



Constructing a suitable collective bargaining model for the South African Civilian Intelligence Services

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DECLARATION

I, Obakilwe George Sekoane, hereby declare that “*Constructing a suitable collective bargaining model for the South African Civilian Intelligence Services*”, is my own work. I also wish to confirm that the work submitted is my own, except where contributions of others are involved, and every effort was made to indicate this clearly, with due reference to the literature, and acknowledgement of collaborative research and discussions. The work has not been submitted for any other degree or professional qualification. I also understand what plagiarism entails and I am aware of the North-West University’s policy in this regard.

Signature:

Date: 28/11/2025

DEDICATION AND ACKNOWLEDGEMENTS

This thesis is dedicated in memory of my late father, Jacob Shimane Sekoane. His belief in the value of education inspired me to pursue the doctoral degree. Unfortunately, he did not live to witness its completion. However, his influence and legacy remain key towards this achievement.

I extend my deepest gratitude to my mother, Dimakatso Rebecca Sekoane, for her support and encouragement throughout this academic journey. I am equally grateful to my family - my children, siblings, aunts, cousins, nephews, and nieces - whose words of motivation have been a constant source of strength.

This study is also dedicated in the memory of my grandmothers (both maternal and paternal), who played an instrumental role in raising me, and to my late sister, aunts, uncle, and cousins. Their guidance, love, and commitment to hard work continues to shape my life. Their absence is deeply felt, yet their legacy endures. *Thank you, Dibata. Ha ere ha o eja, o roale katiba'nku, phihla molaleng.* Your memory remains ever present.

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ABSTRACT

South Africa demonstrates similarities with Canada in its commitment to the tenets of liberal democracy and adherence to constitutional mandates. These principles encompass the following key elements: conduct elections regularly; safeguard individual rights; uphold rule of law; and safeguards freedom of speech. These factors contribute towards the enhancement of labour relations through the facilitation of collective bargaining and protects the rights of both the workers and the employers (SA, 1995; Anton, 2017:3). This study critically examined the limitations of the current consultation mechanisms within the South African civilian intelligence services. As these stand, the mechanisms tend to favour management and fail to represent employee interests effectively during conditions of service negotiations.

The study does not imply that reliance on consultation mechanisms instead of collective bargaining is inherently flawed. However, to enhance these mechanisms, amendments to the Intelligence Services Act 65 of 2002 will be required. Such enhancements are expected to limit conflict amongst the involved parties and advance a more peaceful and liberated work environment (ILO, 2000; 2013). South Africa has ratified several conventions, which are aligned with the international labour standards advocated by the International Labour Organisation (ILO).

The South African Police Service (SAPS), South African National Defence Force (SANDF), and Canadian Security Intelligence Service (CSIS) serve as public service institution examples which engage in collective bargaining. However, there is lack of empirical evidence to support the exclusion of the civilian intelligence service employees from collective bargaining due to the confidential nature of their functions and duties. Therefore, collective bargaining is exempt from national security. The study advocates for an independent and autonomous consultation structure - complete with a dispute resolution mechanism within South Africa's civilian intelligence services to facilitate negotiations which are fair and uphold democratic labour standards.

The General Intelligence Laws Amendment Act 37 of 2024 is aimed to strengthen the intelligence services governance and oversight. However, it does not solve problems associated with consultation process due to the lack of autonomous and dispute resolution mechanisms. In doing so, it strengthens the narrative which prioritises secrecy over fair labour practices within civilian intelligence services.

Key terms: liberal democracy, labour relations, consultation mechanism, collective bargaining, civilian intelligence services, national security, dispute resolution, ILO, SAPS, SANDF, CSIS, GILAA.

TABLE OF CONTENTS

DECLARATION	i
DEDICATION AND ACKNOWLEDGEMENTS	ii
ABSTRACT	iii
LIST OF FIGURES	xi
LIST OF TABLES	xii
LIST OF ACRONYMS	xiii
 CHAPTER 1: INTRODUCTION	 1
1.1 Introduction	1
1.2 Understanding Intelligence and collective bargaining: Context of Liberal Democratic Theory	1
1.2.1 Framework for limitation of rights in terms of Section 36(1) and (2)	3
1.3 Need for a Collective Bargaining Model within the SA Intelligence Services	4
1.4 Problem statement	6
1.4.1 Primary research questions	6
1.4.2 Research objectives	7
1.5 Central theoretical statement	7
1.6 Methodological framework	8
1.6.1 Research methodological approach	9
1.6.2 Data collection instruments	9
1.6.2.1 Literature review	10
1.7 Data analysis: Strategy	12
1.7.1 Empirical study findings: Integration of data	13
1.8 Ethical considerations	14
1.8.1 Informed consent	15
1.9 Limitations of the study	15
1.10 Significance of the study	16
1.11 Outline of chapters	16

CHAPTER 2: THEORETICAL FRAMEWORK – COLLECTIVE BARGAINING WITHIN LIBERAL DEMOCRATIC SYSTEMS..... 19

2.1	Introduction	19
2.2	Overview of Liberal Democratic Theory.....	19
2.2.1	The “state” from a liberal democratic view.....	20
2.3	What is a “Liberal Democracy”?	21
2.3.1	Rule of law and Constitutional safeguards	22
2.3.2	South Africa as a liberal democracy	24
2.4	Collective Bargaining within liberal democracies.....	26
2.4.1	Legislative and policy context: Collective bargaining in South Africa.....	28
2.4.2	Employees’ recourse: Impasse during negotiations	29
2.5	Conclusion	30

CHAPTER 3: FUNDAMENTAL PRINCIPLES GOVERNING COLLECTIVE BARGAINING IN LIBERAL DEMOCRATIC CONTEXTS..... 32

3.1	Introduction	32
3.2	Collective bargaining in liberal democracies: Fundamental principles	32
3.2.1	The first fundamental principle: Constitutional and legislative foundations.....	33
3.2.1.1	Freedom of association.....	34
3.2.1.2	Right to form a trade union and employers’ organisation	35
3.2.2	The second fundamental principle: Employee participation in decision-making	35
3.2.2.1	Conceptual clarifications: involvement vs participation.....	36
3.2.2.2	Limitation of participating in closed forums	37
3.2.2.3	Workable approaches to participation: direct or indirect.....	37
3.2.2.4	The democratic challenge of employee participation in intelligence services	40
3.2.3	The third fundamental principle: Collective bargaining and social justice	41
3.2.4	The fourth fundamental principle: Dispute resolution mechanisms.....	43
3.2.5	Fifth fundamental principle: International law as a basis for protection of rights of workers .43	
3.2.5.1	The Universal Declaration of Human Rights.....	44
3.2.5.2	The International Covenant on Economic, Social and Cultural Rights (1966).....	46

3.3	Practices and Principles of Collective Bargaining in a Liberal Democracy: The example of Canada	48
3.3.1	Characteristics of the Canadian collective bargaining legislation.....	48
3.3.1.1	Dispute resolution mechanisms	49
3.3.1.2	Workers' participation in collective bargaining	49
3.3.1.3	Right to strike	49
3.3.2	Parties to public service collective bargaining	50
3.3.3	Labour rights within the Canadian Security Intelligence Services.....	51
3.3.3.1	Grievances.....	52
3.3.3.2	Adjudication of employee grievances	52
3.3.3.3	Regulations on oversight	53
3.3.3.4	Resolution of support staff disputes: Processes.....	53
3.3.3.5	Public Service Superannuation Act of 1985	54
3.4	Conclusion	54

CHAPTER 4:	COLLECTIVE BARGAINING: SOUTH AFRICAN CIVILIAN INTELLIGENCE SERVICES SINCE DEMOCRACY	56
4.1	Introduction	56
4.2	Collective bargaining: South African public service	56
4.2.1	The three key role players in public service labour relations.....	57
4.2.2	Legislative requirements for collective bargaining within the South African public service...	58
4.2.3	Collective bargaining and Labour Relations Act.....	60
4.2.4	Collective agreements	61
4.2.5	Bargaining councils.....	62
4.2.6	Bargaining councils in the public service.....	63
4.2.7	Statutory councils	66
4.2.8	Workplace forum.....	67
4.2.9	Right to strike and lockout	70
4.3	Collective bargaining: South African Civilian Intelligence Services.....	71
4.3.1	Collective bargaining and limitation of rights: Civilian Intelligence Services	74
4.3.2	Consultation mechanisms: Civilian Intelligence Services.....	75
4.3.3	Concomitant role of consultation committee and the ISCCS	76

4.3.4	South African Civilian Intelligence Services: ‘Not essential services’	78
4.4	Difference between collective bargaining: Public Service and Civilian Intelligence ...	80
4.5	Reasons for discrepancies in collective bargaining: Public service and SA Civilian Intelligence Services	82
4.5.1	Lack of appreciation of constitutional provisions: Civilian Intelligence Services	83
4.5.2	Confidential nature of intelligence services versus national laws and ILO conventions	84
4.5.3	Absence of dispute resolution mechanisms in Civilian Intelligence Services	84
4.6	Conclusion	85

CHAPTER 5: THE ROLE OF AN AUTONOMOUS COLLECTIVE BARGAINING STRUCTURE WITHIN THE SA CIVILIAN INTELLIGENCE SERVICES..... 87

5.1	Introduction	87
5.2	Role of an autonomous collective bargaining structure in Civilian Intelligence Services	88
5.2.1	Role of government in protection of civil liberties	88
5.2.2	Legitimacy, credibility, power and influence of unions	89
5.2.3	Intelligence Services Act 65 of 2002	90
5.2.3.1	Principles of consultation mechanism	90
5.2.3.2	Negotiation.....	96
5.2.4	Principal aims of the LRA	96
5.3	SA Civilian Intelligence Services: Consultation mechanisms	97
5.3.1	Consultation committee	98
5.3.2	Staff council	98
5.3.3	Intelligence Services Council on conditions of service	98
5.4	Nature of labour relations conflict: South African Civilian Intelligence Services	99
5.4.1	Attitudes	99
5.4.2	Labour relations institutions, legal framework, and participants actions	100
5.4.3	Power and interests in civilian intelligence labour relations	103
5.5	Collective bargaining as a political process and a threat to secrecy	105
5.5.1	Functions of collective bargaining	106
5.5.2	What influences collective bargaining?	107
5.5.3	Strategy and organisational culture	108

5.5.3.1	Management strategies in collective bargaining	109
5.5.3.2	Trade union strategies in collective bargaining	110
5.6	South African Security departments: Employees labour rights.....	111
5.6.1	Labour rights in the South African Police Service	112
5.6.2	SANDU model: Example of effective collective bargaining structure.....	115
5.6.2.1	The Labour Relations Act 66 of 1995 and the formation of SANDU	115
5.6.2.2	Promulgation of Defence Act 42 of 2002 and formation of unions	117
5.6.2.3	Collective bargaining and arbitration process.....	117
5.6.2.4	SANDU registration as a trade union	120
5.6.2.5	Application of collective bargaining	121
5.7	Conclusion	122
CHAPTER 6: RESEARCH METHODOLOGY.....		124
6.1	Introduction	124
6.2	Research methodological framework.....	124
6.3	Qualitative research approach: Applicable for empirical study	126
6.3.1	Qualitative research through case studies	130
6.4	Literature review: Gaps.....	131
6.5	Data collection instrument: Qualitative study	133
6.6	Population and sampling	133
6.6.1	Rationale for the sample.....	134
6.7	Data collection process (Empirical).....	135
6.8	Implementation of ethical considerations.....	136
6.9	Conclusion	138
CHAPTER 7: FINDINGS: EMPIRICAL RESEARCH		139
7.1	Introduction	139
7.2	Views of established consultation mechanisms and collective bargaining	139
7.2.1	Consultation mechanism	140
7.2.2	Collective bargaining in Civilian Intelligence Services.....	141

7.3	Critique of <i>status quo</i> (Consultation mechanisms collective bargaining): Civilian Intelligence Services	142
7.3.1	Challenges of managerial legitimacy	143
7.3.2	Legislative matters.....	144
7.3.3	Views on a suitable form of collective bargaining.....	144
7.3.4	Other proposed interventions	146
7.4	Specific considerations: Institute framework for collective bargaining: Civilian Intelligence Sector	147
7.4.1	Mandatory legislative amendments	147
7.4.2	Balancing of powers	149
7.4.3	Ensure trust and “good faith”	149
7.4.4	Recourse instances of disputes.....	149
7.5	Suitable form of labour relations: Engagement between employer and employees .	150
7.6	Ideal organisational locus for consultations	150
7.7	Summary: Issues of concern and related proposals	151
7.8	Conclusion	154

CHAPTER 8: SOUTH AFRICAN CIVILIAN INTELLIGENCE SERVICES: appropriate COLLECTIVE BARGAINING MODEL..... 157

8.1	Introduction	157
8.2	Liberal Democratic Theory	157
8.3	Collective bargaining in liberal democracies	158
8.4	Nature of ‘collective bargaining’ in SA Civilian Intelligence Services	160
8.5	Autonomous collective bargaining structure.....	163
8.6	Incorporate findings into ideal collective bargaining model	164
8.7	Conclusion	169

CHAPTER 9: CONCLUSION AND RECOMMENDATIONS

9.1	Introduction	171
9.2	Recommendations: Introduce collective bargaining model in SA Civilian Intelligence Services	173

9.2.1	Amendment of Intelligence Services Act 65 of 2002.....	175
9.2.2	Introduce collective bargaining	176
9.2.3	Create autonomous consultation structure.....	176
9.3	Theoretical recommendation	177
9.4	Recommendations for further research	178
9.5	Conclusion	179
BIBLIOGRAPHY		181
ANNEXURE A: CONFIRMATION OF EMPIRICAL STUDY AND ETHICAL CLEARANCE		209
ANNEXURE B: RESEARCH CONSENT FORM		210
ANNEXURE C: AGREEMENT BETWEEN RESEARCHER AND PARTICIPANT		211
ANNEXURE D: RESEARCH QUESTIONS FOR THE EMPIRICAL STUDY		213

