regulatory framework. There is also academic debate over the advantages or disadvantages of homogeneity of treatment of public servants and private sector workers (Morris, 2000).

4. Characteristics of modern public service structures

While employment or work in the service of the supreme power or State goes back to the Middle Ages notion of serving a monarch, and continued with relatively few major changes over generations, once the modern civil service was established, at the eve of the twenty-first century many nations adapted their laws to new circumstances. At the political

² See OECD: SIGMA Papers: No. 5, *Civil Service Legislation Contents Checklist*, and No. 14, *Civil Service Legislation: Checklist in secondary legislation (and other regulatory instruments)*.

³ *The State in a changing world*, Washington, 1997, in particular table 9.3: "First- and second-generation reforms", p. 152.

level, the new scene responds to major transformations towards democratic systems governed by the rule of law. From the economic point of view, Bach states that pressure for reform had arisen from concerns about high levels of public expenditure and their potentially detrimental effects on national competitiveness in a more global economy. In most countries, characteristic features of public service employment had included intricate systems of administrative and legal regulation, centralized pay determination, rudimentary forms of human resource management and entrenched union influence. For public service employers, proposed structural and employment reforms bolster their authority but also hold them more to account for performance and productivity. In addition to concerns about the cost of public services, there has been more persistent criticism of the quality of service provided and the failure to meet citizens' expectations in terms of access, equity, speed of service and effectiveness.

Downsizing (also called "rightsizing" or "re-engineering") of State-owned enterprises and utilities was the response, in particular in Africa, in the 1980s and early 1990s often as part of structural adjustment programmes. Its impact on employment conditions of public servants was described by the ILO's 1989 *World Labour Report*. Its impact on the legal and career positions of civil servants was such that the ILO in the 1990s held two Sectoral Meetings specifically examining the phenomenon. The 1995 Joint Meeting on the Impact of Structural Adjustment in the Public Services (Efficiency, Quality Improvement and Working Conditions) stressed the need for an adequate legal and institutional framework when defining public sector structural adjustment (Final Report, Conclusion No. 8, page 20). The Joint Meeting on Human Resource Development in the Public Service in the Context of Structural Adjustment and Transition in 1998 highlighted the need to maintain human resource development in such situations. The background report stated that downsizing policies usually highlight the tensions that may exist between social expectations regarding job security, "safety nets" for affected workers and budgetary restrictions that may limit the range of services or the size of the "safety nets" governments decide to offer those workers. At the same time, it warned that cutting the size of the civil service will achieve little in terms of quality and effectiveness if attention is not paid to human resource development and stressed that in view of the employment trends in the public service, a climate of uncertainty will undoubtedly affect the potential for training, motivation and ethics, improved productivity and performance. In situations of downsizing, says the report, where flexibility concerns take precedence over employment security, employees cannot be expected to demonstrate the same sort of loyalty which traditionally characterized the public service. Wescott, too, makes the link to morale and productivity:

Reducing the size of the civil service is often a prerequisite for ensuring that governments can sustain and finance a smaller and better paid civil service over time. However, unless such efforts are well designed, they can have negative consequences on morale and productivity. These risks can be minimised by developing programmes in close consultation with those affected, and linking them with other measures to improve administrative capacity. The challenge is to combine restructuring with capacity building in a programme which can ultimately enhance overall performance.

Even those most in favour of downsizing state, at the same time, that "Whether making policy, delivering services, or administering contracts, a capable, motivated staff is the lifeblood of an effective State. Civil servants can be motivated to perform effectively", says the 1997 World Bank report, "through a combination of mechanisms to encourage internal competition: a recruitment system based on merit, not favouritism; a merit-based internal promotion system; [and] adequate compensation" (page 9).

Jordan (see box below) went through a series of major overhauls, characterized by the removal of certain structures only to see some of them reappear as of 2000 in the nation's endeavours to create a modern public service. Botswana, Dominica and Sri Lanka have civil service laws that reflect their colonial past, and the structures created by those laws are typical of the British civil service as it evolved over time. Australia, too, has a civil service tradition from its British cultural and political heritage, but recent adaptations reflect the current Government's political commitment to a leaner, merit-based public service. Brazil's federal, state and municipality structure, strengthened even more in the 1988 Constitution, reflects its past colonial development. Bulgaria's structure is struggling to respond to the challenges of the post-communist State. The other Latin American countries studied – Costa Rica and Ecuador – have structures based on laws dating back several decades, and are reported to be weak and poorly adapted to the needs of modern civil services.

Main landmark in the history of reforming public service in Jordan

- 1926: General orders for public service.
- 1955: Establishment of civil service bureau.
- 1966: Issue of civil service regulations No. 23/1966.
- 1969: Establishment of Jordan Institution of Public Administration (JIPA).
- 1984: Royal Commission of Administrative Reform.
- 1988: Issue of civil service regulations No. 1/1988
- 1994: Establishment of Bureau of Inspection and Ministry of Administrative Reform.
- 1994: Issue of civil service regulations No. 1/1994.
- 1999: Elimination of the Ministry of Administrative Reform.
- 2000: The formation of the Royal Economic Consultative Council and the revitalization of the Ministry of Administrative Reform.

Countries with perceived effective public service laws are reviewing their structures (and therefore necessarily their statutes) to assess whether they remain relevant and efficient. For example, the Canadian Advisory Committee on Labour-Management Relations in the Federal Public Service took as its starting point the 1967 Public Service Staff Relations Act and tracked its various amendments up to 1997, when charged with recommending changes to one aspect of public service employment, namely industrial relations. One of the Advisory Committee's findings so far is that the Canadian legislation is too restrictive. The May 2000 report states:

Other common complaints about the labour-management relationship point to the restrictions imposed by legislation such as the Public Service Staff Relations Act (PSSRA). The PSSRA restricts the scope of bargaining and the kinds of issues that can be subject to arbitration and therefore limits the number of issues that can be put on the table for discussion and resolution. The restrictions themselves often become the source of friction, as the parties argue about what is and is not negotiable. Both parties suggest that more use be made of mediation, informal problem-solving committees, and other forms of alternative dispute resolution.

Data on the size and structures of several public administrations can be obtained on-line from GLLAD's ATLAS website, via the ILO home page (www.ilo.org). The ILO's Sectoral Working Paper "Statistics on Public Sector Employment: methodology, structures and trends", is also a good reference (although its data cover the broader public sector).

Van Ginnekin (1991) had already plotted the share of women in public employment, but bemoaned the lack of accurate data. According to the German Federal Ministry of the Interior, of a 1997 public service total of 4,780,000, 52.9 per cent (2,576,000) were women.

The national papers commissioned for this study give the following up-to-date picture of staff numbers from the gender perspective:

- Australia (Commonwealth federal jurisdiction only) – 113,268 civil servants, 48.3 per cent women (as at 30/6/99);
- Brazil – 7,839,900, 53.6 per cent women, as at 1996 for the broader public sector;
- Botswana – of 105,248 civil servants, 45 per cent women (as at September 1999);
- Bulgaria – of 31,000, 61 per cent women (as at 1995);
- Costa Rica – for central government 83,642, 55 per cent women, and local government 7,799, 75 per cent women (as at 1999);
- Dominica – 2,977 women with 13 per cent at permanent secretary level (as at 1999/00);
- Ecuador – 71,426 civil servants (as at 28 February 2000) – no data on gender breakdown;
- Jordan – of 145,854, 32 per cent women (only one of the 115 top level is a woman);
- Mali – of 37,893, less than 25 per cent women (as at May 2000);
- Sri Lanka – of 773,852, 26 per cent women (as at 30 June 1998).

5. Institutions (ministries, departments, agencies, commissions, boards) responsible for administering the laws governing the public service

Most of the countries studied (except for Latin America) have undergone changes of name or complete changes of institutions responsible for the public service. Those from a British colonial background still have ministries for the public service, often linked to mega-ministries with varied labour and social portfolios, together with a public service commission (for example, Botswana, Dominica, Sri Lanka). Most systems also have a higher quasi-judicial body to hear disciplinary matters and complaints (*Tribunal del Servicio Civil* in Costa Rica, Public Service Appeal Board in Dominica, *Junta de Reclamaciones* in Ecuador) and Mali has joint administrative commissions as well as the *Conseil superior de la Fonction publique*. Jordan has the innovation of a civil service bureau alongside the Ministry of State for administrative development, with all government decisions ultimately scrutinized by an administration control and inspection bureau. Depending on the constitutional framework, some institutions must report to the Council of Ministers (for example, the State Administrative Commission in Bulgaria).

In other countries surveyed, regional trends are repeated: the new Latvian statute creates a public civil service administration appointed by Cabinet; the new Polish law sets up a Civil Service Council as well as a High Disciplinary Civil Service Commission.

Canada (federal level) also has a Public Service Commission, and a Public Service Staff Relations Board to adjudicate grievances. Mauritania has set up a *Commission nationale des concours*, as an independent agency to carry out testing of civil servants.

II. Themes present in the laws

1. Contract of service and legal status of public servants

Employment in the civil service at the beginning of the twenty-first century is a far cry from the classic civil service framework of the last century. While the overall objective of the civil service – the part of government machinery which is entrusted with the task of serving the people by implementing laws and government policy – remains the same, almost all surrounding conditions have changed.

For instance, after a burgeoning numbers increase, there are nowadays in many countries – subject to regional variations – fewer civil servants concentrating on core public functions; the level of service delivery is more decentralized; the workforce itself is more diversified, with women, persons with disabilities and minorities entering, but the spread of such groups throughout the structures and grades is widely different; the way civil servants are expected to work has changed, both from the point of view of new technologies, but also from that of “service-orientation” and user satisfaction because they compete with private sector and utilities providers; the legal status is evolving, and along with it the rights and obligations of civil servants either continuing to differ from or merging into those of private-sector workers; unionization fluctuates more and more, even where newly adopted constitutional provisions consecrate the right of these workers to organize for the defence of their social and economic betterment; at the level of specific terms and conditions of employment, there is increasing flexibility; working time arrangements have diversified and pay systems have developed with, in more and more countries, social dialogue in the form of consultations and collective bargaining playing a much greater role than in the past. And the list could go on.

Faced with this new environment, the Office presented to the 1998 Joint Meeting research into the legal status of public servants and their employment security (pages 62-67). The report summarized the debate in Europe over contract arrangements for public servants in the context of privatization and transfer of services into the private sector.

Earlier ILO research had also looked at the differing legal consequences of employment status as civil servant, or public employee to whom the provisions of the private sector labour law apply. For example, the ILO’s Joint Committee on the Public Service, established in 1968, held five sessions (1970, 1975, 1983, 1988 and 1994), all of which recorded at some stage discussions on definitions. At a key recent meeting of the Joint Committee on the Public Service, when examining the terms and conditions of part-time and temporary workers in the public service, one definition put forward for “public service personnel” was “Persons employed by public authorities, whether central or federal, regional, provincial (state, canton, land, etc.) or local authorities, or by autonomous public institutions of a non-industrial and non-commercial nature”. Report II of that 1993 meeting thus covered this broad group, but recognized the distinction between established civil servants, being “tenured”, “permanent” “titularized” or “statutory” public servants who enjoy recognized official status, as opposed to public employees, being non-established staff who have the status of contractual employees of the State. As this definition is wide enough to cover persons who work for the State in teaching and health

professions, in the posts and telecommunications sector and the public transport systems which, these days, in more and more countries, are run on a competitive basis as private commercial enterprises or which have been sold off to the private sector outside all government control, it goes beyond the confines of the present study.

Several commentators (DSE, EPSC and FES, Morris, Nola and Rueda, NPC, OECD) also offer descriptions of the varied legal status rather than definitions. This study has used the following criteria to assist in defining the civil service:

- What it does: the administration and governance function and related policy-making characteristics.
- Its constitutional role of overseeing the provision of fundamental state responsibilities.
- Whom it employs: structure and classification of employees within the service.
- How it works: serving the public interest in its formulation and analysis of policy options and implementation on the basis of political neutrality, objectivity, anonymity and a clear separation between public and private interests.
- How it is financed: through tax revenues and the government budget approved by Parliament.

The constitutional positions

The contents of civil service statutes are usually crafted around the provisions of a country's basic law. This study therefore looked into the constitutional framework of the ten baseline jurisdictions. Based on an analysis of the most recent texts,⁴ the following table indicates both the status of public servants and other aspects of their working terms and conditions covered in this study.

Most of the Constitutions surveyed do not include any provisions regarding the terms of the contract of service or the legal status of public servants. Three Constitutions rely upon the law to determine them (Bulgaria, Costa Rica, Mali). Only the Constitution of Ecuador establishes a principle in the matter of appointment and removal of public servants providing that they are subject to appointment and removal at will only as an exception.

⁴ Recent texts:

- Commonwealth of Australia Constitution Act (1 January 1901 as altered 31 October 1986)
- Constitution of Botswana (30 September 1966 as amended of 1987)
- Constitution of the Federative Republic of Brazil (5 October 1988 as amended to 4 June 1998) and Constitutional Amendment No. 20 of 16 December 1998
- Constitution of the Republic of Bulgaria (12 July 1991)
- Constitution of the Republic of Costa Rica (7 November 1949)
- Constitution of the Hashemite Kingdom of Jordan (8 January 1952 as amended through 1 August 1984)
- Constitution of the Commonwealth of Dominica (3 November 1978)
- Constitution of the Republic of Ecuador (10 August 1998)
- Constitution of the Republic of Mali (12 January 1992)
- Constitution of the Democratic Socialist Republic of Sri Lanka (16 August 1978 as amended to 1989)

The Constitutions of Bulgaria and Ecuador provide that the status of public servants may be compatible with that of, respectively, members of political parties or trade unions and candidates to elections only under conditions to be established by law (Bulgaria) or singled out by the Constitution itself (Ecuador).