LIST OF FIGURES

Figure 1.1: Intelligence cycle.....	2
Figure 1.2: An Overview of the Systematic Data Integration Method.....	14
Figure 2.1: Definitions of democracy (Adapted from Beetham, 1999:94)	22
Figure 3.1: Approaches of direct and indirect participation in collective bargaining.....	39
Figure 4.1: The current collective bargaining structures in the public service.....	65
Figure 4.2: Structure of dispute resolutions in South Africa	66
Figure 4.3: The collective bargaining process in PSCBC.....	69
Figure 4.4: Consultation mechanism within the State Security Agency	73
Figure 5.1: Consultation approaches	92
Figure 5.2: SANDF Dispute Resolution Model	119
Figure 6.1: Methodological Framework.....	125
Figure 8.1: Challenges of the current consultation mechanism within the SA civilian intelligence services	166
Figure 8.2: Proposed interventions to strengthen consultation mechanism.....	167
Figure 8.3: Collective bargaining model for SA civilian intelligence services.....	168

LIST OF TABLES

Table 2.1: Characteristics of South Africa's liberal democracy	26
Table 4.1: National Departments.....	80
Table 5.1: Differences between employer and employee needs	103
Table 5.2: Union and Non-union Industrial Relations Patterns	110
Table 6.1: Philosophical assumptions with implications for practice	127
Table 6.2: Comparison of research approach: Key design criteria	129
Table 7.1: Findings and proposals from the semi-structured interviews	152

LIST OF ACRONYMS

ANC	African National Congress
ACTU	Australian Council of Trade Unions
ALP	Australian Labour Party
CSIC	Canadian Security Intelligence Service
CCMA	Commission for Conciliation, Mediation and Arbitration
CC	Constitutional Court
COSATU	Congress of South African Trade Unions
CUPE	The Canadian Union of Public Employees
DIS	Department of Intelligence and Security (South Africa)
DPSA	Department of Public Service and Administration
EDS	EBSO Discovery Service
ELRA	Education Labour Relations Act
GILAA	General Intelligence Laws Amendment Act
HPWS	High Performance Work Systems
ICESCR	The International Covenant on Economic, Social and Cultural Rights
ISAP	Index to South African Periodicals
IA	Intelligence Academy
ISCCS	Intelligence Services Council on Conditions of Services
ILO	International Labour Organisation
LRA	Labour Relations Act 66 of 1995
MAB	Military Arbitration Board
MBC	Military Bargaining Council
NEDLAC	National Economic Development and Labour Council
NIA	National Intelligence Agency
NICOC	National Intelligence Co-ordinating Committee
NIS	National Intelligence Services

NUPGE	National Union of Public and General Employees
NWU	North-West University
OIGI	Office of the Inspector General of Intelligence
POPCRU	The Police and Prisons Civil Rights Union
PSBC	Public Service Bargaining Council
PSCBC	Public Service Collective Bargaining Council
PSLRA	The Public Service Labour Relations Act
SA	South Africa(n)
SALGA	South African Local Government Association
SANDF	South African National Defence Force
SAPS	South African Police Service
SSA	State Security Agency
UDHR	Universal Declaration of Human Rights
UN	The United Nations

CHAPTER 1: INTRODUCTION

1.1 Introduction

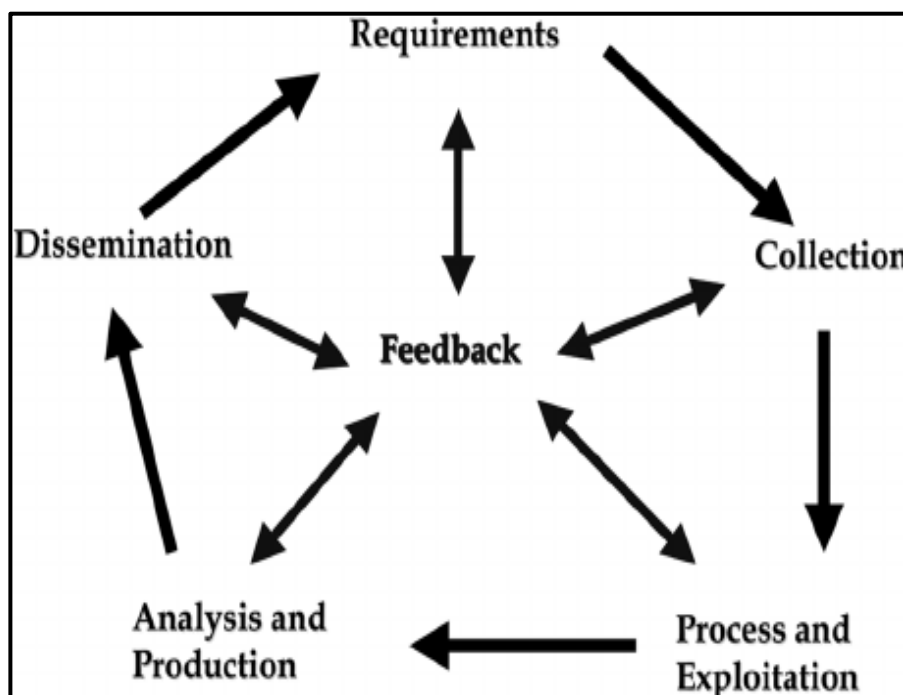
The study endeavoured to propose a suitable collective bargaining model to resolve labour disputes within the Republic of South Africa (RSA) civilian intelligence services. Generally, these disputes are negotiated by trade unions and the employer. Therefore, a collective bargaining model would need to conform with the provisions of Section 85 of the Labour Relations Act 66 of 1995 which legislates workplace forums within the public service. However, these provisions are prohibited by the South African civilian intelligence labour legislation through the Intelligence Services Act 65 of 2002. This appears to be premised on the assumption that there is no need for collective bargaining. However, this might not necessarily be the case. This assumption is analysed through the etymology and ontology of “intelligence” and “collective bargaining” within the context of liberal democratic theory.

The Canadian Security Intelligence Service’s (CSIS’s) collective bargaining model serves as a key example of collective bargaining exercised within a liberal democracy. Reference to the CSIS is solely based on two fundamental issues: (i) it is an intelligence service much like the South African (SA) civilian intelligence services; and (ii) permits collective bargaining and certain occupational groups and its public service to join trade unions, including the CSIS. However, this study does not intend to utilise the CSIS as a case study or a direct comparison. Rather, it aims to illustrate that notwithstanding the inherently secret nature of intelligence environment, certain intelligence services - such as the CSIS - permit members to join trade unions and participate in collective bargaining. According to this example, which will be discussed in Section 5.7 of Chapter 5, the role of collective bargaining is examined to determine its necessity as a legal instrument to resolve labour disputes, even in “sensitive” services that deal with national security issues.

1.2 Understanding Intelligence and collective bargaining: Context of Liberal Democratic Theory

It is expected that the introduction of an acceptable collective bargaining model which can be applied throughout the South African civilian intelligence services would be confronted by resistance from management and a lack of political will by the government. This is informed by the history and complex nature of the intelligence environment. This challenge emerges from the intrinsic secrecy associated with intelligence, notwithstanding that the term fundamentally refers to verified information of strategic and political significance and the means by which such information is acquired (The Oxford School Dictionary, 1994:269; Compact Oxford English Dictionary, 2006:13). Sternberg (2012:19) and Hindes et al.

(2011:1329-1335) asserted that intelligence is an appreciation of specialised methods and requisite skill set to acquire information. Bruneau (2008:452) drew on military experience to define it as the methods utilised to request data, gather, examine, and disseminate through covert means. Furthermore, it is also an output of these activities authorised by specific structures and roles within institutions. Similarly, Bruneau (2008:453) proposed an intelligence cycle that resembles the one described by Brown et al. (2018:280), to prioritise the interrogation of data by determining best options: “planning and direction, collection, processing analysis, and production and dissemination” (Brown et al., 2018:280). This cycle is broadly adopted and practiced by intelligence services globally including South Africa’s civilian intelligence services (see Figure 1.1 below). Despite the discreet nature of intelligence operations, its characteristics are generic and readily available in the public domain. However, De Judicibus (2015:108) cautioned that there is no universally accepted definition or understanding of ‘intelligence’. The study concurred with this perspective because it lacks clarity which contributes to the suppression of the individuals’ fundamental rights. Intelligence should instead be viewed as a means of providing fore-warnings and policy advice about threats and strategic opportunities to policymakers, aimed to protect the interests of the population irrespective of any categorisation, including race and political affiliation. Consequently, there is a need to strengthen oversight by political regimes, such as South Africa, to regulate the intelligence services.



Source: Bruneau, 2008:453; Brown et al., 2018:280

Figure 1.1: Intelligence cycle

Higley and Burton (2006:20) argued that the “classical elite theorists” view a regime as the rule by the selected few and cast doubt on the significance of democracy. Mukand and Rodrick (2017:1-4) contested that in liberal democracies, government should not suppress the individuals’ fundamental rights based on any form of classification. Held (1993:2021) shared a similar view and accentuated freedom of association as a key element of these rights. Okolie et al. (2021:7) asserted this principle and the need to protect an individual’s rights. Mukand and Rodrik (2017:1-4) cautioned that countries such as Bolivia, Ghana, and Indonesia tend to apply these principles selectively and are classified as “electoral democracies”. Held (1993:20-21) postulated that liberal democracy promotes citizen engagement to elect political office-bearers and protect the fundamental rights and freedom. In SA’s civilian intelligence services context, the study proposed autonomous consultation and a dispute resolution mechanism. The CSIS was utilised as an example (see Section 3.3, Chapter 3).

The CSIS established a labour relations dispensation in which the employer and employees engage as equals in a bargaining council. Section 23(5) of the Constitution of South Africa (1996) prescribes the rights of trade unions, employer organisations, and employers to engage in collective bargaining. It allows national legislation to regulate this process, provided that any limitation of the right aligns with the criteria stipulated in Section 36(1). Furthermore, Section 23(6) acknowledges the existence of trade unions by institutionalising collective agreements. Although this study did not advocate for union recognition within the civilian intelligence sector, a critical reflection on the acceptable limitations of labour rights, as prescribed by Section 36 of the Constitution of South Africa (1996), is essential to comprehend the broader labour relations dispensation within South Africa.

1.2.1 Framework for limitation of rights in terms of Section 36(1) and (2)

Section 36(1) of the Constitution of South Africa (1996) allows for the limitation of rights in the Bill of Rights only through laws of general application, and when such limitations are reasonable and justifiable in an open and democratic society based on human dignity, equality, and freedom. The nature and significance of the right requires consideration, the extent and purpose of the limitation, and the availability of limited restrictive alternatives. Section 36(2) affirmed that beyond these criteria, no legislation may limit rights entrenched in the Bill of Rights (Constitution of the Republic of South Africa, 1996). However, the civilian intelligence services’ regulations (see Section 1.1) neither recognises trade unions nor provides for collective bargaining as stipulated in Section 23(5) of the Constitution of South Africa (1996). Instead, they rely on internal consultation mechanisms which, in the current form, do not support genuine worker participation adequately or effective labour relations (South Africa, 2002). These mechanisms conflict with key International Labour Organization

(ILO) standards which assert that public sector employees are entitled to fundamental collective labour rights. The civilian intelligence services may not be an exception in this regard.

The CSIS serves as an example of an intelligence service which nullifies the assumption that collective bargaining may compromise national security. On the contrary, this mechanism promotes dispute resolution and protects both the employers and employees' rights (Public Service Alliance of Canada, 2020). South Africa's civilian intelligence services can benefit from this model by subscribing to constitutional provisions and international labour obligations (see Section 3.2, Chapter 3). Doellgast and Benassi (2014:1) concurred that it is an appropriate platform to promote representation and collective ownership of the decision-making processes due to its inclusivity.

1.3 Need for a Collective Bargaining Model within the SA Intelligence Services

Considering this understanding of intelligence services within a liberal democracy, it is suggested that a collective bargaining model should be utilised to advance administrative justice and the protection of basic rights within the SA's civilian intelligence services. According to Ehlers (2007:123), collective bargaining promotes collective agreements which are binding to both the employer and the employees. Visser (2016:1) concurred that it constitutes a process of negotiation between trade unions and employer organisations aimed to determine the terms and conditions of employment. Furthermore, it is regarded as a fundamental right at work, as acknowledged by the ILO. The Right to Organise and Collective Bargaining Convention No.98 of 1949 is a significant convention of the ILO as prescribed in section 1.2.1. It acknowledges collective bargaining as a voluntary process between autonomous parties and requires governments to promote mechanisms to negotiate voluntarily and regulate employment conditions through collective agreements (ILO, 1949; Du Plessis & Fouche, 2019; Visser, 2016:1). South Africa's non-ratification of ILO's Labour Relations (Public Service) Convention No.151 of 1978 which advocates for workers' civil and political rights could be perceived as a lack of commitment to promote freedom of association. This is such despite the Constitution of South Africa (1996) prescribing freedom of association and protection against any form of discrimination (see Section 3.2, Chapter 3).

South African civilian intelligence employees should not be excluded from benefiting from the principles of liberal democracy (see Sections 3.1 and 3.2, Chapter 3). Oldfield (2000:6-7) and Rhoden (2015:565) argued that fundamental human rights - including civil and political rights - are universally protected and without exception. In alignment with these principles, the Constitution of South Africa (1996) affirms that the Bill of Rights is the cornerstone of South Africa's democracy. Consequently, almost all the South African public service employees

enjoy the labour rights enshrined in Section 23 of the Constitution of South Africa (1996), including the right to join a trade union and to engage in collective bargaining. The Labour Relations Act (LRA) 66 of 1995 promotes collective bargaining and includes dispute resolution mechanisms as well as establishing forums in the workplace. The Act also promulgated the Commission for Conciliation, Mediation and Arbitration (CCMA); bargaining councils; and the Labour Court to provide an avenue for recourse. Employees of SA's civilian intelligence services do not enjoy these privileges and legal recourse can be costly. Instead, the employees must adhere to an ineffective "consultation" mechanism which is regulated by the Intelligence Services Act 65 of 2002. According to this Act, "consultation" takes place between management (employer) and members (employees) through the staff fora and the Consultation Committee. Consequently, a protracted stalemate endures which is characterised by the submission of unreconciled proposals to the Minister. Given this irregularity, there is no guarantee that the Minister will act upon the recommendations advanced.

This anomaly has been challenged in the courts. The Chief State Law Advisors (2004) contended that the limitation of the Section 23 rights of the Constitution of South Africa (1996) regarding the intelligence services is unconstitutional. This legal opinion was informed by the Constitutional Court's ruling in the *South African National Defence Union (SANDU) v the Minister of Defence* 1999(4) SA469(CC)). In this case, the Court ruled that the provisions of the Defence Act of 1957 prohibit members of the defence force from participating in public protests, form or join a trade union which would be unconstitutional. Based on these arguments, it can be inferred that the introduction of a collective bargaining model into SA's civilian intelligence services would promote fair labour practices and democratic principles. In this instance, collective bargaining is directed to advance participation in decision-making processes without compromising the confidential and secret nature of intelligence work.

South Africa and Canada embrace a liberal political ideology. According to Spitzer (2018:447), this helps protect civil rights and encourages regular elections, which are key principles of liberal democracy. Furthermore, Spitzer (2018:553) asserted that these principles are articulated in Section 3 of Canada's Charter of Rights and Freedoms (1982) although Canada is classified as a constitutional monarchy. Collective bargaining is intended to promote peace in the workplace and is institutionalised within the CSIS through Chapter 388 of the Canadian Public Service Labour Relations Act (1996). The SA's civilian intelligence service could benefit from this model (see Section 3.3, Chapter 3) if a similar collective bargaining mechanism is institutionalised in a structure and equivalent to the Public Service Collective Bargaining Council (PSCBC). Therefore, the CSIS is an example of a workable model within a comparable liberal democratic context.

1.4 Problem statement

The exclusion of South Africa's civilian intelligence services from a formalised collective bargaining framework constitutes more than an administrative anomaly. This raises constitutional and theoretical concerns within a liberal democratic order. Labour rights are entrenched in Section 23 of the Constitution of South Africa (1996) as an expression of dignity, equality, participation, and accountability which are core tenets of Liberal Democratic Theory. Therefore, the systematic absence of structured collective bargaining within the intelligence services creates a potential rights deficit that requires principled justification.

Since the enactment of the Intelligence Services Act 65 of 2002, employee representation has occurred primarily through consultative structures such as the Staff Council. However, these arrangements lack binding collective agreements and an autonomous dispute-resolution mechanism. This deviation from established public sector labour relations practice raises concerns regarding the legitimacy, effectiveness, and constitutional adequacy of the current framework.

Comparable security institutions such as the South African National Defence Force and the South African Police Service have implemented structured bargaining and dispute-resolution mechanisms without evident compromise to national security. The continued exclusion of civilian intelligence employees thus appears less a matter of necessity and more an unresolved institutional design question. Therefore, the central problem is the absence of a context-sensitive collective bargaining model capable of reconciling constitutional labour protections with the operational imperatives of the intelligence services. This institutional design gap gives rise to the primary research question: *What would be a suitable collective bargaining model for the South African civilian intelligence services?*

1.4.1 Primary research questions

The research questions outlined in the study are intended to address the above general research question. These emanated from gaps identified in the problem statement which revealed the absence of collective bargaining mechanisms within the South African civilian intelligence services. In this context, the study examined the theoretical framework and fundamental principles which supports collective bargaining within liberal democracies (Objectives i and ii). An examination of the reasons behind the exclusion of collective bargaining within the SA civilian intelligence services (Objective iii) addresses the anomalies that contribute to the current deficiencies. Furthermore, the research aimed to contribute to scholarly discourse and address current challenges by exploring the role and significance of

an autonomous collective bargaining structure within the civilian intelligence services (Objective iv). Finally, a suitable collective bargaining model would be proposed (Objective v). This would aid to advance fair labour practice within the civilian intelligence services. In light hereof, the following primary research questions guided this study:

- i. What theoretical framework supports collective bargaining within liberal democracies?
- ii. What guiding principles are applicable to collective bargaining in liberal democratic contexts?
- iii. What are the reasons for the exclusion of collective bargaining within South Africa's civilian intelligence services?
- iv. What role does an autonomous collective bargaining structure play within the South African civilian intelligence services?
- v. What would constitute a suitable collective bargaining model for the South African civilian intelligence services?

1.4.2 Research objectives

The objectives of this study are to:

- i. Examine and formulate the theoretical framework that supports collective bargaining within liberal democracies.
- ii. Identify and analyse the fundamental principles applicable to collective bargaining in liberal democratic contexts.
- iii. Criticise and investigate the underlying reasons for the exclusion of collective bargaining within South Africa's civilian intelligence services.
- iv. Explore and appraise the role of an autonomous collective bargaining structure within the South African civilian intelligence services.
- v. Propose and construct a suitable collective bargaining model for the South African civilian intelligence services.

1.5 Central theoretical statement

There is no consensus that a liberal democracy is the only legitimate and practical form of democracy (Cunningham, 2002:27). Fukuyama (1992: xi) argued though that this difference of opinion is common although most of democracies share similar characteristics of a liberal democracy. Mill (1991b (1859):7) cautioned that the history of oppression of the populace by a select few persists although such practices have diminished due to the evolution of democracy. In this context, Mill (1991b (1859):14) appealed to the state to utilise its authority to protect society against those who abuse power. Cunningham (2002:28) concurred that this

could inhibit the abuse - either by the state or individuals. Beetham (1994:1-26) discussed the significance to protect the fundamentals of human rights. This narrative fits well within the context of South Africa's transition from an oppressive to a democratic regime. The supreme law of the Republic affirms the principles of an open and democratic society rooted in the rule of law; equality; respect for human rights and freedoms, universal adult suffrage; and non-racialism (Constitution of the Republic of South Africa, 1996).

The constitutional context of South Africa aligns with the Liberal Democratic Theory because it underscores individual democratic rights. Churchill (1994:11) concurred that it helps to enhance civil rights and freedom of preferences. Nonetheless, these rights are denied within SA's civilian intelligence services. The absence of a viable collective bargaining model with autonomous bargaining structures such as the PSCBC further compounded this matter. This model may be implemented with greater care to protect employees who are in the core business of these organisations. This proposal is aligned with Sections 23(1) – (5) of the Constitution of South Africa (1996) which guarantees the right to fair labour practices, including the rights to form and join trade unions, strike, and engage in collective bargaining.

The study adopted the Liberal Democratic Theory to explore the reasons for the exclusion of collective bargaining within SA's civilian intelligence services as discussed in Sections 4.3.1, 4.4 and 4.5 of Chapter 4. Furthermore, it highlighted the absence of a collective agreement and inability to institutionalise dispute resolution mechanisms which are root causes of despondency among employees of the State Security Agency (SSA). It also exposes the shortcomings of the Intelligence Services Act 65 of 2002 which was intended to regulate the consultation mechanism. This mechanism is ineffective; lacks sufficient authority to influence policy initiatives; and incapable of promoting consensus-based decision-making processes. Therefore, the research contributed to the scholarly understanding of the guiding principles of the liberal democratic theory to promote fair labour practices within South Africa's civilian intelligence services (see Section 3.2, Chapter 3).

1.6 Methodological framework

Research methodology can be defined as a systematic approach of how the study will be conducted. According to Box-Steffensmeier et al. (2008:1), it is the craft of deconstructing complex ideas. Lauer (2021:420) identified the following three approaches to research: (i) descriptive tradition to clarify historical facts; (ii) explanatory-prognostic tradition which is aimed at forecasting; and (iii) a genuine practical (not applied) tradition to promote authoritative skills to understand complex issues and processes. Therefore, the guiding principles would be skills and methods to describe, interpret, explain, predict certain events, and construct specific operational models as explained below.

A methodological framework, according to Neuman (2006:78-80), is an approach towards conducting research, while McMeekin et al. (2020:1) defined it as a formal tool to address a problem. Neuman (2006:81) further noted that it is aimed to advance innovation and correct certain phenomena. Therefore, it represents a worldview adopted to deconstruct difficult situations and critique established assumptions (see Sections 6.1 and 6.2, Chapter 6). This section provided a broad outline of the methodological framework with specific emphasis of the methodological approach of the literature study which is discussed in greater detail in Chapter 6.

1.6.1 Research methodological approach

Long (2014:427-438) explained that the selected research methodological approach aims to enable researchers to decide on relevant research methods. Silverman (2013:225) concurred that it could either be quantitative, qualitative or mixed depending on the solution which was being pursued. Teherani et al. (2015:669-670) posited that qualitative research is an evaluation of a particular trend under investigation and includes community or institutional dynamics and their connections. In the context of this study, information was gathered and evaluated with integrity (see Sections 6.3, Chapter 6).

Borgstede and Scholz (2021:3) argued that the primary method to examine qualitative research is to classify information according to specific criteria. Similarly, designing a detailed method for scientific explanation empowers the researcher to examine a situation more effectively and with greater clarity. Qualitative researchers, according to Borgstede and Scholz (2021:3), adopt various methods to gather and analyse data although frameworks could reflect similar properties. Therefore, the arrangement of information according to certain categories such as content, thematic analysis, and grounded theory is significant (see Section 6.3 and 6.3.1, Chapter 6). The study adopted a qualitative research methodological approach to construct a viable collective bargaining model within SA's civilian intelligence services.

1.6.2 Data collection instruments

Instruments to gather data are utilised in qualitative, quantitative, or mixed methods. Kumar (2014:170) provided an overview of the differences of these methods which is informed by a specific worldview or approach that supports the investigation including the simplicity of the format; quality; and preference to respond to the research questions. In the study, the following data collection methods were utilised: literature review (explained in Section 1.6.2.1) and semi-structured interviews (explained in Section 6.6, Chapter 6).

1.6.2.1 Literature review

The aim of a literature review is, according to Neuman (2006:111), to enable the researcher in understanding the problem being investigated and analyse information from various sources and repositories. According to Snyder (2019:333), researching existing knowledge is critical for all academic inquiry, regardless of the discipline. It becomes a priority for scholars to undertake this task. It is also a structured process to investigate previous developments in areas of specific interest. Snyder (2019:333) cited Webster and Watson (2002) and asserted that it serves as a pillar to advance knowledge and design theory. Furthermore, it can address research questions more effectively than any single empirical study by integrating findings across multiple sources.

The review is, therefore, aimed to expose patterns of thematic issues under investigation. It is also utilised to demonstrate how the research is aligned with the broader context of collective bargaining in the public service. The reviewed literature enables the researcher to: (1) understand concepts and ideas; (2) validate the approach taken to conduct the study; (3) merge and consolidate previous achievements; and (4) compare contributions from various sources to develop new knowledge (Neuman, 2006:11; Strauss, 2021:211). In this context, it included the investigation and assessment of available information to develop an appropriate collective bargaining model within the South African civilian intelligence services.

To develop this theoretical framework, a variety of sources including the NEXUS database (catalogue of South African theses and dissertations) and the Index to South African Periodicals (ISAP) were consulted. The NWU referencing guide and political science dictionaries provided further clarity.

The Intelligence Services Act 65 of 2002; General Intelligence Laws Amendment Act 37 of 2024; and the Constitution of South Africa (1996) were among the key legislative documents which were consulted. Databases such as LexisNexis, Juta Law and SABINET Online also provided invaluable information. Additionally, JSTOR, EBSCOhost, Google Scholar, SAGE Journals Online, Cambridge Journals, and the Directory of Open Access Journals (DOAJ) were also utilised. Boloka, the NWU Institutional Repository, was also consulted. Official government gazettes and ILO committee reports were consulted to comprehend the policy environment. Hence, classified or secret SSA documents were disregarded. The material was analysed to develop a theoretical framework to support this study, which enabled the interrogation of the extent to which liberal democratic principles could be embedded in the labour relations dispensation of South Africa's civilian intelligence services.

The following authors, books, political science dictionaries and government publications formed the basis of the arguments:

- The study endeavoured to comprehend intelligence as a collection of information; analysis; and distribution as a product. Brown et al. (2018) provided the operational concept of intelligence and its cycle which is generally adopted by most civilian intelligence services. This contribution suggested that intelligence would involve human beings; how it is gathered; and distributed. Mukand and Rodrick (2017) contributed to understand the concept liberal democracy and its implications on fundamental human rights. This helped to measure the impact of the limitation of rights within SA's civilian intelligence services.
- Liberal Democratic Theory and liberal democracy informed the case for collective bargaining within the South African public service and civilian intelligence services. The adoption of this theory was influenced by various authors and philosophers who perceived the need for states and governments to protect the individuals' fundamental rights. Although there have been differences of opinion regarding sustainability of liberal democracy, Mill (1910), De Tocquille (1969) and Pennock (1950) maintain that protection of these rights is non-negotiable. De Jäger and Sebudubudu (2017), affirmed the liberal nature of the SA democracy. Meyers (1994) and Holmes (1995) support the protection of individuals rights in liberal democracies. Wolterstorff (2012) shared a similar view and contributed towards appreciation of the Constitution of South Africa's (1996) Bill of Rights as a means to protect individual rights. These rights were further articulated by Rhoden (2015) in the context of a liberal democracy (See Rhoden, T.F. 2015. The liberal in liberal democracy. In Babayan and Risse (eds). *Democracy, Promotion, and the Challenges of Illiberal Regional Powers*. 22 (3), 560-578)). SA's civilian intelligence services may benefit immensely if the significance of these values is appreciated.
- Adams (2010:153-164) argued that as a fundamental human right, collective bargaining is a prerequisite for engagement in a workplace. Vetorri (2005:109) argued that the right to bargain remains a contested issue. Collective bargaining in South Africa's public service is largely centralised and permits trade unions (Public Service Commission, 2020). Bendix (2000:143) concurred and argued that trade unions have freedom to operate freely in the workplace. To comprehend collective bargaining and its benefits within South Africa and the civilian intelligence services, and limitation of rights, the study consulted Sections 23(1), (2), (3) and (5) of the Constitution of South Africa (1996). The study was further motivated by the Universal Declaration of Human Rights (1948) and the number of ILO instruments, the majority of which South Africa ratified. These instruments accentuate freedom without exception or classification.
- The South African civilian intelligence services labour dispensation is governed by the Intelligence Services Act 65 of 2002. Section 21(2) of this Act prescribes the establishment of a mechanism which must provide internal rules to manage complaints, grievances, and

consultation on the conditions of service and human resources within the Academy or the Intelligence Services. Section 21(1) of the Act further mandates that “*no member of the Intelligence Services or the Academy may strike, induce, or conspire with other members to strike*”. This Act, which was prominently acknowledged in the study, does not advocate collective bargaining.