Under a few Constitutions, the status of public servants may imply a limited enjoyment of fundamental rights and freedoms: Botswana's and Dominica's allow for restrictions on the freedoms of expression, assembly, association (including the freedom to form or belong to trade unions). The legitimacy of restrictions on these freedoms is, however, subordinated to the condition that restrictions are "reasonably justifiable in a democratic society" (Botswana) or "reasonably required for the proper performance of their [public servants'] functions" (Dominica). Under these two Constitutions, as well as those of Sri Lanka and Brazil, restrictions on the right to non-discrimination may be also carried out by laws in relation to qualifications for service (confined to language requirements in the case of Sri Lanka). The relevant provisions have to be "reasonable" (Botswana), and qualifications have to be required by the nature of office or necessary for the discharge of the relevant duties (Brazil and Sri Lanka) and may not be related to sex, race, place of origin, political opinions, colour or creed (Dominica). With regard to the two federal States surveyed (Australia and Brazil), the provisions of the Australian Constitution concerning public servants apply only to the servants of the Government of the Commonwealth, while those of the Brazilian Constitution refer not only to the servants of the Federal Government but also of states, federal districts and counties.

Statutes

Even very recent laws commence with a statement of objectives that reads like the statutes of earlier decades, without hinting at the major changes to status contained later in the text. Take, for example, the Australian Public Service Act, No. 147 of 1999. Section 3 states:

The main objects of this Act are:

- (a) to establish an apolitical public service that is efficient and effective in serving the Government, the Parliament and the Australian public; and
- (b) to provide a legal framework for the effective and fair employment, management and leadership of APS employees; and
- (c) to define the powers, functions and responsibilities of Agency Heads, the Public Service Commissioner and the Merit Protection Commissioner; and
- (d) to establish rights and obligations of APS employees.

As noted in the introduction, the last two decades have seen major changes in the role of the State as employer, changes which have affected the legal status of employees of the State. One trend has been to introduce into civil servants' statutes of verification as to which provisions of the private sector labour law do or do not apply. A second trend is to modify the provisions of the civil service statutes themselves to reflect a whole new status for state workers. The Polish Law on the Civil Service of 18 December 1998, section 7, provides:

1. Provisions of the Labour Code and other provisions of the labour law apply to all issues ensuing from civil service member's employment relationship, which are not regulated by this Law.

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2. Disputes over claims ensuing from civil service member's employment contracts are exclusively investigated by labour courts, unless the Law states otherwise.

The Australian Public Service Act, No. 147 of 1999, section 8, provides supremacy for the private sector regulatory framework: “(1) This Act has effect subject to the *Workplace Relations Act 1996*”. And in Latin America, this shift in coverage towards the general labour law came earlier. For example, the Venezuelan Organic Labour Act of 20 December 1990, in section 8, states:

In all matters relating to recruitment, promotion, transfer, suspension, retirement, systems of remuneration, security of employment and jurisdictional status, national, state or municipal officials and employees shall be governed by the corresponding administrative career regulations. In any matter not so regulated they shall enjoy the benefits accorded by the present Act.

Career officials and employees in public service shall have the right to collective bargaining, to the peaceful settlement of disputes and to strike, in accordance with the provisions of Title VII of the present Act, in so far as they are compatible with the nature of their duties and with the requirements of the public administration.

Wage-earning employees in state-owned undertakings shall be covered by the provisions of the present Act.

The Lesotho Public Service Act, No. 13 of 1995, section 35, provides: “The Labour Code Order of 1992 shall not apply to public officers.”

The new statutes reflecting the second trend imply that the concept of tenure is outmoded. This legal option applies a policy decision which has weighed up what the costs and benefits, impact and relevance of job security in today's public administration are. It embodies the public service employer's decision to adapt to the rapidly changing market for high-level skills in particular which, in turn, might be related to other factors like the level of civil service remuneration and obstacles to developing training that will safeguard merit, mobility and motivation in the civil service.

A clear illustration of the second trend towards change in status is Switzerland's new Act on Confederation Staff (LPers) of 24 March 2000. Aimed at repealing the 1927 Act on Civil Service Staff, it raised criticism and was put to a popular vote on 26 November 2000. It was supported by the population and entered into force on 1 January 2001. The box below provides the Government's official description of the new legal situation.

Swiss Government abolishes status of civil servant

What does the new law involve?

The Act on Confederation Staff is an entirely new text, applicable to the 195,000 collaborators in the administration, the Post and the Federal Railways. It is a framework law which will allow personnel policy to adapt to real needs.

The main innovations are:

- *The elimination of the status of civil servant:* With only a few rare exceptions (for example, judges of appeal commissions), nomination for a period of service of four years disappears. Rescindable public law contracts will replace the status of civil servant. However, the new law guarantees a strong employment security to collaborators whose service is satisfactory and who show themselves ready for professional mobility.
- *Protection against dismissal:* The new text lists all the grounds for termination. After a written warning, the Confederation may dismiss collaborators whose services or conduct are not satisfactory. Unless the employee is at fault, they may only be dismissed for economic reasons or due to serious business imperatives. In such cases, the employer should propose alternative acceptable employment or supplementary training with a view to a new job. When they cannot avoid mass dismissals, the administration, the Post and the Federal Railways will be legally bound to elaborate a social plan in collaboration with the staff associations. Dismissals having no legal basis will be deemed null and void, and when appeals are brought before a tribunal, the burden of proof shall be on the employer.
- *Scope of contractual law:* When the new law and its executing regulations contain no specific provision, the contractual law applies – as it does to the other three million wage earners in Switzerland.
- *Wages:* The new law requires a periodic evaluation of the staff member. That way the services of collaborators will be better reflected in the fixing of remuneration. The automatic adjustments that currently lead development in wages will disappear.
- *Employment contracts:* Until now, the Confederation, in its sovereign power, decided on appointments. The new law provides for individual employment contracts, in order that collaborators will become genuine partners of the employer; it also authorizes the signature of collective labour agreements under public law.

Source: Unofficial translation of "Votation populaire du 26 novembre 2000, Explications du Conseil fédéral – Cinquième objet Loi sur le personnel de la Confédération", p. 26.

Similar far-reaching changes had already taken place in other developed countries, like Italy (the 1993 laws on the privatization of public employment, which allow the "responsible manager" in the public service entity to dismiss under certain conditions and to issue fixed-term contracts), and developing countries, like Burkina Faso (Act No. 13/98/AN of 28 April 1998, which contains detailed provisions on contractual employees in the public service who, like civil servants also covered by this Act, can be recruited through direct competition, serve probationary periods, can apply for paid leave for training but who have fewer disciplinary procedures and can be dismissed for capacity or structural reasons with notice or pay in lieu of notice). However, another approach to contract workers appears in Nepal's Civil Service (First Amendment) Act, No. 19 of 1998: new section 7(c) prohibits the hiring of persons to perform civil service work on a wage or contract basis.

The Italian example merits further examination, since the overhaul of the civil service statutes in order to "modernize" the civil servant status and abolish tenure continued through to the end of the 1990s (Legislative Decrees Nos. 396/97, 80/98 and 387/98) with certain positive developments such as the privatization of labour relations permitting collective bargaining. Under the terms of these laws, public employment is regulated by the Civil Code and the laws concerning labour relations in enterprises with the exception of the following categories of civil servants: magistrates, diplomats, state lawyers, military personnel, prefects, personnel of the Bank of Italy and other bodies involved in the management of the financial market, who are governed by their own respective regulations.

In contrast, several recently revamped statutes maintain the traditional status, role, functions and obligations of civil servants. In Botswana, the Public Service Act, No. 13 of 1998, has provisions on the general duties of public officers which reflect their particular legal status:

17. It shall be the duty of every public officer to aid and assist the Government of Botswana according to the Constitution and other laws of Botswana, to carry out and obey all lawful orders of the Government and, subject to the Government's authority and direction to exercise the functions of his office impartially, efficiently and without delay so as to serve the people of Botswana and promote their welfare and lawful interests.
18. Unless it is otherwise provided in the terms of his appointment or in any other written law –
 - (a) every public officer shall place the whole of his time at the disposal of the Government; and
 - (b) no public officer may claim as of right additional remuneration in respect of any official duty or work that he is required by competent authority to perform.

In Dominica, the Public Service, Act No. 27 of 1991 (amended in 1995), reflects traditional civil service tenure:

Section 5. A public officer shall hold office subject to the provision of this Act, the Pensions Act and the Social Security Act, and except where a period of employment is specified in any written law or agreement, may hold office for an indeterminate period.

The Establishments Code, 1985, of Sri Lanka echoes in strong language the special “civil servant” status found in traditional statutes, particularly in countries having inherited the common law legal tradition:

CHAPTER XXX: RIGHTS OF GOVERNMENT OVER ITS OFFICERS

Section 1. Services outside an officer's Regular Employment or Office

- 1:1 The Government has a total claim to the time, knowledge, talents, and skills of its officers and their salary is fixed on that assumption, unless specifically provided for otherwise.

Many statutes from civil law tradition countries also reflect that status. The Mali General Statute for Civil Servants (Ordinance No. 77-71/CMLN of 2 June 1974), sections 9 and 10 read: “the civil servant is in a legal and statutorily governed relationship with the Administration”; “the civil servant shall serve the State with devotion, dignity, loyalty and integrity”.

Most transition countries have adopted new statutes that reflect the traditional status of subjugation while recognizing that other (often private sector) legal status will apply to public employees outside that relationship. In Bulgaria, the Civil Servants Act, No. 7 of 1992 (amended in January 2000), contains a whole chapter (III) devoted to civil servants' status, the basic principle of which is:

Section 18. Employment in the civil service shall be based on the principles of law, loyalty, responsibility, stability, political neutrality and hierarchical subordination.

In Hungary, the legal status of civil servants is governed by Act XXIII of 1992 (as amended) on the legal status of civil servants. That Act authorizes the Government to regulate the basic areas of the civil service by decrees. Public employees (i.e. teachers, medical doctors, librarians, etc.) are not civil servants, and their status is generally regulated by Act XXXIII of 1992. The status of employees in state-owned companies is regulated by the Labour Code (Act XXII of 1992). The status of some groups of public officials is regulated by special laws which set greater service obligations while rights are more limited compared to the civil servants (law enforcement bodies: Act XLIII of 1996; judges: Acts LXVII and LXVIII of 1997; and attorneys: Act LXXX of 1994). There are also special laws on the members of government and state secretaries (Act XXII of 1992).

The consequences of the traditional “servant” status are invariably listed in the relevant statute immediately after the principal obligations provision. They include: faithful execution of orders⁵; confidentiality; prohibition on any outside employment (interestingly, the new Burkina Faso Act No. 13/98/AN on the legal regime applicable to employment and public employees permits (section 123) civil servants/*fonctionnaires* to ask for special leave to carry out an activity in a private undertaking subject to certain preconditions, renewable up to a total of six years); prohibition on any outside remuneration; restrictions on the exercise of certain political rights (such as joining and taking active part in political organizations) and civil rights (such as freedom of speech); disclosure of property holdings; and, generally, conduct to maintain the prestige of the civil service. The Bulgarian Civil Servants Act includes, as formal obligations based on the worker’s status, certain behaviour towards citizens, which elsewhere are covered by “mission statements”:

Section 20(1). The civil servant must react without delay on any citizen’s request. He/she shall be obliged to satisfy strictly and in due time the lawful demands, and to contribute to the acknowledgement of the citizen’s rights and legal interests.

(2). The civil servant must not show rudeness, bad manners and lack of respect to the citizens whom he/she is servicing.

2. Recruitment

In general terms, civil service recruitment is conditional on the existence of a vacancy being an established post approved in advance by Parliament when adopting the budget. Some common features are then: advertisement, selection (by each agency or by a central recruitment competition), after examinations and interviews, leading to appointment. Probationary periods are common (on sliding timescales depending on the level of the service being entered, e.g. in Germany, one year probation for the sub-clerical service, and three years for the administrative service).

All the Constitutions under survey include provisions concerning the subject who has the power to appoint public servants. The Constitutions of Botswana and Ecuador rely upon the law to determine the person or persons holding the power to appoint public servants. All the remaining Constitutions entrust the power to make appointments directly

⁵ Yet the new Australian Public Service Act permits questioning of the actions of superiors and co-workers when it states in section 16: “Protection for whistleblowers: A person performing functions in or for an Agency must not victimise, or discriminate against, an APS employee because the APS employee has reported breaches (or alleged breaches) of the Code of Conduct ...”.

to the Executive. Under the Constitution of Costa Rica this power belongs jointly to the President and the respective Cabinet Ministers. Under the Constitution of Mali the President appoints higher civil servants. Similarly, under the Bulgarian Constitution, the President appoints state officials apart from the higher officials listed in the Constitution. The Constitution of Sri Lanka vests the power to appoint civil servants in the Cabinet of Ministers and in the Public Service Commission; the Constitution of Dominica in the Public Service Commission; and the Constitution of Australia in the Governor-General in Council (unless this power is delegated to some other authorities).