- Ehlers (2007) made significant contributions to expose labour relations systems and the competing priorities of employer and employees. Therefore, collective bargaining is a necessity in the workplace (see Ehlers, L. 2007. Labour relations systems, procedures and practices. Pretoria: EAMS Publishing). According to Serrano et al. (2011:59), there is a selfish tendency by employee representatives to prioritise their members’ needs at the expense of the competing expectations of the employer during the bargaining processes. The civilian intelligence services employees, however, do not have such an influence due to the limitations which emanate from the restrictive regulations.

The literature review (expounded upon primarily in Chapters 2–5), provided an understanding of the anomaly of the lack of collective bargaining and dispute resolution mechanisms within the civilian intelligence labour dispensation. An empirical study was conducted to clarify the research gap and *construct a suitable collective bargaining model for the South African civilian intelligence services* (see Section 6.4, Chapter 6).

1.7 Data analysis: Strategy

The purpose of the literature review was to gain an in-depth understanding of the essence of collective bargaining within the liberal democratic theory context. It also assessed and reflected upon the reasons for excluding collective bargaining within the SSA. The identified gaps were addressed through the empirical study and leading into findings presented in Chapters 7 and 8.

DiCicco-Bloom and Crabtree (2006:314-321) argued that an examination of information occurs simultaneously with the gathering phase to acquire a better understanding of issues under investigation and adopted methods to address these. This process permits the researcher to acquire reasonable access to the intended target on identified issues. DiCicco-Bloom and Crabtree (2006:314-321) advocated a template approach that utilises coding to analyse information within manageable contexts. This approach was informed by prior investigation and frameworks regarding collective bargaining as a viable solution to resolve labour disputes within SA’s civilian intelligence services.

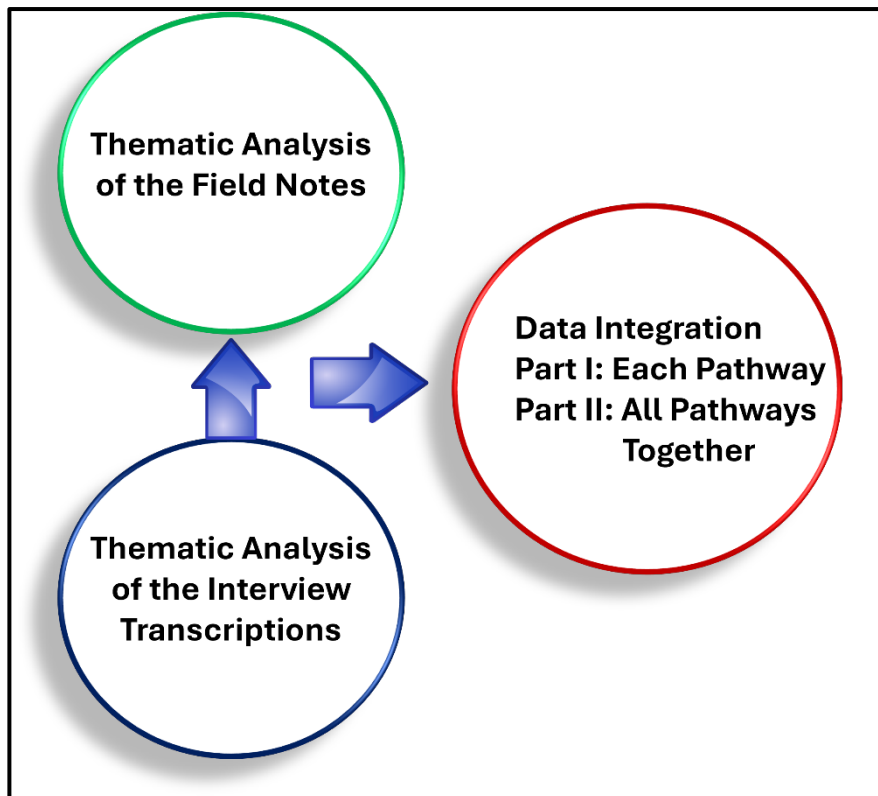
Codes were utilised to establish common phrases, patterns, and according to May (2001:191), their occurrence (see Section 6.6 and 6.7, Chapter 6). Strauss and Corbin (1990:61-62)

defined coding as examination of information and open coding as classification by analysing gathered information. This exercise aimed to test competing views in the search for new information. It was also supported by records which were captured during the interviews to maintain impartiality including data gathered through observation.

Due to the confidential and highly restricted nature of intelligence services, snowball sampling was utilised in a context-appropriate strategy to identify and engage the participants with relevant expertise and experience (Strauss, 2021:215) within the intelligence community. According to Zickar and Keith (2023:318–319), snowball sampling involves participants referring others who meet the inclusion criteria and thereby expand the sample. This method was particularly effective to access hard-to-reach individuals such as intelligence officials, who typically operate outside public visibility. Ten interviews were conducted, which was considered adequate based on the data saturation principle (Neuman, 2009:245–246; Ishak & Bakar, 2014:29–35; Strauss, 2021:215).

1.7.1 Empirical study findings: Integration of data

Strøm and Fagermoen (2012:534-535) alluded to a method for systematic data integration (see Section 6.7, Chapter 6) and compared information gathered through active or passive engagement during the interviews and examined similar patterns as explained in Figure 1.2. It was acknowledged that it is difficult to eliminate bias when gathering information from interviews which are often perceived as rehearsed engagement. However, this study adopted a systematic data integration approach to ensure consistency in gathering information - through audio-recording and notes - and an examination of the final product. In this context, interviews were the primary reference while detailed field notes complemented this process to consolidate and conduct an analysis. The interview recordings and detailed field notes were compiled into a single report to verify consistency and synergy. A template compiling old and new data from this process was integrated to assess value-added which, according to Strøm and Fagermoen (2012:534-535), aims to avoid compromising the original text and quality. This exercise supports the research objectives and interpretation of empirical evidence.



Source: Strøm & Fagermoen, 2012:534-535

Figure 1.2: An Overview of the Systematic Data Integration Method

1.8 Ethical considerations

Ethical considerations guide researchers to adhere to a code of conduct and protect subjects as well as observe academic requirements as articulated by Mathews and Ross (2010:71). McAuley (2003:95) asserted that these principles aim to ensure the integrity of the study. Neuman (2006:129–135) also accentuated the significance to protect the dignity of the participants involved in the research. In this context, interviews in intelligence services is demanding due to the secretive nature of the environment. Therefore, it was important that all the interviewees provide informed consent and understand the probable implications of their participation (Babbie, 2021:67; Resnik, 2015:1; Strauss, 2021:223). These principles were observed throughout the phases of the research process. Furthermore, the interviewees were consistently reminded of their right to withdraw at any time if they felt uncomfortable.

The researcher also noted the guidelines outlined by the North-West University to manage and preserve data acquired from interviews, *i.e.*, utilise password protected devices which are only accessible to the researcher and the supervisor. Detailed field notes from the interviews were also secured in conformance to the guidelines. Data would be stored for five years and disposed of after this period (Strauss, 2021:211-212). The researcher was also cautious and avoided unnecessary disclosure that could compromise the operational integrity of the

intelligence services, which aligned with Bos's (2020:50) recommendations. Ethical clearance was acquired from the North-West University Research Ethics Committee, reference number NWU-00248-19-A7 (see Section 6.8, Chapter 6 and Annexure A). Furthermore, ethical considerations were observed throughout both the literature review and empirical phases of the study. Further details are provided in Section 6.8 of Chapter 6.

1.8.1 Informed consent

Researchers must ensure that interviewees, who assist during the research process do so willingly to safeguard their rights (Neuman, 2006:135; Strauss, 2021:219). Mathews and Ross (2010:73) reinforced this and underscored that informed consent ensures that subjects are aware of the implications of agreeing to cooperate and contribute to the research as interviewees (see Annexure B). The researcher ensured that the North-West University's Research Ethics Committee ethical guidelines were respected. The study employed semi-structured interviews and prioritised anonymity and confidentiality throughout the process. The interviewees completed the consent forms at the start of the interview. Their right of participation and withdrawal was reiterated and that the process was voluntary. The researcher assured the participants that their identity would not be disclosed during this process and after the study.

1.9 Limitations of the study

The following limitations were identified for this study:

- This study was not a comparison of SA's civilian intelligence services' collective bargaining with the CSIS model. The former makes provision for a consultation mechanism, whilst the latter permits certain occupational groups to belong to a public service association which has collective bargaining instruments. However, this study utilised the CSIS as an example of an effective collective bargaining model which could be implemented within the SA civilian intelligence services in a liberal democracy.
- The study did not include the review of the South African civilian intelligence services, which led to the adoption of General Intelligence Laws Amendment Act (GILAA) 37 of 2024. The Act amends the National Strategic Intelligence Act 39 of 1994; Intelligence Services Oversight Act 40 of 1994; and the Intelligence Services Act 65 of 2002 and focuses specifically on intelligence gathering, data collection and surveillance oversight. However, it does not address the employee's conditions of service in SA's civilian intelligence services. This matter which remains strictly regulated under the Intelligence Services Act 65 of 2002 was not affected by the review. It also gave effect to the Presidential High-Level Review Panel on the SSA (2018) recommendations, as

well as the implementation plan of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State (2023). Amongst others the GILAA 37 of 2024 is aimed at: “(a) *transforming the intelligence services in improving capability and introducing domestic intelligence agency and the foreign intelligence services; (b) improving the efficiency and capacity of the signals intelligence as confirmed by the Constitutional Court; (c) correcting challenges highlighted by the Financial Action Task Force process, in dealing with money laundering and terrorist financing by capacitating intelligence services in probing individuals and organisations posing a threat to national security; (d) enhancing systems of managing private security; and (e) monitoring behaviour of employees who were at the employ of the institution and their privilege to institutional data*”. Therefore, it is evident that the General Intelligence Laws Amendment Act 37 of 2024 did not address the contested issue to enhance the employees’ conditions of service in civilian intelligence services.

1.10 Significance of the study

This study contributed to the field of intelligence and labour relations and proposed a collective bargaining model within South Africa’s civilian intelligence services. The model balances employee interests against the secret nature of the intelligence work. Based on the Liberal Democratic Theory, the study encouraged the adoption of an inclusive collective bargaining mechanism to promote democratic values as prescribed in the Constitution of South Africa (1996).

The proposed model would eliminate the risk of strikes and the formation of a trade union. More importantly, the outcomes of the study could contribute to the development of a formal framework for civilian intelligence services in Africa and globally. Thus, the study did not only address a critical governance challenge but also contributed to the evolving academic discourse on strengthening consultation mechanisms in civilian intelligence services.

1.11 Outline of chapters

This thesis comprised of nine chapters. A critical analysis of the exclusion of collective bargaining within the South African civilian intelligence services was expounded upon in detail, analysed, and a suitable collective bargaining model was proposed.

Chapter 1: Introduction

This chapter provides an overview of the research methodology, and introduces the topic, identifies the problem statement followed by the research questions.

Chapter 2: Theoretical Framework – Collective Bargaining within Liberal Democratic Systems

Chapter 2 interrogates collective bargaining within the Liberal Democratic Theory context as an operational theory. The basis of the Liberal Democratic Theory is to protect fundamental human rights and endorse regular elections. Collective bargaining, through collective agreements, serve as a mechanism to enhance working conditions and promote fair labour practices.

Chapter 3: Fundamental Principles Governing Collective Bargaining in Liberal Democratic Contexts

In this chapter, the guiding principles which underpin collective bargaining within liberal democracies were discussed. Collective bargaining, collective agreements and trade unions in liberal democracies endeavour to alleviate unilateral decision-making by management because it has an impact on the employees' conditions of service. Collective bargaining in liberal democracies serve to balance employer and employee power during negotiations.

Chapter 4: Collective Bargaining: South African Civilian Intelligence Services Since Democracy

This chapter provides an outline of collective bargaining within the public service in South Africa and highlights that “other employees of the state” enjoy certain rights which are prohibited in the intelligence services, as well as collective bargaining. The labour relations dispensation within the South African intelligence services was explored and its limitations and challenges highlighted. The rationale for the exclusion of collective bargaining within the South African civilian intelligence services by the LRA is also examined.

Chapter 5: The Role of an Autonomous Collective Bargaining Structure within the Civilian Intelligence Services

In this chapter the role of an autonomous collective bargaining structure within the South African civilian intelligence services is interrogated. It also demonstrates that collective bargaining minimises labour disputes whilst simultaneously sustains peace in the workplace. The chapter also focuses on collective bargaining within the SANDF and the SAPS (see Sections 5.6.1 and 5.6.2, Chapter 5) to de-mystify the assumption that collective bargaining can have a negative impact on the intelligence services operational functions.

Chapter 6: Research Methodology

The chapter discusses the research methodological framework for the empirical study and clarifies the research design. A case study design is adopted to acquire an in-depth understanding of the reasons for the exclusion of a collective bargaining mechanism within

the SSA. The study further reveals the SSA employees' experiences; human resources management; subject-matter experts; and the Inspector General's Office through one-on-one semi-structured interviews. It investigates the thematic issues of contradictions between consultation mechanisms and collective bargaining as well as the potential national security implications which may be used to deny employees their fundamental basic human rights of forming or joining a trade union.

Chapter 7: Findings: Thematic Analysis

The chapter outlines the principles of Liberal Democratic Theory and how the exclusion of collective bargaining within the SSA impacts on the employees' rights. It also provides a detailed description of consultation mechanisms and collective bargaining. The benefit of collective bargaining is analysed and deficiencies in the consultation mechanisms are highlighted. The second section of the chapter discusses alternative collective bargaining models identified during the empirical research to establish dispute resolution mechanisms.

Chapter 8: South African Civilian Intelligence Services: Appropriate collective bargaining model

A model for collective bargaining in the South African civilian intelligence services is proposed. This model is designed on the Canadian example, SANDU, and SAPS experiences. The chapter provides a summary of the research and responds to the research questions which is supported by the reviewed literature. Practical recommendations; limitations of the study; and recommendations for future research are highlighted in the chapter. Furthermore, it incorporates both theory and the outcomes of the semi-structured interviews.

Chapter 9: Conclusion and Recommendations

Chapter 9 summarises the key points of the study; essential features of the design; and the significant outcomes of the investigation. It relates directly to the primary aim of the research, *i.e.*, construct an appropriate collective bargaining model for the South African civilian intelligence services; highlight the extent to which the research objectives are achieved; summarises the key findings and outcomes; and focuses on the significance or usefulness of the study.

CHAPTER 2: THEORETICAL FRAMEWORK – COLLECTIVE BARGAINING WITHIN LIBERAL DEMOCRATIC SYSTEMS

2.1 Introduction

This chapter explores the ‘Liberal Democratic Theory’ in detail and explains how it relates to the study. Liberal democracy is defined, and it is argued that South Africa reveals characteristics of this type of regime. It also outlines collective bargaining within liberal democratic systems as a reasonably fair, just mechanism to negotiate, alleviate tension at work and promote principles of equality. The aim was to achieve the first research objective of the study: *“To examine and formulate the theoretical framework which underpins collective bargaining within liberal democracies”*. The structure of the argument is based on the premise that collective bargaining within liberal democracies is informed by the Liberal Democratic Theory. An overview of the selected theory is discussed, followed by an explanation of the term liberal democracy. Furthermore, the logical connection between collective bargaining in liberal democracies and the Liberal Democratic Theory is expounded upon.

2.2 Overview of Liberal Democratic Theory

The Liberal Democratic Theory is grounded to protect the individuals’ rights; freedoms; promote regular elections and limit state over-reach. Mill (1910:203) argued that it teaches the citizenry of how to participate in decision-making processes and promote sound administration. Therefore, these values also aim to preserve peace amongst the populace. In the context of SA’s civilian intelligence services, collaboration and understanding is promoted during negotiations of the employees’ conditions of service. Beatty (1984:37–69) contended that the Liberal Democratic Theory propagates protection of fundamental human rights and serves as an oversight over policy making processes and promotes accountability amongst ordinary citizens. Furthermore, De Tocqueville (1969:228-229) noted that democracy enhances governments material circumstances; promotes peace; and enhances adherence to rules amongst various sectors of the populace. This will, by default, elevate the integrity of the citizenry and the state. In this regard, the SA’s civilian intelligence deliberate appreciation of these values would enhance in consolidating a peaceful work environment.

The above argument is augmented by the “bill of rights” which was introduced by the English, American, and French to embrace constitutional provisions in appreciating individual rights and entitlements to minimise abuse by governments (Pennock, 1950:14). In summary, these values were aimed to introduce institutional checks and balances to avoid encroachment by

the three spheres of government namely, the “judiciary, legislature and executive”. These provisions are also articulated in the Constitution of South Africa (1996) and is referred to in the next section.

2.2.1 The “state” from a liberal democratic view

According to the Oxford Concise Dictionary of Politics and International Relations (2018), a state is a group of organisations which controls individuals as a disguise to protect their rights. In this context, Dunleavy and O’Leary (1987:3) distinguished between two arrangements which characterise these institutions. The first was an **ex-ante** approach, which views the state in terms of the institutions which pursue specific objectives. Therefore, this may include organs of state which endeavour to protect national interests. The second, an **ex-post** approach, identifies the state through its effects, particularly its role in stabilising society. In South Africa, civilian intelligence services contribute towards state authority by ensuring national security and positioning these institutions as critical stabilising actors. Section 198 of the Constitution of South Africa (1996) explicitly mandates security services, including intelligence which must act in accordance with the law and remain accountable to the authority of Parliament and the national executive.

The oversight is important to minimise the abuse of power and manipulation of intelligence services to serve selected individuals or political interests. Holmes (1995:11–12) cautioned that too much power poses a fundamental threat to individual rights whereas liberalism underscores the significance of persons and freedoms and mitigates this risk. It also appreciates the government’s function to safeguard the progress of its citizenry. Therefore, the concern of substantive and unregulated power is of relevance to intelligence services because secrecy could lead to abuse, as revealed in the Presidential High-Level Review Panel on the SSA Report (2018). The functions of the intelligence services should not only be to advance national interests but also embrace liberal-democratic principles such as transparency and lawfulness. It is also important to establish effective political oversight to ensure a balance between the state’s constitutional obligations and the rights of individuals in conformance with Section 36(1) and (2) of the Constitution of South Africa (1996).

This above submission is supported by Dunleavy and O’Leary (1987:3) who contended that liberalism is premised on the balance of the rights of persons which is fundamentally aligned with the liberal nature of South Africa’s democracy which prioritises inclusivity, representativity and protection of fundamental rights. Holmes (1995:16) concurred that it is aimed to limit state power and safeguard rights without bias which is discussed in the next section.

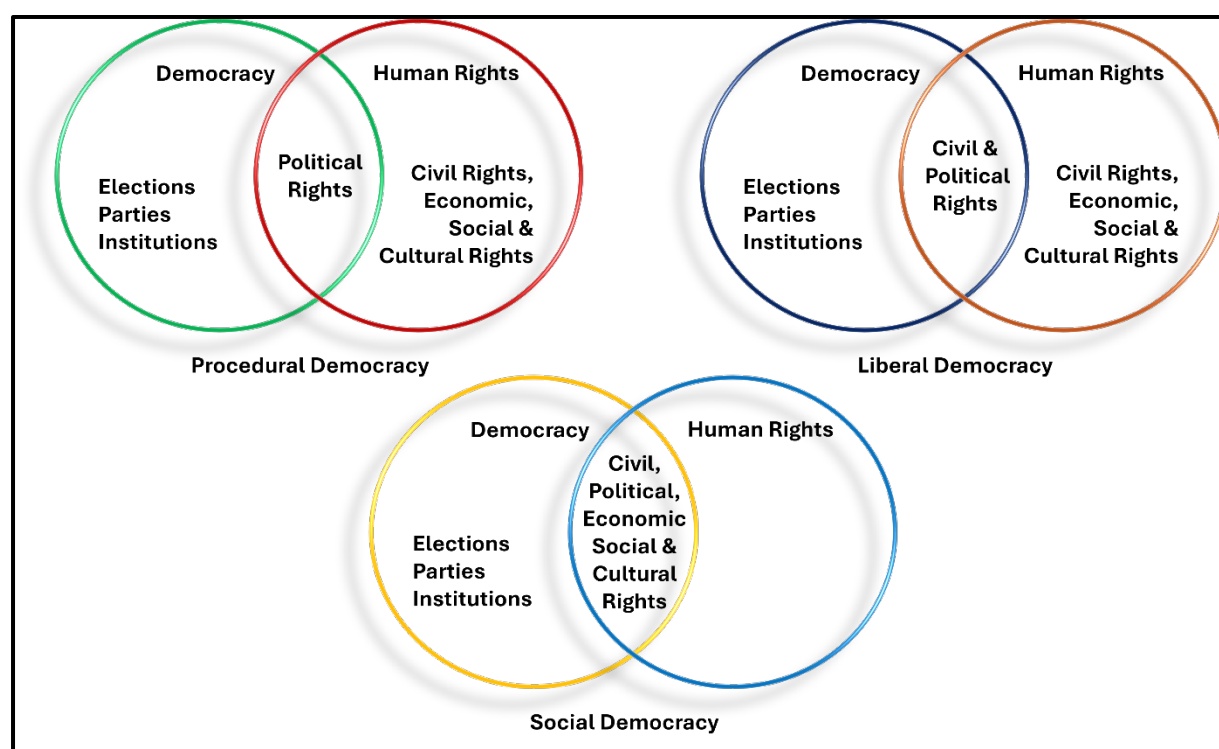
2.3 What is a “Liberal Democracy”?

It may be difficult to define the meaning of liberal democracy precisely without considering historical contexts and its meaning. Wolterstorff (2012:1) argued that the term seems to be evasive, transforms intermittently and may take place at slower or rapid pace depending on the understanding and previous worldview. Pennock (1950:3-4) argued that philosophies and organisations have historically overcome unexpected transformation. Of significance is that the survival of liberal democracy is informed by patterns which affects societies and an analysis thereof would require an appreciation of this evolution. Therefore, it is important to understand this concept within the context of the state as a means and institutions which are required to regulate individual behaviour and correspondingly protect the interests of others.

Landman (2017:48-49) contended that democracy and freedoms are based on consensus and the appreciation of values of inclusivity, representivity, engagement and the peaceful resolution of disputes. The recent understanding of these terms is informed by elements of independence, inclusive engagement and accountability. However, selected scholars hold different perspectives of this concept which prompted Landman (2017:48-49) to categorise it as either: a) procedural democracy; b) liberal democracy; or c) social democracy (see Figure 2.1). This differentiation is informed by the reconciliation of divergent rights which demanded independence while pursuing inclusive engagement. In this context, SA's liberal democracy endeavours to balance the need for autonomous structures and decision-making with legitimate participation by all stakeholders. Independence and the demand to play a critical role in decision-making processes remains a delicate matter. In particular, the civilian intelligence services' consultation mechanism may be confronted by this contradiction since management may perceive these rights as indicators of micro-management and erode the command-and-control principle (see Section 2.3.1).

Holden (1993:17) endeavoured to diffuse this situation and suggested that liberal democracy demands that state power be minimised through checks and balances. This view is also shared by Zakaria (1997:22-43) and Fine (1999:1574) who acknowledged that the liberal aspect safeguards freedoms. Dryzek and Dunleavy (2009:18) concurred that a liberal democracy is governed by principles of equality and protection of fundamental human rights. For the South African civilian intelligence services, this advances the popular view - which is controversial due to the SANDU precedence - that these institutions function within the parameters stipulated in the Constitution of South Africa (1996) despite not having dispute resolution mechanisms. Section 199(5) of the Constitution of South Africa (1996) explicitly states that “*security services must act, and must teach and require their members to act, in accordance with the Constitution and the law*”. Thus, it could be perceived that the Constitution of South Africa (1996) inhibits state's overreach by institutionalising oversight. This serves as

both a directive and a defensive mechanism which authorises intelligence functions where necessary for national security but simultaneously protects citizens from abuses and political interference. The Intelligence Services Oversight Act 40 of 1994 further institutionalises accountability and mandates oversight by the Joint Standing Committee on Intelligence (JSCI) and the Office of the Inspector-General of Intelligence (Constitution of the Republic of South Africa, 1996). It is important to note that these structures are not mandated to manage labour disputes with reference to conditions of service as explained in Section 2.2.1 of this chapter.



Source: Landman (2017:51)

Figure 1.1: Definitions of democracy (Adapted from Beetham, 1999:94)

2.3.1 Rule of law and Constitutional safeguards

The rule of law implies that the action of the state or institutions should protect the interests of the citizenry by keeping them happy. Therefore, the emphasis on civil and individual rights suggests that liberal democracies mandate the state to act impartially to protect these rights. However, Lautenbach (2013:18-69) argued that there is no agreement on the meaning of rule of law since most definitions are about limiting state authority and how it is executed. To complicate this matter, democracy is also appreciated as part of rule of law which is difficult to separate because these safeguard persons and their independence. Therefore, it is suggested that governments are expected to establish oversight structures to protect the

rights of individuals which is aligned with the ideals of liberal democracy. Pennock (1950:5) posited that there is also an expectation of regular elections which is ideal for rule of law. Overall, Queiroz (2018:11) concurred that these principles intend to limit state authority over the population.

The above arguments are strengthened by Audi's (1997:16) assertion that a liberal democracy does not promote force unless there is a need to protect citizens against arbitrary actions. This implies that any other circumstance would not be adequate to justify the use of force. Therefore, the state must rely on negotiations to solicit support. The assumption, according to Rawls (1985:223-251), is that human beings could distinguish between right and wrong which is why they subscribe to government laws.

Wolterstorff (2012:137) held that the key foundation of constitutional liberal democracy is equality and freedom of expression. This critical pillar also lies in the fact that the Constitution limits state power to inhibit the undermining of people's rights and dignity. This narrative is more sustainable than the one which suggested that the population has unlimited rights. Therefore, there is no plausible theory to support it. Furthermore, it is expected that responsible governments would implement mechanisms to regulate and protect individual rights in a fair manner (see Section 1.2.1, Chapter 1). This requirement remains relevant to both the employer and employees of the SA's civilian intelligence services which demands that, to execute the legislative mandate, the rule of law must be adhered to.

According to Anton (2017:3), liberal democratic governments are classified according to how they campaign for positions of influence and through a transparent voting system. However, it is difficult to classify a regime as liberal democracy if it does not support these fundamental freedoms. The focus is on commitment to important societal principles including all basic human rights without discrimination.

According to Anton (2017:3), liberal democracy is supported by numerous states across the globe, for example:

- Asia: India, Israel, Japan, South Korea, and Taiwan;
- Europe: Iceland and Switzerland;
- Africa: South Africa;
- Liberal democratic states of North America: Canada, Mexico and United States; and
- South America: Argentina, Brazil, and Chile.

From the above, it can be inferred that South Africa is categorised as a liberal democracy because it meets the requirements to protect fundamental human rights and freedoms, which are explored in the next section.

2.3.2 South Africa as a liberal democracy

Section 2.3 of the Chapter (see Figure 2.1) established that post-apartheid South Africa is considered a liberal democracy which is characterised by, among others, regular elections; accountability; application of fair administrative justice; and protect civil liberties. It is also acknowledgement that the Constitution of South Africa (1996) established oversight institutions which are mandated with checks and balances of how power is exercised to inhibit the abuse of power by both the state and individuals. Anton (2017:3) argued that by embracing liberal democratic model it is an indication that a regime is willing to confront the harsh realities communities face and commit to addressing these. Therefore, within the Sub-Saharan region, South Africa is considered a relatively successful example of democratic governance. According to De Jäger and Sebudubudu (2017:15–23), it has maintained consistent democratic practices including fair and regular elections; acknowledged divergent views; embraced multi-partyism; and established institutions assigned with checks and balances. Given this liberal democratic nature, SA's civilian intelligence services is subjected to similar principles including oversight.