As for the method of recruitment, the Constitutions of Brazil, Bulgaria and Ecuador provide that recruitment of public servants has to be made through competition.

Turning to the various civil service statutes examined for the study, one major trend is the clarity with which recruitment and appointment are set out in each text.

One new statutory situation is worth describing in detail since it attempts to encapsulate private sector flexibility while at the same time preserving certain civil service traditions. In Australia, agency heads are empowered to engage persons as employees in their respective agencies under section 22 of the Public Service Act. All decisions relating to engagement of persons as Australian Public Service (APS) employees must be made according to merit, as defined in sections 10(1)(b) and 10(2), and in the Directions issued on 5 December 1999 by the Public Service Commissioner. It is clear that employment decisions should be made without patronage or favouritism, when section 17 says: “(1) A person exercising powers under this Act or the regulations (a) in relation to the engagement of APS employees, or (b) otherwise in relation to APS employees, must do so without patronage or favouritism.” The Directions specify methods intended to ensure that the pool of applicants is sufficiently broad and address the eligibility of former public servants for re-engagement. They also provide examples of the types of matters that might properly be taken into account when making an assessment of work-related qualities for the purposes of a merit-based decision in relation to engagement as a public servant, qualities which include skills and abilities, qualifications, training and competencies, standard of work performance, capacity to produce outcomes from effective performance at the level required, relevant personal qualities, demonstration of potential for further development and ability to contribute to team performance (Chapter IV). All members of the community are to have an opportunity to apply for public service employment wherever possible under section 10(1) of the Act.

An agency head may decide not to advertise a position for candidates outside serving public servants for posts above a certain level, on grounds of cost and operational efficiency, but the use of this power is intended to be an exception to the normal policy of open vacancies. As at February 1999, 98 per cent of public service employment opportunities were open to the public; nevertheless, as at 30 June 1999, two-thirds of appointments to positions were from within the agency concerned. While the statute attempts to reflect private sector practice by giving most appointment power to agency heads, the law still gives a possibility to have initial decisions about recruitment made by an independent selection advisory committee (ISAC) which would be established for the purpose by the Merit and Protection Commissioner. While the ISAC must make a recommendation to the agency head, it is not binding, but if the agency head follows that recommendation, the decision is not reviewable. Appointment is part of a common law contract with employment with the Commonwealth of Australia, the agency head and/or the Ministry of State for Employment and Workplace Relations who represent the employer for the purposes of the relevant legislation, namely the Workplace Relations Act. The usual basis of work is as an ongoing Australian Public Service (APS) employee (section 22(2) of the Public Service Act). However, a public servant may also be engaged on a “non-ongoing” basis for a fixed period of time or for a particular task or for duties that

are irregular or intermittent. Details as to the reasons why persons may be engaged on a non-ongoing status, and the minimum/maximum time periods for such employment, are set out in the Public Service Regulations (Statutory Rules No. 300 of 1999) at Regulation 3.5. For example, the Regulations state that such employment may be justified where an agency has a temporary demand for employees with particular skills on the condition that employees within such agency with those skills are or have been given the opportunity to express interest in performing the relevant duties, and the time frame in such a contingency must not exceed 18 months.

In Botswana, appointment is made by virtue of General Orders issued by the President. The procedures rely on internal promotion within the public service, or direct recruitment by advertisement proposed at a certain level or above. The Public Service (Amendment) Act, No. 14 of 2000, adds a new section 31(f), specifying that nepotism or discriminatory treatment in appointments shall be misconduct, punishable by penalties. The misconduct is described as: appointment or promotion of any person to a post in the public service or sending any person on a course of training on the basis of consanguinity, affinity, amity, amorous relationship, tribe, favouritism, or on any other consideration other than on merit based on fair and open competition. In Brazil, public competition is the general rule for recruitment. There are in this country, as in others studied, constitutional requirements that applicants be of the nationality of the country concerned (for example, section 37 of the Brazilian Constitution of 1988).

In Bulgaria, under the Civil Servants Act of 1999, applicants must submit a written application with any attachments that may be required by order of the Minister of State Administration. Section 10 of the Act sets out a competition procedure whereby the employment body issues a statement regarding the position for which competition is being held, the nominative and additional requirements for occupying the position, the machinery that will be followed in the competition, the required documents, place and deadline for their submission which should not be less than 30 days from the day of the published announcement of the competition, and the name of the official or the commission empowered to receive such documents and record the applicants who present themselves for the competition. Publication of the competition shall be the responsibility of the employing body, in one central or one local daily newspaper, and both applicants admitted to the competition, and those not so admitted, shall be informed in writing by the employing body, in the latter case giving reasons for the non-acceptance of the application. The employing body shall appoint a competition commission staffed with experts and including the participation of a representative of the State Administrative Commission; this subsection of section 10 states “representatives of the trade unions of the civil servants of the respective administration could also participate”. The competition commission shall run the competition in the manner announced, by evaluating the professional and performance qualities of the various applicants, and can rank up to three of them; its decision and ranking are not subject to appeal. Subsection 11 stipulates that the State Administrative Commission shall be the body to give specific instructions for the methodology of holding the competitions.

In Costa Rica, article 192 of the Constitution states that appointment shall be by open examinations with some exceptions, for example, for posts of trust.

In Dominica, as in many other countries studied, senior posts may be filled by direct presidential appointment. It is the Public Service Commission’s Regulations of 1975 which stipulate the details of appointments, promotions, transfers and secondments: Regulation 11 states “where vacancies are not to be filled by the normal process of promotion as laid down in an approved scheme of service or by the results of examinations or scholarships prescribed by any approved scheme, the existence of the vacancies shall, unless the Commission otherwise directs, be notified to the public by advertisement in time

to enable candidates to make application in accordance with the advertisement”. Regulation 17 lays down the procedure for appointments, promotion, transfer and secondments, stating that the procedure shall involve, if the Public Service Commission requires that the post be advertised, the submission by the relevant permanent secretary of the advertisement text to the Public Service Commission for approval and publication. The Commission shall consider the replies to the advertisement in the light of the recommendations made on the application by the relevant permanent secretary. The Commission shall decide whether a selection board shall be constituted to interview candidates, what the composition of the board shall be and the form in which the report of the board shall be submitted to the Commission. The Regulation also provides that the Commission may, if it sees fit, summon any of the candidates for interview. Regulation 19(1) provides that the Commission may cause notice of any vacancy in the public service which the Commission is requested to fill, to be sent to the general secretary of the appropriate representative body of public offices inviting suggestions for the filling of such posts, and may also request that individual to attend and give evidence before it on any matter concerning that vacancy.

The Jordanian Civil Service Regulations of 1994 are an example of several new texts that base recruitment specifically on merit and qualifications. Section 22 of the national Constitution specifies that “every Jordanian shall be entitled to be appointed to public offices, under such conditions as prescribed by laws or regulations. Appointment to any government office or any establishment attached to the Government or to any municipal office, whether such appointment is temporary or permanent, shall be made on the basis of merit and qualifications”. The Jordanian Civil Service Bureau has broad responsibility in the recruitment and selection process: the Director of Recruitment and Selection in that service prepares, organizes and conducts the technical procedures for selection of candidates on the basis of fair and open competition. There is full commitment to equal opportunity of employment and there are quotas established by law for four categories of persons, namely (1) sons and daughters of martyrs; (2) members of poor families receiving regular monthly subsidies from the National Aid Fund; (3) disabled persons whose disability does not prevent them from doing the particular job; and (4) one member of a family with four unemployed family members, being members holding a community college diploma or above. This latter requirement reflects the merit and qualifications requirement of the Constitution. Actual appointment to the Jordanian civil service still rests on nationality and attainment of 18 years of age, physical and mental fitness, lack of criminal convictions and good behaviour and conduct.

Likewise, the Mali Ordinance No. 77/71 CMLN of 26 December 1977 specifies that recruitment shall be carried out in the context of rules set in advance on an impersonal basis, including provisions such as nationality, age and required aptitudes. It reflects its colonial past by echoing the French public service appointment system, by requiring selection through examinations, this time done on an annual basis by the National Directorate for the Civil Service (*Direction nationale de la fonction publique et du personnel*) in the case of fixed posts that are budgeted from the central budget. But this form of selection is not restricted to French-speaking Africa. In Japan, recruitment and promotion in the civil service are conducted on the basis of personal merit, so that the opportunities are equal and open for all citizens and the selection for each appointment should be based upon the results of examination or work performance or other demonstrated abilities. Recruitment to the civil service is highly focused on new graduates from high schools and universities. In accordance with the National Public Service Act, the National Personnel Authority annually conducts three major types of recruitment examinations for new graduates for all ministries and agencies in the Government. Competitive recruitment examinations are usually composed of three or four major types of tests: general knowledge tests, specialized knowledge tests, short essays and interviews.

The weight given to each test is carefully examined, so that candidates who are well-balanced and highly qualified, both in terms of knowledge and personality, are available for recruitment.

Some recruitment provisions in new laws reflect a break from the past history of the civil service: the Latvian Law on the Civil Service of 21 April 1994 states, in section 6 –

The mandatory requirements to apply for a civil service position are:

[...]

(iii) knowledge of Latvian and at least one foreign language;

[...]

(viii) not having been salaried or contracted employees of the KGB of the former USSR or Latvian SSR, the Ministry of Defence of the former USSR, Russian and other foreign security service, military intelligence or counter-intelligence service; agents, residents or members of a conspirative (sic) department of said institutions;

(ix) not being or having been members of the organizations banned by laws of the Republic of Latvia, the decisions of the Supreme Court or court order after outlawing of said organizations;

(x) not being otherwise restricted by law from holding a position of a civil servant.

In France, in an effort to modernize recruitment procedures, the Act on re-absorbing precarious employment and modernizing recruitment in the Civil Service (no. 2001-02 of 3 January 2001) allows professional experience to be counted as equivalent to academic qualifications.

In all countries studied, initial appointment is on a probationary basis, with Sri Lanka, for example, involving a three-year probationary period. In some more recent statutes the period is shorter (Antigua and Barbuda's Civil Service Regulations of 12 December 1992, No. 1 of 1993 – at least six months; Poland's Law on Civil Service of 18 December 1998 – 6-18 months; Zambia's General Orders of 1990 – minimum one year). Likewise, a common feature of these statutes is that the highest posts in the civil service are filled by parliamentary committees based on interviews or by examination of the civil servants' files when they are already in service. Most of these high-level appointments are not subject to review for procedural or substantive reasons.

3. Remuneration

Much ILO research has centred on civil service pay (Chow, Ghellab, Määttä, Robinson and Silvestre). The Joint Committee on the Public Service and its successor Joint Meetings, have also discussed the issue (see, in particular 1995 Joint Meeting Final Report, Conclusions Nos. 14-17 and 1998 Joint Meeting, Conclusions Nos. 11 and 12). This study is not aimed at providing a comprehensive overview of civil service pay systems, much less tracking the actual rates of pay and allowances, but at reflecting on recent trends in the regulatory framework that appear in the main statutes. For reasons of manageability – already noted in the introduction – the study compares legislative provisions applying under the civil service Acts; the numerous details introduced by subsidiary legislation are not described.

Generally, three modes have been employed to determine civil service salaries: legislative, executive and collective bargaining. Under the first, the setting of compensation by the elected members of the legislature, usually on the advice of the Ministry for the Public Service or equivalent department (Ethiopia, Zimbabwe), is less and less used. In some African countries the trend has been for the government decision to be subject to advice from a body on which there is trade union involvement (Central African Republic's Superior Council of the Public Service, Benin's Inter-Ministerial Consultative Committee, Tunisia's Superior Council for the Public Services). The third option, as is described below in the section on freedom of association and collective bargaining, is on the increase, despite the fact that Conventions Nos. 151 and 154 have not been widely ratified.

Countries with a British heritage appear to favour the second mode: determination by the executive body upon recommendations from ad hoc commissions usually established by statute. Executive determination originates either with special commissions appointed periodically by the government to examine civil service pay or with the Cabinet or Council of Ministers itself, after consulting the budgetary authorities and the central personnel agency (Bangladesh, India, Pakistan and Sri Lanka; Gambia, Sierra Leone and Sudan). The commissions' remit may go beyond salary revisions to look at grading and other issues (Kenya). The resulting general salary revisions are implemented through executive orders or regulations, and the moral authority of the persons appointed to serve on the ad hoc revisions ensure that the recommendations, while not binding, are followed. The statutes usually allow some form of input from staff representatives, even to the extent of requiring staff union or association involvement in the drafting of the terms of reference of the revision commissions.

What the current study has been able to note is the general trend towards performance-related pay (Australia, Mali, Latvia (performance bonus)). Clearly this is part of the more general movement towards more flexible pay structures in the civil service. Some national laws permitted a type of performance-related incentive early on, in the form of productivity bonus. But the more recent interest in performance-related pay appears to stem from its potential usefulness as a motivational tool in the context of civil service reform and as a means of retaining high performance staff. A further factor is market pressure to change the pay schemes. Many studies have documented the 1980s-1990s drop in rates of pay, particularly falling behind private sector rates for senior civil servants. In Costa Rica and Ecuador, remuneration issues (both falling value of the "wage basket" and non-payment of statutorily mandated semestral increases) have overshadowed civil service reforms.

A particular word about allowances, since they continue to be popular in the newly adopted statutes. They are generally classed into three types, and can be cash or non-cash benefits. Reimbursement allowances aim to refund expenses incurred in the performance of official duties, and most of the laws examined include transport vouchers or cash travel/subsistence allowance in this category. Secondly, standard allowances are paid to all civil servants, or to all members of certain grades; festival allowances and annual bonuses are often the example here. Some systems include the cost-of-living allowance (COLA) here; others see it as part of the basic remuneration. In Brazil, the Constitution provides for annual revisions so as to maintain purchasing power. Housing allowance is a common standard benefit (Kenya, Mali). Thirdly, contingency allowances are dependent on meeting some special criteria, such as marriage, death or parenthood, a speed allowance for typists or the use of a personal car and driver for official duties. In the Latin American and French-based civil services a flat-rate family allowance is granted (Brazil, Mali). Higher grades often receive entertainment or representation allowances (Benin, Kenya, Nigeria, Pakistan, Sierra Leone, Somalia and Sudan). Geographical/location weightings and hardship allowances fall into this category (Costa Rica).

Some recently reformed civil service statutes lean towards paralleling the private sector machinery for the setting of remuneration. Australia is a prime example, where the 1999 Public Service Act formally stipulates that its provisions are subject to the Workplace Relations Act of 1996 which in turn formally regulates collective bargaining. Under the 1996 Act, workers' representatives and employers can bargain to arrive at certified agreements, which should be deposited with the relevant government department for verification of conformity with the rules, or workers may directly negotiate what are called "workplace agreements" at the individual level, which should be certified by the Industrial Relations Commission. There is, however, in the new Australian system the option of ministerial setting of remuneration under section 24 of the 1999 Act but this has apparently been used sparingly. The Australian situation is therefore one of relatively full individual responsibility at the agency level, although decisions and bargaining on the level of salary and movement within salary ranges should be guided by certain principles such as higher productivity and performance and the fact that such increases must be funded from within that particular agency's appropriations.

Other recent texts lay down the remuneration framework in general terms. The Botswana Public Service Act of 1998 is silent as to the details of salary, although section 38 (entitled "Miscellaneous") permits the President to make regulations for the better carrying out of the purposes and provisions of the Act. The Dominican Public Service Act, section 39(1), permits the minister, after consultation with the chief personnel officer and the representative body, to issue regulations for all matters required under the Act or that he considers necessary or convenient to give effect to the Act, and specifies in particular: "(b) for prescribing the terms and conditions of employment in the public service; (...) (d) for prescribing the qualification and remuneration of public officers". It should be noted that the ILO's Committee of Experts has been following, in the context of Dominica's application of Convention No. 100, the rationalization of classification/pay scales by job evaluation in the civil service. This was carried out by the Personnel Services Branch of the Establishment Division in the Office of the Prime Minister. A new Job Evaluation Manual was issued using a gender-neutral points system (covering knowledge, experience, job complexity, guidance needed, effect of errors, confidential data, contact with others, supervision of others mental demand, working conditions and hazards). The Public Service Association was involved in carrying out a new job evaluation exercise recently.

These above-mentioned texts should be compared to the older (1985) text for Sri Lanka; it contains an extremely detailed set of rules in its Chapter VII on salaries. It specifies that the determination of salaries is a function shared by the Director of Establishments and the Director of Budget, General Treasury, who will act in consultation. The Director of Establishments will assign salary scales in the public service to particular posts or grades, and the Ministry of Finance is to be responsible for the formulation of such scales and the general salary structure as a whole. The chapter makes arrangements for the computation of salary for part of a year or month, paid monthly, and details a number of specific examples where public servants are promoted, or reappointed having left the service and rejoined, and for increments, for example when a civil servant takes leave without pay for a period of study leave and rejoins thereafter.

Several statutes envisage the setting of remuneration through a centralized body: in Botswana, this is the Salary Review Commission; in Ecuador, it is the National Remuneration Council (*Consejo Nacional de Remuneraciones*). In the latter case, a specific statute – Act on remuneration of public servants, Supreme Decree No. 1338 of 3 January 1975 – sets out the details (what constitutes the basic salary, additional benefits; listing 21 functional levels with their corresponding scales).

The Mali statute contains a certain amount of detail concerning the remuneration package itself, namely it is composed of salary plus family benefits and as needed various allowances and grants. It provides for the amounts published as a table attached to the *Statut général*, and productivity bonuses and similar incremental incentives can be set by orders.

The Bulgarian Civil Service Act of 1999 is another example of relative detail in the area of remuneration. Section 32 of the Act states that the civil servant shall have the right to a basic salary fixed according to his or her position and rank, and subsection 2 stipulates that additional payments to the salary shall include: length of service; performing duties on holidays and rest days; compensation for time being available out of the workplace and out of working hours; for possessing a scientific degree; for performing additional duties assigned by the employer body; and in other cases set by a law. Whereas most of the statutes examined provide for remuneration to be paid at monthly intervals, the Bulgarian situation is fortnightly payments.

The Costa Rican Regulation on Collective Bargaining for Public Servants (No. 162 of 9 October 1992) refers to a negotiation commission (*Comisión Nacional de Homologación y Ratificación de la Negociación Colectiva. en el Sector Público*), which is the forum for negotiations on public service salary increases. As of 1 January 2000, certain posts were to receive a total salary indexed to the consumer price index and no other emoluments. One specific benefit is the 13th-month salary paid each December. There appears to be a further loading for holders of masters degrees, as well as loading for carrying out service in certain geographical zones.

4. Other terms and conditions of employment

Most of the statutes, whether newly formulated or those in place for the last two decades, include specific provisions on leave, mobility, maternity benefits and transfer.

Regarding leave, in Australia the Long Service Leave (Commonwealth Employees) Act of 1976, in sections 16 and 18, provides that public servants are entitled to such leave after ten years' continuous paid employment. Other types of discretionary leave in the Australian context, usually without pay, may be negotiated in certified agreements or in the individual's workplace contract under the Workplace Relations Act. There is a mobility policy set out in supplementary regulations. Maternity is covered by another specific statute dating back to 1973 (the Maternity Leave (Commonwealth Employees) Act).

In Botswana it is the regulations that set out a 7¾hour working week, and the provision of 12 weeks' maternity leave on full pay for female civil servants, with the *proviso* that this applies only for up to three confinements. The Brazilian Constitution again plays a major role in setting out the working day (eight hours) and working week (44 hours), as well as 120 days' maternity leave generally for citizens. The 1990 Act on the Civil Service also includes time off for elected service. The Constitution provides for permanent tenure after three years' service (article 41) and the 1990 law sets out certain details for such tenure after five years' service.

The Bulgarian Civil Servants Act, in section 34, stipulates that there should be a right to regular fully paid leave each year; likewise the right to additional leave, to service-linked full pay leave, to leave for performing social duties, to leave linked to absence under the social insurance scheme, and to leave without pay are also provided for. Section 40 of that law states that to perform his or her service duties, the civil servant shall have the right to a uniform (clothing) under the conditions made by order of the Council of Ministers.

Section 49 stipulates an eight-hour working day and a 40-hour week within a five-day working week. Section 50 lays down the details concerning overtime: there shall be a right to an additional annual leave of up to 12 days for performing duties overtime. Other provisions concerning working time appear in section 52 (breaks during the working day, including a lunch break of not less than 30 minutes; and rest (continuous rest between days which cannot be less than 12 hours; the right to weekly rest of two consecutive days, being in principle Saturday and Sunday)). Section 56 specifies that a civil servant who has been in service for at least eight months has the right to fully paid leave of 30 working days and, as he/she moves up in rank and length of service, an additional paid leave amounting to 20 working days. Subsection 3 of that section provides that the Council of Ministers shall determine the exact number of days for such additional leave per position and rank.

The Jordanian Civil Service Regulations (Section 82A) prescribe 30 days annual leave (higher category post) or 20 days (for lower graded posts). Other types of leave are: academic, maternity, emergency, pilgrimage, sick and special unpaid leave. The Mali ordinance stipulates various types of leave, such as annual, sick, maternity, training, family and special leave. The eight-hour day/40-hour week is common in other recent texts (Japan, Latvia, Poland), although some European jurisdictions have lowered the weekly working hours (Germany, for example, has 38.5 at the federal level). The most heralded text in this connection is the French Decree No. 2000-815 of 25 August 2000 reducing to 35 hours the working time of civil servants, and permitting an annual computation of working hours to a maximum of 1600.

5. Training

The ILO's Joint Meeting on Human Resource Development in the Public Service, in the Context of Structure Adjustment and Transition, in 1998, paid particular attention to the relationship between training and human resources development. Its Conclusions nos. 8 and 9 recall the link with the Paid Educational Leave Convention, 1974 (No. 140) and highlight the need, during restructuring, to gear training to employability of staff through a multi-skilling approach. This modern training, going beyond the usual job-related courses is exemplified in Conclusion 9: "Training must go beyond simple job qualification and should also seek to reinforce important public service values, such as high ethical standards, equal opportunity, non-discrimination, transparency, accountability and responsibility. It should also promote attitudes that will support an environment free from corruption". In this area, the statutes tend to fall into two trends: the first group of statutes which follow this modern approach to human resource development (often reflected in private sector labour codes as well), in particular the Australian situation, and secondly those that follow a tradition that was built up in the 1950s and 1960s whereby formal job-related and formalized training of civil servants was the norm. In the first group of statutes very little is specifically stated about training for civil servants apart from the possibility of taking special leave. The Botswana statute permits one year's leave on full pay and leave thereafter at half pay as long as the study leave is taken at an approved institution and applies only to a certain level of civil servant. In Brazil, it appears that government schools offer courses for promotional career advancement in the context of constitutional article 39(2). Article 37(7) also foresees productivity and quality improvement programmes financed through other laws. The Bulgarian Act gives a clear statement as to the right for professional qualification: section 35 reads:

1. The employer body shall provide conditions for the civil servant to improve his or her professional qualification and retraining.

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2. When the necessities of the service so demand, the expenses for improvement of the professional qualification and retraining of the civil servant shall be borne by the respective administration.
 3. An Institute for Public Administration and European Integration having the status of an executive agency under the Minister of State Administration shall be created to undertake the issue of professional qualification and retraining of the civil servants.

Likewise in Costa Rica, there is a National Commission for professionalization and training of state civil servants (*Comisión nacional de capitalización y formación del personal de la administración pública*). Created under Act No. 6362 of 3 September 1979, this Commission has been strengthened by the creation of a further Commission for programming of capacity in public law for state civil servants, set up by Decree No. 14177-J-PLAN of 27 December 1982. In a similar vein, in Ecuador, laws have been adopted to modernize capacity in the public service: the Act for modernizing the State (*Ley de Modernización del Estado*), No. 50 of 31 December 1993, gives the opportunity for improvement through training within the Office of the Civil Service and Institutional Development (*Oficina de Servicio Civil y Desarrollo Institucional – OSCIDI*).

The Dominican Public Service Act, 1991, creates an Establishment, Personnel and Training Department under section 17. That department is given numerous functions, including ensuring that efficiency is maintained in the public service and that there is an opportunity for advancement on the basis of recognition of merit, ability and integrity. Under the Dominican Public Service Commission Regulations, Regulation 15 outlines the procedure for making appointments where it is desired to select an officer for a scholarship to attend a special course of training designed to fit that officer for a higher post or which may enhance the qualifications for immediate promotion. In addition, Regulation 12(2)(d) states that among the reasons to be taken into account by the Public Service Commission in assessing an officer's suitability for promotion, account shall be taken of any special course of training undertaken by that public officer (whether at the expense of government or otherwise); this appears to imply that government-paid training related to job requirements is also available in Dominica.

Both Jordan and Sri Lanka are examples falling into the second category mentioned above, with the former having a formal Institute of Public Administration (JIPA), and the latter a formal Academy of Administrative Studies (AAS) as well as the Sri Lankan Institute of Development Administration (established by Act No. 9 of 1982) and the Public Service Training Institute (PSTI) established in 1991. The JIPA conducts a wide variety of training courses, including top management courses considered as a prerequisite for promoting civil servants into the highest category; middle-management courses; general training courses; specially tailored courses to meet departmental training needs; and short seminars and symposia on specific subjects for high-ranking officials. Some public servants responsible for vocational and technical jobs may receive vocational training through the Vocational Training Corporation which also provides services to the private sector. There is a special department within the Civil Service Bureau responsible for scholarships and training courses abroad. The Sri Lanka statute likewise contains provisions on scholarships for selected overseas training and all ministries have a management development and training unit for specialized in-house development training. The training provisions were extended in the 1980s to permit a no-pay leave period (for example, for specialized civil servants, like engineers, to undertake a period of overseas employment) of five years in two spells, with the right to accumulate increments during the leave of absence.

The OECD, in the context of the SIGMA programme (Support for Improvement in Governments and Management in Central and Eastern European Countries – SIGMA-CEEC), has prepared a paper entitled “Public service training systems in OECD countries”. While restricted to examples from OECD countries, it gives a useful description of the evolution of civil service training from the 1960s approach where governments decided to invest in in-service training, to the 1970s and 1980s when comprehensive administrative reforms gave rise to more ambitious training programmes in order to meet the new philosophy of serving the public better. The study makes the point that another wave of training philosophy, namely management training, may well be transforming approaches towards those of private sector management, depending on the country. For example, the United Kingdom seems to have taken the lead in Europe in introducing private sector values in the public service; although it lacks general legislation to regulate in-service training, such training has traditionally played an important role in the British administration. Other countries, such as Austria, France and Germany, have been reluctant to change the public service value system while at the same time reforming the management culture to emphasize flexibility, performance and linking career development to performance and training. Regarding the legislative framework, the study notes that in most countries in-service training is regulated either by the civil service law or its regulations.