South Africa's liberal democratic character draws a clear distinction between three tiers of governance and legislative mandates to avoid over-reach. Despite these provisions and oversight, Good (2002:191-193) criticised the functioning of liberal democracy because it has created an opportunity for the lack of responsibility by the select few and those who own the means of production. This gave rise to opportunistic cooperation between a few from poor backgrounds and corporate entities which focuses on access to funding. This criticism may not be sustainable because the judiciary and Chapter 9 institutions support constitutional democracy, as prescribed in the Constitution of South Africa (1996). These have remained effective and impartial to protect both the state and civil liberties.

The Bill of Rights, in the Constitution of South Africa (1996), guarantees constitutional democracy, because it promotes fundamental human rights and freedoms. Section 23 provides a framework for labour relations and rights which are applicable to all stakeholders which embrace fair labour practices. Moreover, Section 1(a) of the Constitution of South Africa (1996) protects the fundamental rights of individuals and their entitlements. However, there are limitations on exercising these rights which were articulated in Section 1.2.1 of Chapter 1 though.

South Africa's democracy has matured since 27 April 1994 following decades of oppression; sanctions and isolation from the civilised world and has translated into a measure of political stability. However, Carothers (2002:11-12) disagrees. Despite regular elections only one party ruled the country. This is relevant to the former ruling African National Congress (ANC) which

had power since the dawn of democracy. Therefore, Carothers' (2002:11-12) referred to this phenomenon as a *"dominant power politics syndrome existing within the grey zone"*. Hence it is difficult to separate the ruling party from the 'state'. However, De Jäger and Sebudubudu (2017:15-35) argued that in such instances, non-governmental organisations are expected to be effective and ensure responsible governance. Dahl (1971:4-9), Huntington (1984:195) and Rothstein and Teorell (2008:165-190) posited that there is a need for universal suffrage and fairness in a democracy. However, the 2024 elections exposed a new election pattern that led to coalition politics and government while the ANC remained the ruling party, except in municipalities where there is an alternative in power. However, this does not make South Africa lesser of a liberal democracy since the fundamental principles of regular and fair elections is evident.

The above assertion is evident in Heywood's (2013:270) characterisation of liberal democracy which includes elections on a regular basis; institutionalisation of oversight and protection of fundamental rights; active non-governmental organisations; and autonomous employee's representative structures. In this context, South Africa embraces regular elections and allows citizens to participate in critical decision-making processes, as well as promote active civil society as illustrated in Table 2.1 below. However, it does not suggest that the protection of individual rights is absolute otherwise it may infringe on the rights of others. Hence, certain rights may be limited by Chapter 2 of the Constitution of South Africa (1996) based on specific conditions and limitations must be justifiable. The absence of collective bargaining within the SA's civilian intelligence services may not qualify within this clause. Collective bargaining in liberal democracies as a means to protect the rights of workers is discussed in the next section.

Table 2.1: Characteristics of South Africa's liberal democracy

Thematic Liberal Democratic Issues	Phenomenon
Civil Liberties	Freedom of speech Freedom of religious belief & observance Right to petition for redress of grievance Right to own property and be protected in its use and disposal
Rule of Law	Rule of law Legal impartiality within a single system of laws applied equally to all
Individual and Societal Values	Human diversity Value of individual achievement
Civil society responsibilities	Check on abuse of political power Dependence on self-discipline
Fundamental Freedoms	Psychological security Uncensored discussions
Democratic Participation	Collective rule through elected government Regular elections
Equality	Autonomy Equality
Administrative justice	Access to justice and fair administrative justice Participation in decision-making processes

Source: Author's own construction

2.4 Collective Bargaining within liberal democracies

The submissions in this chapter are consistent in that collective bargaining is necessary to protect fundamental human rights in the workplace. Based on the principles of independence, fair treatment, and good governance, it aligns with the broader aims of the Liberal Democratic Theory, which promotes the protection of freedom and inclusive engagement in the formulation of legislation (Pateman, 1970:1). These democratic ideals are stipulated in the Constitution of South Africa (1996) which guarantees dignity, equality, and freedom of the citizenry. It also mandates that governance must reflect the will of the people and be executed in an open and inclusive manner. In conformance with these prescripts, Section 23 specifically guarantees the right to fair labour practices and acknowledges the rights of stakeholders to engage in collective bargaining. This provision is put into effect through legislation such as the Labour Relations Act 66 of 1995 which institutionalises collective bargaining as a mechanism to resolve labour disputes.

Vajda (1981:9) concurred with the above and argued that '*democracy*' entails a comprehensive platform of collective decision-making which allows individuals to assert their

interests in a fair and structured manner. Brown et al. (2018:147) concurred that it facilitates government to act in a manner such that it always considers the wishes of the citizens. The difference between liberal democracy and other forms of government, is that it does not allow the state to apply rules selectively when providing services regardless of any motivation and alternate of leadership (Mukand & Rodrick, 2017:14) (see Section 3.2, Chapter 3). The lack of regulations to establish ‘*autonomous*’ consultation with a dispute resolution mechanism intended to sustain peace within the civilian intelligence services is, therefore, anomalous.

Guerin (2004:23) argued in conformance with Carothers’ (2002:11-12) concerns in Section 2.3.2 of the chapter, that it is undesirable to have the same party in government despite the holding of regular elections and further drew a distinction between: “(i) *pseudo-democracy, that is: parliamentary democracy not direct democracy; (ii) bourgeois democracy not proletarian democracy; (iii) adulterated democracy not pure democracy*”. This categorisation, and arguments (see Section 2.3.2), suggests that the concept “*democracy*” can imply many things to different people. Roberts (2009:84) concurred that citizens are manipulated into believing that the authority lies with those who manage institutions and with material advantage whereas it resides with the masses. These arguments are aligned with the perceived ineffectiveness of consultation mechanisms within SA’s civilian intelligence services. The latter is due the possibility that management could be utilising funding to manipulate elected employee representatives. The implications are that management legitimacy and impartiality may be questioned, as it compromises the autonomy of workers’ structures (Roberts, 2009:88-89).

Kajee (2007:7) argued that liberal democracy, which Western countries tend to embrace as a global instrument to address the wellbeing of citizens, is aimed to promote collective and fundamental human rights. However, these expectations are a mere illusion created by those with influence and intend to crush activism against injustices. The continued marginalisation of the working class as a disposable commodity contradicts the ethos of liberal democracy. Hence, there is a need to strengthen the regulations which govern consultation mechanisms through the introduction of collective bargaining processes within the civilian intelligence services and, which, according to Du Plessis (2013:84), advance the protection of the workers’ rights (see Section 2.4.1). South Africa could borrow from Canada’s experience to establish such mechanisms to safeguard the fundamental rights of the employees.

The Canadian labour dispensation, as an example of a liberal democracy, is based on a federal model of collective bargaining which allows individual sectors to formulate their own negotiation and engagement mechanisms. This decentralised approach is designed to

streamline administrative processes to enhance fair labour practices, especially the resolution of labour disputes. However, this should not be interpreted as an indication that South Africa's centralised collective bargaining system lacks similar effectiveness. The South African model also aims to enhance labour relations and peaceful resolution of conflict despite the challenges the intelligence services face.

The collective bargaining mechanism in South Africa emanated from prolonged political engagement and alignment with international labour practices (see Section 3.2, Chapter 3). As alluded to in the previous sections, South Africa's labour dispensation was reconfigured by mass mobilisation from within the country, international pressure, and the association of liberalism with fair conditions of employment (Donnelly, 2001:551). According to Natras (1998:21), these developments were largely influenced due to disillusionment with an oppressive and discriminatory private sector. This perception was supported by Donnelly (2001:551-567) who argued that they became an extension of government rather than advance the interests of capital. However, this mindset is disappearing as corporate start to realise that they don't have to rely on the state for survival.

Flanagan (2008:406) concurred with the above statement and suggested that the methods of engagement which the employer and employees establish when discussing conditions of service is influenced by internal and external factors. Donnelly (2001:551-567) who cited Macun and Webster (1998:35-50), posited that this transformation has compelled legislators to adopt "*Modelle Deutschland*", to promote collaboration in governing employment relations with the emphasis on liberating and protecting the well-being of society throughout the corporate world. Donnelly (2001:551-567) lamented that such development in the South African context would require meaningful engagement to attract investments both internally and from European countries. Therefore, there is no doubt that negotiating in good faith during collective bargaining is influenced by structural and methodological concerns informed by the current and changing needs of society. The collective bargaining system in South Africa is discussed further in Section 3.2, Chapter 3; Section 5.6.2.1, Chapter 5; and Sections 8.2.2 and 8.6, Chapter 8. These arguments necessitate an appreciation of South Africa's legislative framework for collective bargaining and employees' recourse in the event of an impasse during negotiations, as discussed in the next section.

2.4.1 Legislative and policy context: Collective bargaining in South Africa

In South Africa, collective bargaining is formalised through legislation to promote employee participation in governing institutions. In this regard, Karolia-Hussain and Fourie (2021:445–452) argued that the Constitution of South Africa (1996) protects every employee against any form of discrimination and provides legal avenues to express dissatisfaction of the conditions

of service. The Labour Relations Act (LRA) 66 of 1995 came into effect to govern employer-employee engagement through collective bargaining. Therefore, the LRA endeavours to regulate this mechanism and implement a process to engage and reconcile divergent views which are intended to enhance conditions of service. However, there are persistent challenges, especially in developing effective approaches to communicate outcomes of decisions to stakeholders and address the imbalance in power relations. Furthermore, this challenge is complicated because collective bargaining is not mandatory and depends on the whether the parties intend to engage or not. Consequently, the employer may manipulate, exclude selected employees; or deliberately suspend the process to implement collective bargaining agreements. The unintended consequence of this apathy is that employees may withdraw their labour (see Section 2.4.2), which is a constitutional right, while endeavour to elicit the employer to commit to the process.

2.4.2 Employees' recourse: Impasse during negotiations

South Africa, as a liberal democracy, provides employees legislative recourse as well to withdraw their labour to challenge and influence the employer's policy positions. This legislative recourse emanates from a prolonged political struggle against the former oppressive, racist apartheid regime and complicit corporate entities, and is also supported by international law. The Constitution of South Africa (1996) stipulates that workers may withdraw their labour if collective bargaining fails to achieve the intended objective to reach an agreement. This is further clarified by the Labour Relations Act 66 of 1995 which distinguishes between a legal and illegal strike. The former inhibits employers from expelling employees when they embark on such an action whereas the latter provides the employers discretionary powers. However, employees can be dismissed irrespective of whether the strike is lawful or unlawful. Furthermore, dismissal can also be effected in instances where evidence shows that selected rules had been violated due to their actions which inhibit the provision of essential services or intimidate those who refuse to join the protest (Grogan, 2009:185). In this context, SA's civilian intelligence services and other security establishments are not permitted to strike due to the nature of their work and not because the service is classified as "essential services". However, classification as essential services was not the primary objective of this study.

Any collective bargaining model in a liberal democracy such as in South Africa would be required to conform with the provisions of Section 23 of the Constitution of South Africa (1996). The latter dictates the formation of a trade union and the right to engage in collective bargaining. This provision is complemented by Section 85 of the Labour Relations Act 66 of 1995 which legislates workplace forums within the public service. The Act protects freedom of association in the following ways:

- “Employees to freely form, associate, and participate in trade union activities. Both employees and those seeking employment are guaranteed of protection of these rights, and none of these parties may be victimised for exercising these rights.
- Employers to join, form or participate in the activities of an employer’s organisation.
- All parties may join international organisations and form federations.
- All disputes in this regard must be referred to the Bargaining Council or Commission for Conciliation, Mediation and Arbitration (CCMA) and thereafter the Labour Court.”

Ehlers (2007:123) argued that the outcome of the collective bargaining process is a binding agreement to guide implementation of the conditions of service. It is an ongoing process that takes place within specific bargaining structures and conforms with legislative requirements. It is further informed by management and the employees conflicting interests. There could be a need to consider the implications of the LRA’s limitations in case SA’s civilian intelligence services should introduce collective bargaining. The latter would likely delay the process. This dilemma confirms the contradiction between the principles of liberal democracy and the secret nature of the intelligence work which is examined in detail in Chapter 4 (Sections 4.3, 4.3.1, 4.4 and 4.5).

2.5 Conclusion

Pennock (1950:14) noted a persistent conflict with ‘liberal democracy’ based on assumptions that it prioritises fundamental human rights at the expense of the broader society. This is relevant in South Africa’s civilian intelligence services context because operational requirements take precedence over the employees’ rights based on secrecy and the confidential nature of the environment. Therefore, it is important to balance these requirements with the employees’ constitutional rights. This delicate balance highlighted the need for a context-sensitive model which considers these values and adapts these to specific realities of intelligence functions. Furthermore, deliberations should examine the concept of the state and the rule of law within the Liberal Democratic Theory to contextualise these arguments.

Collective bargaining is informed by the principles of Liberal Democratic Theory which focuses on protecting civil liberties and the employees’ rights. By design, liberal democracies aim to ensure accountability of employers as well as promote meaningful employee participation through autonomous collective bargaining mechanisms and oversight. However, there is contestation regarding viability of liberal democracy. The study upheld that it represents a political regime which is committed to protecting civil rights, enforce the separation of powers, and ensure accountability. The reality facing the civilian intelligence services is that the

ongoing ideological debate revolves largely around approach than its legitimacy as a governance model. This is despite the fact that the Constitution of South Africa (1996) protects civil and political liberties and promotes institutional oversight. Furthermore, collective bargaining remains a significant tool which provides employees with a legitimate structure to influence decision-making processes and endure stability. Importantly, it does not suggest that employees' intentions are to micro-manage the workplace with the employer but serves to address the balance of power and ensure fair labour practices.