Some countries, such as Spain, Italy and France, have, in addition to legal provisions, collective agreements which regulate in detail such in-service civil servant training. The French legislation obliges the Government to put into place an in-service training policy and recognizes the right of the public servant to such training. This legal framework is supplemented by an “accord-cadre” of 29 June 1989 (renewed 22 February 1996) which regulates further details for this training: for example, five to six days per public servant are permitted for training during the time that the agreement is valid (three years). For a number of OECD the average number of training days per civil servant in fact exceeds that agreed number of days. In Italy, the legislation permits the public servant to take studies leading to a state diploma and permits up to 150 hours per year paid educational leave for every civil servant pursuing such studies. In Germany, special regulations exist regarding in-service training for public servants working in the inland revenue and the tax and excise administration, labour administration and social security departments; above a certain level, public servants are obliged to undergo a two-year training cycle after recruitment; there is also a six to eight-week training cycle for new entrants in the general administration. For a number of OECD countries, the development of training policies is in principle assigned to the government bodies in charge of public service and personnel policies. These may be the ministries in charge of the public service and administrative reform, such as in France and Spain, or as in Germany and the Netherlands, the ministries of the interior. In the United Kingdom, personnel policy, in particular recruitment, career development and training, is assigned to the Civil Service Commission. Regarding the actual training institutions, most countries have domestic institutions providing long-term initial training which might take place before or after recruitment, in the form of university courses (United States and Canada) or staff colleges (Germany). In-service training for adaptation and promotion in the form of short courses for up to about six weeks is generally provided by other training institutions: the Civil Service College in the United Kingdom and the Federal Academy in Germany. The French National School of Public Administration (*Ecole nationale de l'administration* – ENA) plays a role both for training for initial recruitment and for in-service and further training admittedly restricted to the top civil service layers. Induction courses and orientation are usually offered within the first two years of employment in the administration. These courses tend to be four to six weeks long and are usually split up into one-week segments. They provide an overview of topics such as working methods, budgetary regulations, public law and civil service law. Where the statutes require the civil servant to keep the qualification for the job up to date, some

countries permit special leave for training. In France, for example, civil servants may take up to three years of special leave (one of which is on full pay) to pursue further education. Depending on the country, this special leave may be open in that it is not directly linked to post in functions currently held by the civil servant; for example, the special leave could be for language studies or job-related university courses.

In Bulgaria, by Decree No. 82/2000 of the Council of Ministers, a new civil servants' training machinery was created: the Institute for Public Administration and European Administration, while the main functions could be broadly described as:

- to study training needs in accordance with the trends of administrative reform and European integration;
- to develop programmes in training materials for short and long-term training courses;
- to organize special postgraduate studies for civil servants in Bulgaria and abroad;
- to organize competitive tenders for basic training of civil servants to be provided by independent institutions and colleges;
- to train trainers for all programmes;
- to organize the training of on-the-job instructors; and
- to offer short courses and seminars to senior officials on current issues of administrative reform and European integration.

Certain training responsibilities continue within the line ministries. More detailed information on the training of civil servants in practice is contained in the study of Bulgaria in SIGMA Papers: No. 12.

Some other recent statutes contain innovative ideas: Antigua and Barbuda's 1993 Civil Service Regulations oblige officers to train junior officers wherever possible; Latvia's 1994 Act permits 20 calendar days' study leave with pay to prepare and sit graduate thesis examinations, and covers reimbursement of tuition fees; the Polish 1998 Act requires an Annual Central Training Plan, which can cooperate with the National School of Public Administration, as well as individual professional development plans, and requires budgets to cover the costs of such training; Zambia's 1990 text provides special leave on full pay to sit private exams directly connected to the civil servant's career.

6. Disciplinary procedures

As with the case for recruitment, most of the statutes examined contain detailed provisions in the area of disciplinary measures as a consequence of wrongdoing. This is not surprising for those countries that have maintained the classic legal status of civil servants, in particular as regards tenure – in such jurisdictions, complex procedures for hearing and adjudicating complaints ensure administrative justice where other means of conflict resolution (such as the rights to join a union for protection of employment rights or to take industrial action) are denied. Such detail is, however, interesting to find in those statutes that have aligned the legal status of civil servants to that pertaining in the private sector. As an overall trend, it can be noted that a two-tier system of hearing the complaint is favoured (initial examination by direct superior or agency head, then referral to a neutral – sometimes joint – specialized committee or board). The guarantees of procedural fairness (proceedings in writing, notice on parties, time periods, legal or union representation,

judicial review of errors of law) vary between jurisdictions. Punishments run from warnings to dismissal.

Some of the new statutes (Dominica, Australia) provide for disputes to be heard by a standing body. The Dominican Public Service Act creates, under section 31, a Public Service Board of Arbitration, comprised of equal numbers of representatives of personnel and management, which shall empanel an arbitration tribunal for any dispute referred to it. These tribunals set their proceedings within the discretion of the chairperson, after consultation with all members of the tribunal, and are not bound to act in any formal manner but in such manner as is just. Under section 34(4), the parties to a dispute may appear before an arbitration tribunal personally or be represented by any person. Under section 35, an arbitration tribunal must hear any dispute referred to it within a reasonable time and deliver a written decision as soon as possible, a decision which is final and binding on the parties, and appealable only on points of law. Under section 37(1), when any party has failed to comply with a tribunal decision, any affected party may apply to the High Court for the grant of an appropriate order to enforce compliance of the tribunal decision. The regulations made under the Dominican Act go into further detail. Regulation 24 of the Public Service Regulations defines misconduct to include: failure to perform in a proper manner any duty imposed on the public officer; contravention of any of the provisions of the Regulations; contravention of any written law relating to the particular service of which that public officer is a member; or behaviour prejudicial to the efficient conduct of the particular service to which that public officer belongs, or which tends to bring that service into disrepute. According to Regulation 34, the following punishments may be ordered as a result of proceedings: dismissal; reduction in rank; reduction in salary; deferment of increment; stoppage of increment; fine not exceeding seven days' pay; reprimand; and summary dismissal for absence from the State without permission. Section 35 of the Regulations further provides that, notwithstanding the possible punishments listed above, the Public Service Commission may, if of the opinion that the public officer does not deserve to be dismissed but that the proceedings disclose grounds for requiring her or him to retire in the public interest, require that public officer to do so.

In Sri Lanka, the Establishments Code, Chapter XXVIII, makes detailed provisions for representations from public offices. It states that any officer may address an application of appeal to any duly constituted authority on any matter directly affecting his or her personal interests. The superior officer is bound to forward every such application or appeal through the head of the applicant's department to the Public Service Commission. Certain receivability provisions apply, namely that the representation must be in writing, must be not older than six months in date following the order which is being appealed against, that it does not directly repeat an earlier, failed, appeal made to the same or higher authority, or where the relief asked for is from the judgement of a civil action or the decision of a civil court in which the Government or public officer was not a party or when the case is sub judice. The procedure is as follows: a preliminary inquiry by the reporting officer, charges laid, a right of reply ensured, a formal inquiry or summary hearing, with a decision handed down including a punishment, and thereafter an appeal as permitted under article 126 of the Constitution.

The Mali ordinance of 1977 likewise devotes a specific chapter to discipline. Section 73 sets out the general principle: any non-fulfilment by public officials of their duties, in the framework or outside the exercise of their functions, exposes them to a disciplinary sanction, notwithstanding any punishments foreseen under the criminal law. Section 74 lists disciplinary sanctions as: warning, blame, lowering of a step, temporary exclusion, demotion, termination without loss of pension rights and termination with loss of pension rights. Section 77 stipulates that any authority having the responsibility for disciplinary proceedings is obliged to immediately commence such proceedings once it is

notified of the presumed offence. Within a time delay of five years, disciplinary proceedings must be concluded; this time limit is extended to ten years in the case of offences which constitute a crime under the criminal law. Section 80 provides that the punishments of warning and blame may only be inflicted after notifying the public official of the right to give an explanation within a certain time and when that time limit has expired, the disciplinary proceeding may go ahead. The most serious disciplinary sanctions listed as “second degree” punishments are to be handed down after hearing before a disciplinary committee. Certain subsidiary decrees, for example, No. 182/PG-RM of 3 July 1978 and No. 4/PG-RM of 3 January 1979, give further details regarding disciplinary procedures. In Mali, appeals may also be made questioning the *ultra vires* of administrative actions to the administrative section of the Supreme Court. The official is entitled to receive a copy of the written charges and defend herself or himself, in particular to be represented before the disciplinary committee. Although Mali has adopted a far-reaching ombudsman law to highlight the accountability to the public of state services and administrations (*Loi* No. 97-022 of 14 March 1997), civil servants are expressly forbidden to bring their complaints to this independent mediator (section 10).

The 1998 Burkina Faso Act (No. 13/98/AN) demonstrates how the different legal status of persons working for the State leads to quite different rights at work:

Disciplinary regime	
For “fonctionnaires” (civil servants)	For “agents contractuels” de la fonction publique (public employees)
S.138	S.226
<ul style="list-style-type: none"> ■ warning ■ reprimand ■ temporary suspension from functions for a maximum of 15 days ■ temporary suspension from functions for 16-30 days ■ lowering in step of grade (<i>echelon</i>) ■ constructive retirement ■ removal from post (<i>révocation</i>) without loss of pension rights 	<ul style="list-style-type: none"> ■ warning ■ reprimand ■ standing down for a maximum of 15 days ■ dismissal

In Jordan, sections 43 and 44 of the Civil Service Regulations of 1994 set up the procedures for disciplinary proceedings and sections 132-140 set out the penalties, which are similar to those listed above. The public servant is to be heard before a disciplinary council. Challenges and reviews to the application of all laws can be channelled to the Administration Control and Inspection Bureau, established in 1994.

In the Latin American jurisdictions, a similar system of warning and administrative monetary sanction, temporary suspension with or without rights and, finally, dismissal apply (Ecuador, Costa Rica). Under the Ecuadorian 1975 Act on the civil service and administrative career, section 62, the proceedings are laid down and appeal is available to the courts. Under the 1978 Costa Rican general law on the public administration, section 214 and following, the procedures are laid down.

The Bulgarian Civil Service Act, sections 89-100, explains the disciplinary proceedings in detail. Section 89 states that any civil servant who has guiltily breached his or her service obligations shall be sanctioned with punishment as provided for in this Act, and in subsection 2 lists disciplinary breaches as: non-performance of service duties, delay in performing the service duties, non-respect of the scope of the service powers, breach of

obligations towards the citizens as listed in section 20 of the Act, and a rude, bad-mannered and disrespectful attitude towards citizens. Section 90 lists disciplinary sanctions to be: remark, reproach, postponing promotion to a higher rank for one year, reduction in rank for a period of six months until one year has passed, and dismissal. It stipulates that only one disciplinary sanction may be imposed for one and the same disciplinary offence. Section 92 stipulates that the disciplinary punishment shall be imposed by the employing agency and that the less serious punishments of remark and reproach may be imposed by the direct chief of the civil servant involved. Proceedings are outlined in section 93: before imposing a disciplinary sanction, the sanctioning body is obliged to hear the civil servant, give him or her time for written explanations, as well as time to gather and access the evidence.

In Botswana, the power to discipline public officers of the superior grade is exercisable by the Permanent Secretary to the President, and the power to discipline other public officers is, under section 6 of the Public Service Act of 1998, vested in the Director of Public Service Management (who is appointed by the President). The power to discipline holders of certain specific higher offices (ambassadors, high commissioners, the secretary of the cabinet, attorney-general and permanent secretaries and commissioner of police) is vested in the President. The General Orders prescribe that every public officer against whom disciplinary procedures are being taken shall be informed in writing and in reasonable detail of the facts alleged against him. The public officer shall be accorded a reasonable opportunity to make representations in defence. In the same spirit as the General Orders, section 11 of the Public Service Regulations provides that, where a Permanent Secretary becomes aware of allegations of misconduct against a public officer, that person shall, if of the view that disciplinary proceedings may be necessary, instruct an officer of senior rank other than the accused to hold preliminary investigations into the allegations. If, on the basis of the preliminary investigations, the Permanent Secretary is of the opinion that there is a *prima facie* case against the public officer, a list of charges shall be prepared and sent to the officer concerned within 14 days so that the officer may reply to the charges. If found guilty, the officer may receive punishment ranging from a reprimand to dismissal. At a lower level, with regard to allegations of inefficiency, the Public Service Regulations provide that, where the Permanent Secretary is of the opinion that an officer is unable to carry out duties efficiently, the Permanent Secretary shall submit a report to the “responsible officer” who, if convinced about the alleged inefficiency, shall provide the public officer with a written statement of the grounds alleging inefficiency. The responsible officer may refer the matter to an independent committee of inquiry which shall examine the allegations and inform the responsible officer whether or not, in its opinion, they are proved. If the committee of inquiry does find the allegations proved, the officer may be dismissed. Other forms of punishment include compulsory retirement, reduction in rank, reduction in salary, warning and reprimand. Appeal exists under Regulation 25(3) to the Public Service Commission. Under section 111(2) of the Constitution of Botswana, the decision of the Public Service Commission is final.

In Australia, the public service values enunciated under section 10 of the 1999 Public Service Act, as well as the Code of Conduct enunciated under section 13 of that Act, provide a set of principles to guide employment in the public service. Failure to comply with the Code of Conduct is redressable by disciplinary action by the head of the relevant agency by virtue of section 15(1) of the Act; disciplinary sanctions may range from a reprimand to termination of employment. In general, no action may be taken without a finding that a public servant has breached the Code of Conduct, and such a finding must be made according to procedures to be established within each individual agency (an agency head may establish different procedures for different categories of employees by virtue of section 15(3)(c) of the Act). Under section 28 of the Act and the regulations, an agency

head may also suspend a public servant from duty if there are reasonable grounds to believe that the employee has breached the Code of Conduct and the suspension would be in the public interest (Regulation 3.10(1)). An interesting aspect of the new Australian statute is the protection for “whistle-blowers”. To boost accountability within the framework of public service values and the Code of Conduct, the Act, under section 33, includes specific protection for such persons who draw attention to suspected wrongdoing. They are protected from victimization or discrimination on the ground of reporting a breach of the Code of Conduct to the Public Service Commissioner, the Merit Protection Commission or to an agency head. Although section 33(1) enables a public servant to seek review of any agency action that relates to their employment, many such decisions are immune from review: decisions to terminate employment and decisions to engage an employee may not be reviewed. Likewise, under Regulation 5.23(2), an action cannot be reviewed if the employee has sought resolution via a court or tribunal that has jurisdiction to deal with the matter. According to Regulation 5.2(4), a public servant should generally seek review first by the relevant agency head, thereafter to the Merit Protection Commissioner who may hear the application directly or in a three-person committee (Regulation 5.28(2)), whereafter the Commissioner reports back to the agency head with a recommendation. The employee may seek a secondary review by the Merit Protection Commissioner (Regulation 5.29) following the primary review. It should be noted that recommendations made by the Merit Protection Commissioner, on a primary or secondary review, do not bind the agency head, who rests free to confirm or vary the action reviewed or substitute another measure (Regulation 5.32(2)).

The Australian example highlights another new trend: the use of codes of conduct. This is in line with a Conclusion (No. 13) of the 1998 Joint Meeting on Human Resource Development in the Public Service in the Context of Structural Adjustment and Transition. Germany has had the Federal Disciplinary Code for some time; the United Kingdom has no formal laws on discipline but a detailed code covering ethics and whistle-blowing. In response to the Irish Strategic Management Initiative for delivering better government, the Office of the Civil Service and Local Appointments Commissioners has issued a strategy statement setting out ethical and professional standards and calling for a code of good practice in recruitment and selection.

7. Termination⁶

The statutes examined reveal two distinct approaches regarding termination: one approach is to permit termination at any time as long as written notice is given (Australia, Sri Lanka); the other approach stresses due process based on notification of allegations, investigations, possible appeals and a final decision by an independent body.

In Australia, under the Public Service Act, 1999, section 29, termination can take place at any time in writing (subsection 1) or, for an ongoing employee, with stated grounds (subsection 3) without review except under the provisions of the Workplace

⁶ The ILO has undertaken detailed research on the subject of private sector terminations: see *Termination of Employment Digest*, Geneva, 2000, page 2 of which states: “In the vast majority of both common law and civil law legal systems, the legal position of public employees with regard to security of employment and termination has been regulated quite differently than that of private sector employees. While this seems to be a modern trend to narrow the distinction between public and private sector employees in many countries, the administrative law aspects of dismissal of public servants are beyond the scope of this Digest, and these employees are therefore not included.”

Relations Act. As regards collective dismissals, section 15(3) of the Act and Regulation 3.11 permit them in the context of certified agreements or individual workplace agreements. The process is: for collective dismissals of less than 15 employees, the employer is required to notify the Commonwealth Employment Agency; the Industrial Relations Commission is empowered to make orders in certain circumstances concerning severance pay and consultation requirements. The policy parameters issued in April 2000 under the principal Act make it clear that both certified agreements and individual workplace agreements are to:

... provide for access to compulsory redeployment, reduction and retrenchment and ensure that:

- any revision to redundancy provisions, including in an Australian workplace agreement, is not an enhancement of the existing redundancy obligations applying to an agency; and
- any separate financial incentives to resolve major organizational change are to be cost neutral to the agency in the context of that change and subject to the approval of the agency minister, in consultation with the Public Service Minister.

In Botswana, it is the General Orders (No. 52.1.11 of 1996) that permit termination if the public officer is found guilty of an offence. Under the Public Service Act of 1998, section 14, if it appears to the Permanent Secretary that the appointment of a public officer serving on contract should be terminated (otherwise than by dismissal) in accordance with the provisions of the contract, the Permanent Secretary shall advise the officer in writing that the termination is under consideration and inform that officer of the right to make representations within 21 days. Under subsection 2 of that provision, the Permanent Secretary shall forward representations, if any, together with his own recommendations, to the “responsible officer” who shall decide whether or not the contract should be terminated. Regarding termination on restructuring, section 15(7) states that “on the abolition of any public office, a public officer holding the same shall, unless transferred by the appropriate authority to some other public office, be deemed to have retired from the public service”.

In Latin America Constitutions often contain provisions that relate to termination. In Brazil, the Constitution is particularly detailed on this: articles 41(1) and 169(4), respectively, state the grounds on which a tenured or non-tenured civil servant may be dismissed:

- Article 41(1): By virtue of a judicial decision that has become final and unappealable; through an administrative proceeding in which they have been assured a full defence; or through a procedure of periodic evaluation of performance, in the form of a complementary law, assuring a full defence.
- Article 169(4): If the measures adopted on the basis of the prior paragraph [State budget appropriations] are insufficient to assure compliance with the terminations of the complementary law referred to in this article, non-tenured civil servants may lose their office, so long as the motivating normative act of each one of the branches specifies the functional activity or administrative agency or unit that is the object of the reduction in personnel.
- (5): A civil servant who loses office in accordance with the prior paragraph shall have a right to just compensation corresponding to one month’s remuneration for each year of service.

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- (6): Offices that are eliminated in accordance with the prior paragraphs shall be considered extinct. Creation of offices, jobs opposition with equal or similar powers is prohibited for a period of four years.

The legal position of tenured workers in Brazil is so strong that when the post disappears there can be no dismissal. According to section 41(3), “If his [sic] position is abolished or declared unnecessary, a tenured civil servant shall be placed on leave, with remuneration proportional to time of service, until adequately placed in another position.”

In Bulgaria, the Civil Servants Act of 1999, in Chapter VI, covers termination of the legal relationship. Section 103(1) enumerates the general grounds for termination as follows:

- upon mutual written consent by the parties;
- in case the termination of the legal relationship is acknowledged to be illegal or the civil servant is reinstated by the employment body or by the court and the civil servant does not resume that offered position;
- when the civil servant is not able to perform the assigned job because of a disease which has led to lasting disability or health problems as judged on the conclusions of an expert labour medical commission;
- because of incompatibility with certain basic conditions for employment outlined elsewhere in the Act (section 7: nationality, legal age, clear prison record, etc.);
- when the civil servant is sentenced to a prison term; and
- upon death of the civil servant.

Section 106 details the circumstances under which the employment body may terminate the employment relationship. It stipulates that there should be a one-month warning period in cases involving the closing down of the agency/department where the civil servant has been employed, when the civil service job itself is abolished, for reasons of obvious incapability of the civil servant to perform his service obligations, when a job held by the civil servant is required to be vacated for the purposes of reinstating an illegally dismissed civil servant and when a civil servant is granted the right of full pension for length of service and old age. Subsection 2 stipulates that where the termination is linked to an agency being closed down or a civil service job being abolished, the civil servant is entitled to compensation for a maximum period of two months; longer periods of compensation may be accorded by act of the Council of Ministers. Section 107 of the Act stipulates that the employment body may terminate the legal relationship without notice when the civil servant is subject to disciplinary dismissal, or refuses certain duty obligations. Section 108 of the Act states that the legal relationship shall be terminated by the employment body through an administrative order, issued in writing and stating the legal grounds for the termination, the compensation due and the civil service rank that had been acquired by the dismissed civil servant.

In Costa Rica, article 192 of the Constitution provides that termination may only take place in the interest of better organization of the public administration, and section 104 of the General Act on the Public Service and section 47 of the Statute on Civil Service (*Estatuto de Servicio Civil*) likewise make that determination.

In Dominica, it is also the Constitution (article 85(1)) that states that the power to terminate the employment relationship lies in the Public Service Commission. Section 12

of the Public Service Act of 1991 lists the modes by which a public officer may leave the public service: on dismissal or removal in consequence of disciplinary proceedings; on compulsory retirement; on voluntary retirement; on retirement for medical reasons; on resignation after having given the prescribed notice; on the expiry or other termination of an appointment for a specified period; on the abolition of the office; for public officers on probation, on the termination of appointment; for public officers holding non-pensionable office, on the termination of employment; or on retirement in the public interest. Public Service Regulation 36 outlines the details of proceedings for dismissal based on the ground of misconduct: charges must be provided; the accused officer must reply in writing; the Permanent Secretary's comments are forwarded to the Public Service Commission's secretary; the Public Service Commission may appoint a committee to inquire into the matter; the public officer may defend himself or be represented by another public officer, legal practitioner or staff association or any other person of his choice; the committee's report into the matter shall be forwarded to the secretary of the Public Service Commission, which shall decide the matter. As regard the procedure for termination where posts are abolished in the process of structural or operational changes, section 9 of the Act provides that, before an order is to be made regarding the deletion of a post, the Establishment, Personnel and Training Department shall consult the public officer holding the office in order to treat with that officer or his representative body with a view to agreeing to a suitable alternative office to which the individual could be appointed or, subject to the powers of removal vested in the Public Service Commission, to make provision for payment of compensation to the officer.

In Ecuador, terminations can occur only for just cause after administrative procedures have been fully complied with. Under the Act for the Modernization of the State, compensation may be paid for voluntary departures during the process of modernization. There should be a period of notice of termination, and members of staff can appeal to an administrative body called the Council for Complaints (*Junta de Reclamaciones*) in each administrative body, from which an appeal may be made to the Administrative Appeals Tribunal, and thereafter to the Supreme Court itself.

In Jordan, public servants can be terminated in the following cases: acceptance of their resignation, forfeiture of the post, physical unfitness, relief from service, attainment of the retirement age, loss of nationality, abolition of the post and dismissal following a decision by a disciplinary committee. The public servant has the right to appeal to the Supreme Court of Justice which has the exclusive power to determine the case and take a final decision; this court represents the administrative court.

In Mali, the General Statute on the Civil Service lists, in section 112, the reasons for termination of services to include: attainment of retirement age, resignation, dismissal, removal of statute, or death of the official. A whole chapter is devoted to dismissal in detail. Section 120 states that, in the case of abolition of civil service posts, the civil servants can only be dismissed by virtue of a decree issued by the Council of Ministers with details stipulating the notice and compensation for the civil servants involved. Section 122 lists cases of dismissal without notice: where the official has lost nationality or civil rights; where the official has not himself requested renewal of his contractual status following placement on a supernumerary list; where the official has been convicted of a criminal offence or any other offence which prohibits the exercise of public service; and where the official abandons post. Section 121 lays down the circumstances under which a public servant may be dismissed upon proof of professional inadequacy, namely where the required disciplinary procedures have been observed and where the statement of professional inadequacy is covered by compensation through a Council of Ministers decree.

In Sri Lanka, the powers to appoint and dismiss for higher posts lie ultimately with the President, and for lower posts are laid down in the Establishments Code, 1985, in accordance with the procedures for disciplinary sanctions. It is worth noting in the case of Sri Lanka that certain new laws have been introduced in the context of reconstruction or conversion, such as in the telecommunications sector (Act No. 25/1991) which cover termination as well.

8. Anti-discrimination and gender equality provisions

Following the various UN conferences calling for human rights, non-discrimination and gender equality, and the consequent changes to private sector laws to include protection against workplace discrimination (and sexual harassment and proactive provisions to promote women's equality in enterprises), one might expect laws on state employment to likewise be modernized in this respect. However, the papers commissioned for this study show that few statutes cover women's equality specifically, but that non-discrimination is covered by general constitutional provisions stating that all citizens (or persons) in the country are equal.

All the Constitutions surveyed prohibit discrimination on the basis of a number of grounds, either with reference to all persons or all citizens. A few Constitutions also embody provisions prohibiting discrimination with express reference to workers. The Constitution of Costa Rica prohibits discrimination in relation to wages, establishing the principle of equal pay for equal work under identical conditions of efficiency. Moreover, it expressly prohibits discrimination among national and foreign workers. The Brazilian Constitution prohibits any difference in pay, as well as in the employment criteria, on the basis of sex, age, colour or marital status, while according to the Constitution of Ecuador every type of labour discrimination against women is prohibited. Ecuador's Constitution is also the only one of those studied which includes a provision prohibiting discrimination against public servants on the basis of their political affiliation. As already noted in the section concerning recruitment, most statutes studied do have requirements concerning nationality, which is common to many countries.