Alternative dispute resolution mechanisms such as conciliation, mediation, and arbitration play a crucial role to resolve labour disputes. The right to strike remains a legitimate recourse for employees to address their grievances on matters of interest should these measures fail. As a last resort, it forces employers to invest proactively to build capacity, particularly to enhance negotiation skills and dispute management competencies to inhibit prolonged impasse. The next chapter elaborates on the fundamental principles which underpins collective bargaining in liberal democratic contexts and further clarify its role to advance fair labour practices.

CHAPTER 3: FUNDAMENTAL PRINCIPLES GOVERNING COLLECTIVE BARGAINING IN LIBERAL DEMOCRATIC CONTEXTS

3.1 Introduction

This chapter focuses on collective bargaining as it functions within liberal democratic contexts. While the previous chapter established the key relationship between the liberal democratic theory and labour relations, including Africa as a liberal democracy, the chapter interrogates the *specific principles that govern collective bargaining* in such systems. These principles reflect the essential values of liberal democracy, namely, civil liberties, inclusive participation, equality before the law, and protection of individual and collective rights in the workplace (see Table 2.1, Chapter 2). At its core, collective bargaining in liberal democracies is rooted in the recognition of the employees' rights to participate in decisions that affect their work lives. Negotiations between the employers and the workers, typically facilitated by trade unions or representative worker organisations, enable the employees to assert their interests, demand fair conditions of employment, and hold the employers accountable. This participatory process extends across both formal and informal economic sectors, as well as reinforces democratic ideals in the world of work (see Section 2.3 & 2.4, Chapter 2).

The Labour Relations Act 66 of 1995, which gives effect to Section 23 of the Constitution of South Africa (1996), empowers trade unions and similar organisations to serve as institutional vehicles to protect workers from unilateral employer decision-making and structural inequalities (South Africa, 1995; ILO, 1949). In the absence of effective collective bargaining mechanisms, these institutions would be severely incapacitated to advocate fairness, equality, and social justice. In the liberal democratic context, collective bargaining is not only a functional process to resolve labour disputes but a normative expression of democratic governance and social equity. To address the second research objective - namely, "*to identify and analyse the fundamental principles governing collective bargaining in liberal democratic contexts*" - this chapter was structured on five interrelated guiding principles. These principles, which are informed by ILO Conventions No 87 of 1948 and 98 of 1949 and institutionalised through South African domestic laws, Labour Relations Act 66 of 1995 in particular, is discussed in the sections below (South Africa, 1995; ILO, 1948; 1949).

3.2 Collective bargaining in liberal democracies: Fundamental principles

Collective bargaining is widely recognised as a fundamental principle and right at work and is often considered an enabling tool that facilitates the realisation of other labour rights. In this regard, both trade unions and management (employer) are expected to comply with relevant legal and regulatory guidelines when mutually acceptable solutions are sought. Hutt (1930:1–

2), cited in Kaufman (1993:15), asserted that collective bargaining occurs in various ways of engagement and is often associated with the role of employee representatives. Therefore, this perspective highlights its centrality to regulate terms and conditions of service through engagement between employment parties. It is a swift process that demands mutual compromise and willingness by both parties to engage constructively, and in good faith.

South Africa, as a liberal democracy, encourages management to engage employees in decision-making processes which affect their well-being to adhere to the constitutional provisions of fair labour practices. Lansbury and Wailes (2008:435) support Ramsay's (1977) submission that during the 1960s and 1970s, several advanced democracies encouraged employers to engage with the employees directly to avoid a hostile work environment. This precedence affected the post-1994 South Africa's labour dispensation which changed drastically due to the implementation of democratic principles to enhance workplace engagement through the Labour Relations Act 66 of 1995. Bradley and Hill (1983) concurred that this development was also influenced by global amendments to the labour relations dispensation but specifically by the "*Japanese-style joint consultation*" of the 1980s. This engagement became popular in the 1990s when the employers realised that it influences "*high-performance work systems (HPWS)*" (Huselid, 1995:635–672; Becker & Gerhart, 1996:779–801). Gill and Krieger (1999:572) argued that this renewed focus on the importance of the employee dimension of work reflected an adaptive response to geopolitical and economic changes globally. Therefore, this development reiterated liberal democracy's emphasis on the significance of employee participation in the workplace.

To align with this global transformation, the LRA was introduced to strengthen the provisions of Section 23 of the Constitution of South Africa (1996) by "*regulating organisational rights of trade unions (legislative foundation); promoting employee participation in decision-making through the establishment of workplace forums; facilitating collective bargaining at the workplace and sectoral level; providing simple procedures for the resolution of labour disputes; and a framework to the public international law obligations of the Republic relating to labour relations*" (Constitution of the Republic of South Africa, 1996; South Africa, 1995; ILO, 1948; 1949). These fundamental principles are discussed below.

3.2.1 The first fundamental principle: Constitutional and legislative foundations

The negotiated Constitution of South Africa (1996) introduced liberal democratic principles in the workplace and regulated engagement between the employer and the employees. This new dispensation helped to ease tensions and enhance the working conditions. Ronen (1986:3) argued that democracy is a means to promote fundamental individual rights and well-

being in the workplace. These values demand commitment from all parties involved in collective bargaining at the organisational level.

In South Africa, the LRA further strengthened these arguments. Appropriate structures to manage labour disputes and promote the balance of power during negotiations was established. Van Eck (2010:264) concurred with Grogan (2009:5) that the Constitution of South Africa (1996) and its Bill of Rights impact on all spheres of governance because it provides individuals with legal recourse if there are institutional over-reach and abuse of power. Therefore, these scholarly contributions complement Section 3(2)(a) of the Constitution of South Africa (1996) which secures fundamental human rights, while Section 18 transforms labour dispensation in South Africa. The latter highlights the significance of freedom of association which is also aligned with the ILO Convention No 87 of 1949 core principles.

3.2.1.1 Freedom of association

This principle is important to establish stable labour relations and democratic participation within the workplace. Brown et al. (2018:219) observed that “freedom of association” includes the inherent liberty to utilise discretion to belong to employee representative structures, parties, or institutions and freedom to advance inclusive objectives. Consequently, this right is closely protected by the state in liberal democracies despite the growing difference of opinions of its implications in the workplace.

In South Africa, freedom of association is protected under Section 18 of the Constitution of South Africa (1996). This constitutional provision is given substantive effect through legislation; most notably Sections 4 and 6 of Labour Relations Act 66 of 1995 (LRA), which protects workers and their representative structures; as well as management and their associations’ freedom to embark on strike action. Thus, the LRA serves as the strategic statutory mechanism through which labour rights are operationalised. However, within SA’s civilian intelligence services, these rights are limited by the unique legislation based on considerations for national security. Their employees are subject to a special dispensation under the Ministerial Directives on Human Resource Management and Intelligence Services Act 65 of 2002. Unfortunately, both prioritise internal consultation mechanisms over collective bargaining structures which reflects directly on the delicate historical nature of intelligence work (South Africa, 1994; 2002). Despite these legislative limitations, freedom of association constitutes both a universal human right and a democratic imperative. It enables employees to advance their interests collectively, pursue social justice, and contribute towards accountable institutions. The subsequent section examines this contested right within the civilian intelligence community.

3.2.1.2 Right to form a trade union and employers' organisation

This study did not propose the introduction of trade union within SA's civilian intelligence services as a vehicle to protect the employees' rights, despite the provisions of Section 23 of the Constitution of South Africa (1996) which prescribes that every employee and employer's rights including: "*fair labour practices; forming and joining trade unions; embarking on a strike and participating in collective bargaining processes*" must be protected. Hepple (2011:90) argued that employee representatives, despite the adopted and subjective narrative of lawlessness, provide input towards democratisation and resolve disputes at work during negotiations on the conditions of service. However, engagement between management and the employees does not necessarily take place through trade unions but could also through "consultation" mechanisms. This transformation is informed by amending global labour relations dynamics including methods of doing work and growing disgruntlement with employee representative structures. Therefore, this argument is particularly relevant to SA's civilian intelligence services due to the frustrating legislative challenges which forbid strike action and unionisation.

Freedom of association is further acknowledged by the International Labour Organization (ILO) through Convention No. 87, which protects employees' rights and management to form and join trade unions or management associations. The ILO's Committee on Freedom of Association, established in 1951, plays a critical role to ensure that governments adhere to this convention regardless of the status of its endorsement (ILO, 1948; 1951; Gumbrell-McCormick (2008:338). The significance of the ILO Convention is discussed in detail in Section 3.2.5. It remains uncontested that the purpose of joining a trade union is to facilitate employee participation in decision-making processes in the workplace. The latter is explored in the next section.

3.2.2 The second fundamental principle: Employee participation in decision-making

Employee participation in decision-making is one of the requirements of democratic practices within the workplace. It demonstrates a deeper commitment to key values of a liberal democratic state which includes accountability; inclusive governance; and a caring organisation. Ogu (2024:56) argued that it is based on the principles of effective engagement and not merely for compliance but to assist workers to add value towards the strategic aims of the institution. Notably, it enables to capacitate employees to enhance commitment; strive for the success of the institution; and establish a culture of accountability (Newstrom & Davis, 2004; Ogu, 2024:54). Section 23 of the Constitution of South Africa (1996) is explicit in that the right to fair labour practices which includes involvement in employee representative structure projects and collective bargaining is protected. Grogan (2009:5) argued that these

include safeguarding against slavery; coerced to work and oppression; and all forms of illegal practices that impact negatively on the employees. Therefore, these rights are institutionalised to advance human dignity, as well as inclusive and transparent governance.

Within SA's civilian intelligence services, the above principles were expected to be protected by the Intelligence Services Act 65 of 2002. Unfortunately, these constitutional requirements which are aimed to institutionalise participatory behaviour are denied due to perceived threats to national security. Instead, employees are involved but do not participate in the consultation mechanism that has neither autonomy nor dispute resolution alternatives. The difference between these two concepts - involvement and participation - is discussed in the following section.

3.2.2.1 Conceptual clarifications: involvement vs participation

It is important to note the distinction between 'employee involvement' and 'employee participation' to comprehend the extent of influence in the decision-making process within the workplace. Employee involvement is an informal method to include ordinary employees in decision-making. Gifford, Neathey and Loukas (2005:2) suggested that it serves as a means for the employer to have a firmer grasp of control at the work environment. Furthermore, it aims to encourage employees to engage fully in efforts to enhance working conditions. However, this is not the case with the consulting mechanisms adopted within SA's civil intelligence service.

On the contrary, employee participation is formal which is publicly approved and established to promote an atmosphere that is conducive to the workers' engagement to influence policy decisions and implementation through collective bargaining. As such, it promotes collective accords and power at work. Lansbury and Wailes (2008:435) cited Wall and Lischeron (1977:15- 17), and concurred that this suggests a certain degree of control over decisions within an organisation. In areas with a structure as specific as that of the civilian intelligence services and highly sensitive national security requirements, employee activities are primarily constrained, but not entirely.

Hyman (1975:52) concurred with the above argument and suggested that the level of employee involvement is often restricted by ineffective institutional arrangements and hierarchical power relations. In this context, such mechanisms reinforce management's power to alter consultation outcome processes unilaterally although the means of participation is offered superficially. Knights and Willmott (1999:45–47) argued that this type of discourse is often employed to legitimise authority rather than balance it. Consequently, management strategies can position themselves as democratic while simultaneously repress opposition and

promote a dominant culture. This paradox, which pertains to the depth of engagement and the level of decision-making power granted to workers, is explored in the following section.

3.2.2.2 Limitation of participating in closed forums

There is no agreement in terms of the most effective way to engage with employees in the workplace. The consultation mechanism or closed forums within SA's civilian intelligence services may, according to Beer et al. (1984:78), be categorised as "direct employee participation". Although, the proponents of this approach maintain that it enhances productivity, the process does not empower employees with legitimate power. To avoid this criticism, management at SA's civilian intelligence services allowed the employees to elect their own representatives, in conformance with the Intelligence Service Act 66 of 2002, without establishing autonomous and independent structures to hold management accountable. Moreover, this model confused direct participation with representative engagement. Consequently, the Public Service Commission (2020) confirmed that consultation mechanisms within various departments lacked legitimacy because of the limited balance of power. What would be the ideal option if the closed consultation forums within the civilian intelligence remain inefficient? The next section endeavours to respond to this question.

3.2.2.3 Workable approaches to participation: direct or indirect

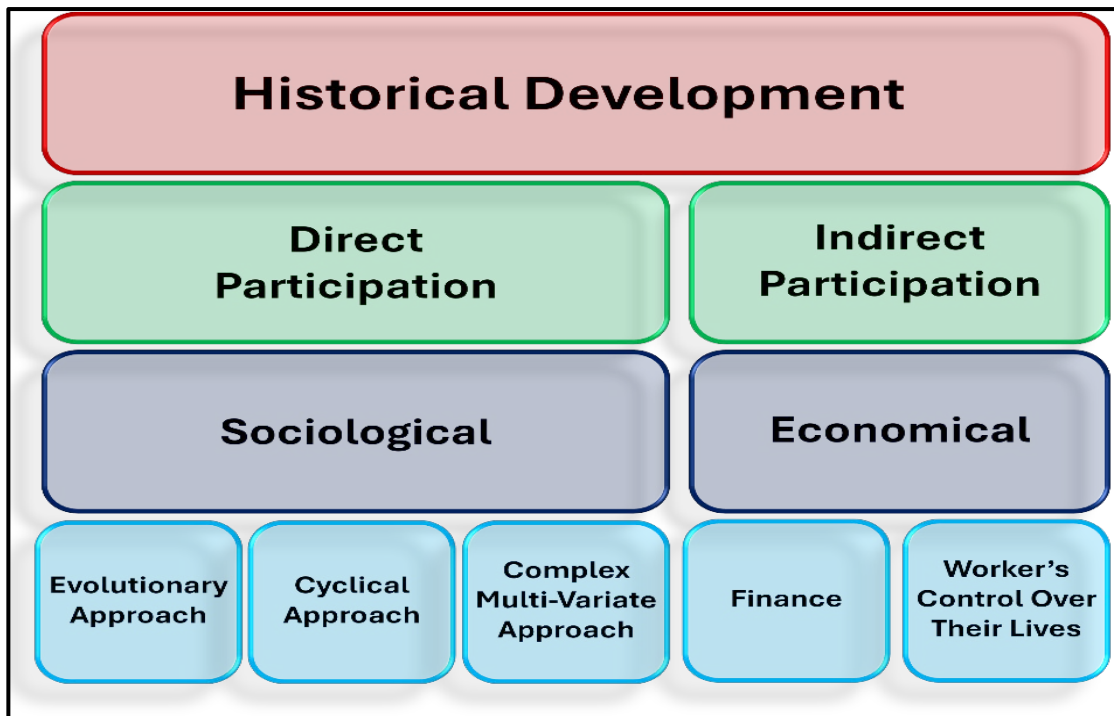
Employee participation in the workplace can be classified as either direct or indirect depending on the nature of the industries. Triantafillidou and Koutroukis (2022:3), drawing from Cabrera et al. (2003), supported this argument and suggested that the fundamental principles are designed to facilitate communication between the workers and the employees. Therefore, "direct participation" permits workers to engage directly to influence decisions whereas "indirect participation" is conducted through employees' representative structures (Brown et al. 2007; Butali and Njoroge, 2018; Cabrera et al., 2003; Triantafillidou & Koutroukis, 2022:3). In summary, the two approaches can complement each other considering the unique nature of each environment and the strategic value of institutionalising this mechanism. Therefore, the study did not advocate for indirect participation; rather it focused on strengthening the current consultation mechanisms (direct participation) and promote collective ownership through structured bargaining.