With specific regard to sex discrimination, all the Constitutions studied, except those of Australia, Jordan and Botswana,⁷ have provisions prohibiting discrimination on the ground of sex. In addition, the Constitution of Sri Lanka permits special provisions for the advancement of women to be made. A few Constitutions also expressly deal with the issue of gender inequality in the world of work. The Constitutions of Ecuador and Brazil provide that positive measures and policies shall be adopted by law. In the case of Ecuador these are addressed to all women workers, including those working in the informal sector. Moreover, Article 36 of the Ecuador Constitution consecrates the principle of identical remuneration for work of equal value between women and men. Under the Constitution of Brazil the protection of the job market for women through specific incentives is defined as a worker's right, both in the private and public sector. Further, under the Constitution of Ecuador, the adoption and application of a gender focus in plans and programmes is obligatory in the public sector. A different approach is, on the other hand, adopted by the Constitutions of Costa Rica and Jordan, where laws giving special protection to, or providing for special conditions for, the employment of women may be enacted.

⁷ In Botswana, nevertheless, the High Court declared the unconstitutionality of the 1984 Citizenship Act by interpreting the Constitution as prohibiting discrimination also on the basis of sex [*Unity Dow v. Attorney-General*, Case No. Misc. A 124/90 (High Court, 1991)].

While not the subject of a specific country study, the Constitution of South Africa nevertheless contains an interesting provision on equality in the composition of the public administration: article 195(1)(i) requires it to be “broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness and the need to redress the imbalances of the past to achieve broad representation”. Under the Public Service Act, No. 103 of 1994, the Public Service Commission is responsible for promoting this objective and its affirmative action measures have been challenged.⁸

Given the above-described constitutional provisions, it is thus a surprising tendency that the civil service statutes studied – even the most recently adopted ones – do not address systematically non-discrimination and gender equality in state employment.

There are one or two exceptions. The Botswana Public Service (Amendment) Act, No. 14 of 2000, adds a new section 31A classing sexual harassment of a public officer by a co-worker or by a supervisor as misconduct. It contains an excellent definition of sexual harassment: “any unwanted, unsolicited or repeated verbal or sexual advance, sexually derogatory statement or sexually discriminatory remark made by a public officer to another, or by a person in authority over another in the public service, whether made in or outside the workplace, which is offensive, or objectionable to the recipient, which causes the recipient discomfort or humiliation, or which the recipient believes interferes with the performance of his job security or prospects, or creates a threatening or intimidating work environment”. In Brazil, the Federal Public Service Act – Act No. 8112 of 11 December 1990 – counters discrimination against persons with disabilities. It states that they have the right to enter competitions for posts in the federal public service which are compatible with their handicap and reserves 20 per cent of vacant posts open to competition for them. The Jordanian 1994 Regulations permit special unpaid leave for men and women civil servants to look after their sick spouse or family (section 94A).

It is, however, the developed countries that have elaborate civil service laws in this area. To a certain extent in Europe this can be traced back to the Equality Directives valid in the European Union and important case law of the European Court of Justice, which generally applies to the public service.⁹ In European Community Member States, civil service statutes have, for some time, contained equality provisions. The Spanish Civil Servants’ Regulation (7 February 1964, amended 1989) in section 63 states that “all workers shall enjoy the right to respect for their privacy and proper consideration of their dignity”, which includes protection against “verbal or physical offence of a sexual nature”. In France, the General Civil Servants’ Regulations (Act No. 83-634 of 13 July 1983, amended 1992), in section 6, protects against sexual harassment in these terms:

No measure may be taken in relation to the recruitment, establishment, training, periodic report, promotion, posting or transfer of a civil servant on the basis of:

1. The fact that the person concerned was subjected or refused to be subjected to acts of harassment by a supervisor or any person who, abusing the authority conferred on him by his duties, gave orders, made threats, imposed constraints or exerted pressure of any kind on that civil

⁸ See Hodges-Aeberhard, J.: “Affirmative action in employment: Recent approaches to a difficult concept”, in *International Labour Review* (Geneva, ILO), 1999, Vol. 138, No. 3.

⁹ See Heide, I: “Supranational action against sex discrimination: Equal pay and equal treatment in the European Union”, in *International Labour Review*, (Geneva, ILO), 1999, Vol. 138, No. 4.

servant for the purpose of obtaining sexual favours for himself or a third party;

2. Or the fact that he witnessed or reported such acts.

Any agent who has carried out the acts defined above is liable to disciplinary measures.

Germany's 2nd Equality Act of 24 April 1994 contains a chapter entitled "Act to protect employees against sexual harassment at the workplace, section 5 of which stipulates that there be training provided on sexual harassment for persons employed in the public service.

Belgium's Royal Order of 27 February 1990 concerning measures for the promotion of equal opportunities for men and women in the civil service provides in section 2:

Affirmative action programmes shall consist of programmes carried out in the areas referred to in the first paragraph of section 116 of the Law of 4 August 1978 on economic reorientation, and their aim shall be to remedy actual inequalities which affect opportunities for women. These programmes shall be carried out by means of equal opportunity schemes, which shall comprise measures to correct the effects of prejudice against women arising from traditional social situations and behaviour, as well as measures to promote the presence and participation of women at all levels of employment.

and in section 3: "An equal opportunity scheme shall be established for each sector of the civil service."

For countries that have ratified Convention No. 111 (which applies to the public service as well as private sector employment), the ILO's Special Survey of 1996 by the Committee of Experts on the Application of Conventions and Recommendations notes lacunae in civil service laws and, where governments reply that equality in practice removes the need for revision of statutes, requests statistical proof. For example, the Committee noted in the Dominican Republic the absence of any specific provisions to guarantee non-discrimination in admission to the civil service in the Civil Service and Administrative Careers Act, No. 14/91, and has been examining data supplied by the National Office of Administration and Personnel proving that women have equal access to posts, promotions and terms and conditions of civil service employment. In Guinea, the Committee has commented on the fact that the Order of 5 March 1987 on the general principles of the public service prohibits discrimination only on the basis of philosophical or religious views and sex (section 20).

Some countries have adopted new laws applicable to both private and public sectors: Guyana's Prevention of Discrimination Act No. 26 of 1997 (which also covers sexual harassment in section 8); Mali's 1977 General Statute for Civil Servants, in section 18, provides that in applying the law no distinction shall be made between the two sexes, on the understanding that consideration shall be given in certain provisions to the requirements specified for exercising certain posts – should this be regarded as protective of women, or as allowing positive action? The recent Australian Act contains some family-friendly and anti-discrimination provisions. The Australian public service values, outlined in section 10(1) of the Act, state that "the Australian public service provides a workplace that is free from discrimination and recognizes and utilizes the diversity of the Australian community it serves". The Public Service Commissioner's Directions (Direction 2.1(11)(a)) state that agency heads must put in place measures to promote and uphold this value including by ensuring that all Commonwealth anti-discrimination laws – sex discrimination, racial discrimination and disability discrimination – are complied with.

Agency heads must institute measures to ensure that employment decisions are taken in a transparent equitable and procedurally fair manner, including elimination of any employment-related disadvantages on the basis of being an Aboriginal or Torres-Strait Islander. The same applies for the grounds of gender, race, ethnicity and physical or mental disability. Beyond banning procedural and substantive discrimination, the Australian statute and subsidiary legislation require agency heads to adopt a proactive workplace stance. The Directions (Chapter III) specify that there be workplace diversity programmes to ensure that the public service is free from discrimination. More specifically, Direction 2.4 stipulates that the public service shall provide a workplace that allows public servants to balance their work, family and other caring responsibilities effectively.

Some other recent statutes contain family-friendly provisions for women and men civil servants: the Latvian Act (section 54) and the Polish Act (section 50(3)) prohibit non-consensual transfers of pregnant employees or for parents with small children (Poland: “sole parent”, as well as recognizing the non-transfer principle on the grounds of family reasons). The French Decree amending the general provisions applicable to non-permanent public employees (No. 2000-1129 of 20 November 2000) extends to such persons the family-friendly provision of the 1984 public service law; new section 19ter permits them to request, under certain circumstances, unpaid leave for up to three months to care for terminally ill persons.

9. Industrial relations and negotiation procedures

Neal, Ozakia and Treu analyse trends in this area over the last two decades. Their findings that, in practice, the right to organize and bargain collectively are respected in more and more countries are confirmed by this study of the legislative developments.

A perusal of the information available in the context of article 22 reports under the ILO Constitution, relating to the Labour Relations (Public Service) Convention, 1978 (No. 151) and the Collective Bargaining Convention, 1981 (No. 154) shows a positive trend towards social dialogue, a pattern discerned in certain Constitutions of recent times. Not only are the legal frameworks opening up to permit civil servants to form and join organizations of their own choosing, but they are also opening up to permit such organizations to defend the economic and social interests of their members. Whether this extends to the specific right to take industrial action to defend those economic and social interests appears to be in need of further development, but in the first place a discernible recent trend in civil service statutes is the opening up of the right to bargain.

As noted in the introduction to this study, there are international standards in the area of labour relations. Article 7 of Convention No. 151 states:

Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for negotiation of terms and conditions of employment between the public authorities concerned and public employees' organisations, or of such other methods as will allow representatives of public employees to participate in the determination of these matters;

And

Article 1 of Convention No.154 states:

1. This Convention applies to all branches of economic activity.

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2. The extent to which the guarantees provided for in this Convention apply to the armed forces and the police may be determined by national laws or regulations or national practice.
 3. As regards the public service, special modalities of application of this Convention may be fixed by national laws or regulations or national practice.

The Right to Organise and Collective Bargaining Convention, 1949 (No. 98), specifically excludes public servants engaged in the administration of the State, but the ILO's supervisory bodies have adopted a restrictive approach concerning this exception, otherwise Convention No. 98 would be deprived of much of its scope (see 1994 General Survey, paragraph 200).

All the constitutions surveyed recognize the right of workers to form and belong to trade unions. A few add that this right is enjoyed within the limits of the law (Jordan and Mali) or that it is subject to restrictions in the pursuance of public interests (Sri Lanka). With reference to public servants, on the other hand, special provisions are included in most Constitutions. The Constitution of Ecuador allows only one trade union organization in the public sector, while the Constitutions of Botswana and Dominica provide that laws restricting the right of public servants to form and belong to trade unions may be enacted. In Costa Rica, article 60 of the Constitution is amplified by sections 332-370 of the Labour Code, where special provisions refer to the right to associate of civil servants (subsections 393 ff). Finally, the Constitution of Bulgaria relies upon the law to regulate the conditions under which state employees may be members of trade unions.

The right to strike in the terms defined by law is guaranteed by the Constitutions of Brazil, Bulgaria, Costa Rica, Ecuador and Mali (as is also the case for some countries not covered by this study: Argentina, Czech Republic, Namibia, South Africa and Sweden). Concerning public servants, the Bulgarian Constitution relies upon the law to define the conditions under which state employees may exercise their right to strike, while the Costa Rican Constitution completely excludes such right.

As for collective bargaining, only two Constitutions of the countries studied have specific dispositions. The Constitution of Costa Rica establishes that collective labour agreements have the force of law, while the Constitution of Brazil not only states that trade unions must participate in collective labour bargaining but also provides for collegiate bodies of government agencies in which workers and employers discuss and deliberate on their professional or social security interests.

In Brazil, article 37(vii) of the Constitution limits the right to strike of civil servants to the stipulations of a specific law, and the constitutional amendment No. 19 of 4 June 1998 provides for a specific strike law. The ILO's supervisory bodies, when assessing Brazil's compliance with ratified Convention No. 98, have for some time commented on the ban on collective bargaining for public servants contained in the Brazilian law. The latest information indicates that moves are under way to amend the law so as to remove the restriction.

From the point of view of social dialogue, the civil service statutes examined fall into two categories: those that attempt to align public service negotiation rights and procedures with those existing in the private sector; and those that maintain a specific, limited right to consultation along the lines of Article 7 of Convention No. 151 and adopt what might be labelled "special modalities" along the lines of Article 1 of Convention No. 154.

The Australian example is a clear reflection of the first category, with the Public Service Act stating that industrial relations procedures are subject to the provisions of the Workplace Relations Act. Beyond negotiation issues, the legal position is that disputes are to be settled in accordance with mutually agreed provisions (in certified agreements or individual workplace agreements) or in limited circumstances by the Industrial Relations Commission. The Bulgarian Act also follows this trend. Section 43 states that civil servants have the right to associate in professional organizations and non-profit associations. Section 44 states that civil servants have the right to form freely trade union organizations, to join such organizations and stop being their members, subject only to the rules of the unions. Section 45 gives such unions legal personality and section 47 permits the right to strike in cases where pronounced demands, related to employment relations, are not respected. Subsection 2, however, limits the performance of strike action to “carrying and placing appropriate signs and symbols, protest posters, strips and others, without cessation of the performance of civil service duties”. Similarly, in Mali, the General Statute of Civil Servants (as amended by Act No. 87-46 AN-RM of 4 July 1987), under section 19, recognizes freedom of association for civil servants. Act No. 87-47 of the same date lays down the provisions for the right to strike in the civil service: advance notice of dispute, utilization of conciliation commissions, non-occupation of the workplace, assurance of a minimum service in essential public utilities (to be determined by a decree of the Council of Ministers), and punishment for violation of the provisions of the Act. The Dominican Public Service Act permits collective bargaining (sections 23-30), calling it “treating with the representative body”.

Other recent statutes stress the importance of bargaining on a broad range of issues. Take, for example, the new Greek law No. 2738 of 9 September 1999 entitled Collective Bargaining in the Public Administration, stabilization of employees under employment contracts and contracts of indeterminate length. Section 2 states that trade unions of such employees and certain other organizations have the right and the obligation to negotiate the conditions of employment of public servants in conformity with the provisions of the law. Section 3 of the law states that collective agreements shall include questions concerning placement, transfer, detachment, training, occupational safety and health, social security except for pensions, trade union rights and facilities for trade union representation and information, leave, working time and provisions concerning the interpretation of such collective agreements. Likewise, it states that such agreements may, but are not obliged to, contain a peace clause banning strikes.

Botswana is an example of the second situation. The constitutional restriction leaves only consultation possibilities for associations of civil servants. Section 38(f) of the Public Service Act provides for the setting up of bodies for consultation purposes. Table 5 describes what use has been made of that power.

Table 5. Social dialogue machinery and groupings in the Botswana public service

(a)	Ministerial Consultative Committee
(b)	Joint Ministerial Consultative Council
(c)	National Amalgamated Local and Central Government and Parastatal Manual Workers Union
(d)	Botswana Civil Servants Association
(e)	Botswana Teachers Union
(f)	Association for Teachers of Tertiary Institutions
(g)	Botswana Union for Primary School Teachers
(h)	Botswana Union for Secondary School Teachers
(i)	Botswana Telecommunications Workers Union
(j)	Botswana Power Corporation Workers Union
(k)	Botswana Railways Workers Union
(l)	Botswana Local Government Service Association
(m)	Central Joint Staff Consultative Machinery
(n)	Localization and Training Committee

Countries having separate public service labour relations Acts (like Canada – federal jurisdiction) have detailed statutes setting out the negotiations through bargaining councils or national joint councils through which the state employer and staff representatives arrive at agreements.

Some countries that had previously restricted freedom of association have changed radically towards direct collective participation of public service employees through their union. In New Zealand, 1 May 2000 saw the signature of an agreement between the Minister of State Services and the Public Service Association which will:

Enable employees to collectively participate in the management of their workplaces to the extent possible while, in the public service, recognising the Chief Executive's ultimate responsibility for management under the State Sector Act, or, in the case of CRIs and Crown Entities, the Public Finance Act or other enabling legislation [achieving this through a process of] enterprise-level negotiation and activity.

In summary, it could be said that the last decade has seen a movement away from the concept of government as a sovereign employer and determiner of pay and other terms of employment to a more consensual approach, reflected in statutory recognition of rights to negotiation in place of the earlier, restricted rights to consultation. The institutional recognition of the broader approaches can be seen in the wide variety of social dialogue arrangements.

But other countries have not witnessed such moves. In Ecuador, collective bargaining is stymied because the Act on the Civil Service and Administrative Career, section 60, bans civil servants' trade unions as such.

Many countries admit that public employees do not have the right to organize or engage in collective bargaining (e.g. Gambia, United Arab Emirates) or that civil servants are not treated on a par with industrial workers (e.g. India). The Government of Kenya is looking into modalities to revive the Civil Servants Union, which by law is banned. Nor is the right to collective bargaining recognized for civil servants in Zimbabwe, which is considering a legislative change. Workplace associations of public officials are not

considered to be trade unions in the Republic of Korea, and cannot engage in collective bargaining, but the Government has indicated that it would make efforts to ensure effective establishment and operation of such workplace associations in the shortest time possible. In Jordan and Malaysia, some restrictions apply to certain categories in the public service.

Regarding the right to strike, the ILO's supervisory bodies have adopted principles concerning its exercise by civil servants: to be acceptable, bans or limitations on strikes should only apply to "public servants exercising authority in the name of the State" (General Survey 1994 on freedom of association and collective bargaining, paragraph 158). The following summary of restrictive situations (most of which are listed in the Committee of Experts' Report III (Part 1A) to the 89th Session of the International Labour Conference, 2001, under Convention No. 87) demonstrates how little progress has been made in statutory reform on this issue in recent years:

- **Austria, Germany, Japan, Korea and Luxembourg** ban strikes by civil servants.
- **Bolivia** (section 7 of the 1999 Act on the Statute of the Public Service) bans freedom of association to public servants, hence the right to strike as well.
- **Bulgaria's** Civil Servants Act of 1999 restricts the right to strike to the carrying and placing of suitable signs/armbands.
- **Burundi's** Statute on the Public Service permits the right to organize but is silent on the right to strike.
- **Canada** (British Columbia and Manitoba), have laws banning strikes by teachers.
- **Chad's** Decree No. 96/PR/MFPT/94 bans strikes in the public service but the Government claims that it has never been used.
- **El Salvador** – trade unions and strikes are banned in the public sector generally.
- **Ethiopia's** 1993 Labour Proclamation bans the right to organize of teachers and thus their right to strike as well but the Government is considering changing the law.
- **Haiti** has a constitutional right to organize but no specific legislation for public servants.
- **Liberia's** Labour Practices Law, section 4506, bans public servants from organizing and thus from exercising their right to strike.
- **Mexico's** Federal Act on State Employees, section 99(II), places excessive restrictions on the calling of a strike.
- **Nicaragua** risks having its (good) 1990 Civil Service and Administrative Careers Act fall for want of regulations.
- **Pakistan's** Industrial Relations Ordinance bans public servants of grade 16 and above from organizing and thus from exercising their right to strike.
- **Rwanda's** 1974 Legislative Decree on the General Conditions of Service of State Employees bans strikes by all civil servants and public employees, although the Government states that a new draft Act will change this.
- **United States** – several statutes ban strikes by most federal and state employees.

III. Major current challenges facing the public service

The papers commissioned for this study show a remarkable similarity in naming the upcoming challenges for the civil service and the laws which govern them. The list includes factors of a general nature (that may affect the content and implementation of private sector labour law as well):

1. *Transition to democracy and market economy* (Bulgaria).
2. *Decentralization* (Dominica).
3. *Need for formal, planned employment policies* (Ecuador).
4. *Corruption* (Bulgaria, Sri Lanka).
5. *Frequent changes in personnel* (Bulgaria).
6. *Uncertainty over recent constitutional and legal changes* (Brazil, Dominica).
7. *Structural inadequacies* (Brazil, Ecuador, Jordan (large size of the service), Mali, Sri Lanka (overly centralized)).
8. *Freedom of association issues* (Botswana, Brazil, Jordan).
9. *Contractual issues, in particular extensions of fixed-term contracts* (Brazil).
10. *The legal regime itself* (Brazil, Sri Lanka).
11. *Multiplicity of legal sources* (Costa Rica, Ecuador).
12. *Wages and pension issues* (Brazil, Bulgaria, Costa Rica, Ecuador, Jordan, Mali, Sri Lanka).
13. *Slow pace of civil service transformation; restructuring* (Bulgaria, Dominica).
14. *High degree of political polarization* (Bulgaria, Sri Lanka).
15. *Lack of promotion opportunities for middle-level personnel; selection of top management* (Bulgaria, Jordan).
16. *Installing a culture of productivity and results; model of private sector participation and employer culture* (Australia, Costa Rica, Mali).
17. *Merit-based system* (Costa Rica, Dominica).
18. *New classification system* (Ecuador).
19. *Updating skills* (Dominica, Jordan, Mali).
20. *Insufficient working manuals* (Jordan).

Lastly, there are a number of management issues identified as requiring urgent attention if the civil service statutory texts are to be applied efficiently:

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21. *Lacking management orientation* (Sri Lanka).
 22. *Out-of-date work systems* (Sri Lanka).
 23. *How to balance employment conditions determined at each separate agency level with the need to maintain a coherent and identifiable “public service”* (Australia).
 24. *Poor coordination between responsible bodies* (Ecuador, Jordan) *or risk of it, between the general policy bodies and the individual agency level* (Australia).

The Irish Strategic Management Initiative has led the Civil Service Commissioners to list certain specific challenges for the law in the face of firm political commitment to delivering better government. Its strategy statement says:

2. Challenges

The provision of recruitment services has become infinitely more complex as compared with the situation pertaining when the legislation governing recruitment and selection was enacted. Some of the issues and developments which have brought about changes are:

- geographic decentralisation of Government Departments;
- equal opportunities issues including gender, disability and age;
- developments in the science of recruitment and selection and the concepts of best practice in the area;
- the extent of Commission involvement in selection for promotion in the civil service;
- developments in the law, at national and European level, in relation to the principles of natural justice;
- developments in administrative law, e.g. Ombudsman, Freedom of Information, Data Protection;
- the increased complexity of services delivered by the local authorities and health boards;
- the requirement to recruit an increasing diverse range of professional and technical experts and to tailor this recruitment to the very specific needs of the employing authority;
- Oireachtas Committee System;
- Government policy emphasis on openness and transparency.

In this context it is reasonable to suggest that the legislation governing recruitment to the civil, local authority and health services is no longer adequate to meet the challenges of the modern day.

The devolution, under SMI, of authority, responsibility and accountability, from the centre to Departments/agencies and within organisations to individual managers is set to have a major influence on the way in which the role and modus operandi of an independent, centralised, recruitment service are viewed in the future. Furthermore, the developments in civil service staffing structures together with the forthcoming legislation on equality and freedom of information

will expose further the limitations of the existing legislation as a framework within which to provide an effective recruitment and selection service to the satisfaction of the Commission or that of its customers.

From the point of view of industrial relations, Neal sees the challenge as keeping the flexibility required by the unique nature of the public employer. He states:

In terms of the law, as a regulatory instrument within the public sector, it has been seen that direct control is exercised by the State through the legislative process and in the form of special decrees, regulations, or prohibitions, which are not found (or, at the lowest, are not found to anything like the same extent) in the “free collective bargaining” arena of the private sector. The dual role of the State – as public employer and as legislator – makes this a particularly significant matter, especially when one observes the full armoury of State intervention arraigned at the disposition of the employer party on the industrial relations stage. Where collective bargaining is allowed to give rise to public sector collective agreements, the fruits of that bargaining often require further formalised ratification or registration processes, while some parts of the classical content of collective bargains in the private sector are simply not left within the sphere of influence of the public sector parties.

IV. Future ILO work

A technical meeting of experts on the law and practice of social dialogue in the civil service is scheduled by GLLAD for 2001. It is envisaged that participants will use that occasion to give directions to the Office on areas where technical advisory services, and advocacy and research, need to be directed in the future.

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Table 3. Comparative listing of constitutional provisions relating to civil servants in the ten countries used as a baseline for this study

	Contract of service and legal status	Recruitment	Remuneration	Other terms and condition of employment	Training	Disciplinary procedures (individual grievances and collective disputes)	Termination, especially during restructuring processes	Anti-discrimination and gender	Industrial relations (right to form unions, right for unions to bargain and right to strike)	Enforcement of constitutional rights	Ratified international treaties as sources of further rights directly enforceable by courts
Australia		Art. 67		Art. 84				Art. 117***			
Botswana	Arts. 12(2)(c); 13(2)(c); 14(2)(d); 15(5)	Art. 110				Art. 111		Art. 15**	Art. 13(2)(c)	Art. 18**	
Brazil		Art. 37, IV	Art. 39(3) referring to art. 7, IV, VII, VIII, IX, XI (as amended by art. 1 of the Constitutional Amendment 20/1998), XV; art. 37, X-XVII, XIX; art. 39(1, 4-8)	Art. 39(3) referring to art. 7, XIII, XVIII, XIX, XXII; art. 241; art. 40 (as amended by art. 1 of the Constitutional Amendment 20/1998)	Art. 39(2)	Arts. 111-117	Art. 169, 3-7	Art. 5;** art. 39, 3 referring to art. 7, XX and XXX	Art. 8;* art. 10;* art. 37, VII		Art. 5, LXXVII, ss. 2
Bulgaria	Art. 116	Art. 98(7)	Art. 48(5)*	Art. 47(2)*			Art. 116(2)	Art. 6***	Art. 49;* art. 50;* art. 116(2)	Art. 120***	
Costa Rica	Arts. 191-192	Art. 140, 1-2	Art. 57*	Arts. 58 and 59*			Art. 63;* art. 192	Art. 33;** art. 57;* art. 68;* art. 71*	Art. 60;* art. 61; art. 62*	Arts. 48** and 10	Art. 48
Dominica	Art.10(2)(c); art. 12(3)(f); art. 13(5); art. 121 (definition of public officers)	Art. 70; arts. 85-86				Art. 94	Art. 70; art. 85	Art. 13**	Art. 11(2)(c)	Art. 16**	
Ecuador	Art. 35(9); art. 101; art. 124(2)	Art. 124 (2)	Art. 124 (3)	Transitory dispositions - Nineteenth			Transitory dispositions -Fifth	Art. 36;* art. 41; art. 124(4)	Art. 35(9)*(10)*	Art. 95**	Art. 23; art. 95
Jordan	Art. 22		Art. 23					Art. 6(i);*** art. 23(i)(d)*	Art. 23(f)*		
Mali	Art. 70	Art. 46						Art. 2***	Art. 20;* art. 21*		Art. 116
Sri Lanka	Art. 170 (definition of public officers)	Arts. 54-59				Art. 55(5); art. 58(2)	Art. 59	Art.12(1)** (2)*** (4);** arts. 27(6)* and 29	Arts. 14(1)(d)*** and 15(7)	Art. 17;** art. 126**	

* Provisions concerning workers. ** Provisions concerning all persons. *** Provisions concerning all citizens.