Lansbury and Wailes' (2008:436) clarified the complex nature of the civilian intelligence services' participation in consultation mechanisms and drew a distinction between "evolutionary, cyclical, and complex multivariate approaches" (see Figure 3.1). The post-apartheid efforts to democratise the workplace is a typical example of an evolutionary approach. However, critics such as Pateman (1970:40–47) argued that structural inequalities

often undermine genuine empowerment which leads to a disjuncture between formal mechanisms and substantive worker influence. In contrast, the cyclical approach is like a reactive indirect participation because the employees' voices can only be accommodated by being part of the aggregate assembly under the arrangements of a union (Ramsay, 1977:481–506; Harley et al., 2005:5; Lansbury & Wailes, 2008:436). However, the complex multivariate approach resembles consultation mechanisms in a confined work area such as the civilian intelligence services, and lacks efficiency (Poole, 1986:485–486; Poutsma et al., 2003:322; Lansbury & Wailes, 2008:436). Strictly speaking, it is a mode of consultation that limits exchange of information; disposes autonomy; and empowers management to act without taking the employees' inputs into account.

In response to the above dichotomy, the Labour Relations Act 66 of 1995 paved way for organisations to employ either direct or indirect representative forms of employee engagement to advance harmony within the workplace. As Budeli (2012:321) noted that even within such unique environments, mechanisms for consultation and limited representation can reinforce democratic norms and institutional legitimacy. While acknowledging this context, the challenging issue which affects its efficiency is the perceived lack of political will to transform the civilian intelligence services. Nel et al. (2008:319-320) identified three core elements which manifest themselves in the decision-making processes of an organisation, namely:

- a) *“Influence: the appropriate strategic pitch which promotes balance of power between negotiating parties in the workplace. Therefore, it limits the employer’s ability to unilaterally alter resolutions and agreements.*
- b) *Interaction: advances collective accord aimed at achieving common goals and co-existence.*
- c) *Information sharing: allows exchange and helps the employer to embrace employees’ inputs which is critical for enlightened decision-making.”.*



Adapted from Lansbury & Wailes (2008)

Figure 2.1: Approaches of direct and indirect participation in collective bargaining

Although it is admitted that there is a fine line between collective bargaining and direct employee participation, both mechanisms endeavour to achieve the same objectives to facilitate agreements; enhance influence in workplace decision-making; contribute towards good governance; and promote engagement to align with organisational objectives. However, management tends to either abuse or manipulate these processes to favour their philosophical discourse, *i.e.*, hold onto power by undermining principles of democracy. Roberts (1979:33) noted that these tendencies are evident across Europe. The institutions adopt either direct or representative approaches. However, the mitigating factor is to withdraw labour during a stalemate on issues of governance through representative (indirect) engagement or the involvement of employees in decision-making processes by employing direct approach (Roberts, 1979:33; Kaufman, 2004:375).

With regard to the above discussion, Hyman (1997:38) argued that there is a connection between these approaches because of its application which relies on legislative guidelines to encourage co-existence rather than an adversarial approach. However, the primary concern is the extent of management's willingness to engage with employees to achieve the organisations strategic objectives (Gollan, 2006:481). Therefore, to achieve effectiveness, mechanisms such as consultation committees must be strengthened to achieve the common goal through collective bargaining (see Section 4.2, Chapter 4).

Given the contradiction, it becomes clear that there is insufficient empirical evidence to suggest that collective bargaining can only take place where trade unions are formally recognised or active. Furthermore, this submission is informed by McQuiod-Mason et al. (2004:401) who argued that management can only make concessions when employee representative structures apply pressure. Convention No. 151 of the International Labour Organization (ILO) encourages governments to implement national legislation suitable for special environments within the public service (see Section 3.2.5, Chapter 3). Thus, this flexibility enables states to design mechanisms which respond to the democratic culture without compromising management efficiency and authority. Hence, the provisions by the Labour Relations Act 66 of 1995 to provide alternative methods of engagement and dispute resolution which are unfortunately absent in the SA's civilian intelligence services. This exclusion defies the principle of freedom of association which guarantees workers' autonomy to engage in either direct or collective forms of representation.

3.2.2.4 The democratic challenge of employee participation in intelligence services

There is no rationale to suppress the employees' democratic rights in participating in decision-making and governance of SA's civilian intelligence services because it is based on unsustainable justification of the secret nature of the employees' roles. Thus, the research suggested that alternative mechanisms can be formalised without exposing operational matters of intelligence. Kniep et al. (2024:217) offered the insightful observation that intelligence means "*state secrecy par excellence*", which justifies the refusal of information to the external world regarding its role. By so doing, it undermines the principles of democratic oversight over these institutions' actions and disclosure which is anomalous. Therefore, there is a need to align the confidential nature of these structures and transparency (Kniep et al., 2024:217). This observation is particularly valuable when the limitation of workers' engagement in decision-making within the SA's civilian intelligence services is interrogated. Therefore, the study did not recommend the CSIS as a model, despite being governed by Public Superannuation Act of 1985 (see Section 3.2.5), may not face similar challenges to reconcile the requirements of national security with constitutional provisions to promote fair labour practices.

In summary, while employee participation in workplace governance is supported by the Constitution of South Africa (1996), its realisation within the intelligence services remains suppressed by institutional culture; national security considerations; and management's behaviour. These insecurities and perceived threats are largely informed by management's historical experiences of the apartheid-era National Intelligence Service (NIS) and the African National Congress' Department of Intelligence and Security (DIS) than the actual reality.

Equally, the distinction between involvement and participation highlights the significance to ensure that consultation mechanisms are not merely symbolic. Therefore, for participation to be meaningful, it must involve genuine influence over decisions and institutional governance in pursuit of social justice in the workplace.

3.2.3 The third fundamental principle: Collective bargaining and social justice

Collective bargaining is a critical mechanism to protect workers' rights in a democracy. It also offers workers a structured and legitimate means to assert their rights and influence the conditions of service. In South Africa, it strengthens democracy in the workplace and human dignity as stipulated in Section 23 of the Constitution of South Africa (1996). Moreover, it transforms institutions which historically excluded employees to engage with the employers through formal structures. Furthermore, it is aligned with social justice as a mechanism to balance power between workers and employers. It also facilitates the expression of collective action to protect the employees against arbitrary decision-making and promote equality in the workplace. Carrell and Heavrin (1985:5) argued that it is a continuous discussion between management and the employees' representative structures to enhance the conditions of service. Hayter (2011:1) concurred that it promotes collective accountability; helps to alleviate management over-reach; counters abuse of power; and mitigates unfair labour relations legislation. These principles are further articulated in Article 2 of the International Labour Organization (ILO) Convention No. 154 of 1981 as a crucial platform to realise social justice in government and private entities.

According to Bendix (2010:706), historically advanced "democracies" embraced indirect employee participation to achieve common organisational goals. However, later, this attitude changed in Western democracies and became a contested terrain which made it impossible to differentiate between management and the shareholder. Simultaneously, the states' philosophy of profit also matured and gravitated to promote equality. In this context, the South African government appears reluctant to force civilian intelligence services to adhere to the principles of social and administrative justice. This contradiction is prevalent although the government ratified several ILO conventions and translated these into domestic legislation through the Basic Conditions of Employment Act 75 of 1997 (see Section 3.2.5). Furthermore, the Public Service Coordinating Bargaining Council (PSCBC) and the General Public Service Sectoral Bargaining Council (GPSSBC) institutionalised collective bargaining in government excluding security departments. Therefore, these structures provide effective mechanisms to engage and dispute resolution which is aligned to the specific needs of institutions based on the nature of the work (South Africa, 1995; 1997).

Hayter (2011:2-7) who argued that collective bargaining was aimed to correct the unfairness of an oppressive regime, cautioned that organisations may be unable to adapt to the above-mentioned principles of social justice and consequently obstruct productivity. However, within the South African context, this submission is unsustainable due to the Constitutional Court ruling which reinforces the significance of “*collective bargaining and freedom of association*” as critical to embrace fundamental human rights (see Section 5.6.2, Chapter 5). Therefore, any limitation of these rights must conform to constitutional requirements of legality and thereby dismiss the issue of national security considerations as sufficient ground to forbid these rights within the civilian intelligence services. As discussed in Sections 4.3.1 and 4.3.2 of Chapter 4, collective bargaining and autonomous consultation mechanisms are important to advance organisational legitimacy; enhance employees’ morale; and adherence to constitutional provisions. Furthermore, the absence of dispute resolution mechanisms exposes employees to manipulation by management without recourse.

The above elimination of collective bargaining is driven by global neoliberal patterns which elevates capital resilience and profit at the expense of the employees. Therefore, this inevitable event denies employees a privilege to negotiate fair conditions of service including increase in salaries (Rawls, 2001:42–44). Daugareilh (2008:93–110) concurred that collective bargaining is central to achieve equality and enhance the lives of individuals. Therefore, civilian intelligence services is duty-bound to protect this democratic value. Wolterstorff (2012:3) also concurred that it is an important platform for the employees to share collective accountability and embrace common values. Therefore, this mechanism may benefit civilian intelligence services by aligning them to the secret nature of the intelligence work in pursuit of social justice and stability. Kahn-Freud, as cited in Davis and Freedland (1983:69), collaborated with these arguments and posited that for the time being, it could appease the employees’ competing needs and the employer particularly in stratified organisations. Similarly, Rawls (1985:223–251) argued that it is essential for negotiating parties to be perceived to co-exist on equal terms. Therefore, these arguments support the need to strengthened consultation mechanisms within the civilian intelligence services to promote consensus and engaging in good faith.

In summary, collective bargaining is fundamentally a reasonable intervention tool to achieve social justice. Therefore, its absence within civilian intelligence services, as stipulated in the Intelligence Services Act 66 of 2002, undermines the liberal democratic nature of the state. The introduction of structured consultation mechanisms of collective bargaining with effective dispute resolution instruments to align all government departments with constitutional provisions would be significant.

3.2.4 The fourth fundamental principle: Dispute resolution mechanisms

Disputes in the workplace may be resolved by exploring various options other than the courts of law as noted by Du Plessis (2013:90) that of “collective bargaining, conciliation, and arbitration”. In South Africa, the independent Commission for Conciliation, Mediation and Arbitration (CCMA) was established by Chapter VII of the Labour Relations Act 66 of 1995 which endeavoured to resolve disputes through conciliation. The Act further encourages employees and employers in conflict to approach the Labour Court. These avenues could be considered by the civilian intelligence services, where this legislative recourse does not exist. However, this would require autonomous consultation structures which would be legitimate to address democratic limitations within this closed system.

The above argument is complimented by Grogan (2009:427) who argued that the CCMA is a government initiative to address conflict-related matters which are referred to it according to the Labour Relations Act 66 of 1995 hegemony or alternative law. Furthermore, conciliation should not be bias and be determined by the authority of the CCMA and confirmation that the contested matters were communicated within the regulated scope. Therefore, the Commissioner should invoke the level or structures at which grievances on matters of interest be dealt with or delegate a commissioner to attend thereto (Grogan, 2009:427). Unfortunately, these provisions do not apply to civilian intelligence services despite consultation mechanisms and committees which were expected to protect the interests of its employees. In this regard, Glimmerveen et al. (2022:545–546) cautioned that the danger is that these mechanisms may be adopted to achieve institutional objectives instead of protecting its employees.

Visser (2024:361) argued that management should tread carefully of how they treat employees and appreciate that the centre of the relationship includes competing needs which need to be reconciled. Nonetheless, the process would collapse in the absence of negotiating in good faith. As a result, the international law promotes employee contributions towards institutional governance (see Section 3.2.5) which is informed by several global issues.

3.2.5 Fifth fundamental principle: International law as a basis for protection of rights of workers

International law encompasses legislation adopted globally and intended to provide guidance on interactions among countries and between the citizens. Its difference with national legislation depends on abstract inclination. Its legitimacy emanates from the autonomous order and ability to ensure compliance through sanctions. In this view, the lack of autonomy weakens international law. Conversely, the “*naturalist approach*” embraces other principles of autonomy such as social values which are perceived to be legitimate and do not necessarily require government enforcement (Brown et al., 2018:285). Reus-Smit (2004:1) concurred that

it is an organised set of legislation to restrict and regulate political behaviour. Notably, “*legal theorists*” tend to differentiate between “*law and politics*” to justify legislation as an impartial tool. Therefore, these approaches are consistent to promote international law which is designed to protect the fundamental freedoms and regulate governments’ behaviour.

Given the above, international law is essential to protect the employees’ basic rights within the workplace as well as negotiate with the employer to enhance conditions of service. In this regard, there are two key international instruments which promote these rights (see further Sections 3.2.5.1 and 3.2.5.2):

- The Universal Declaration of Human Rights (1948); and
- The International Covenant on Economic, Social and Cultural Rights (1966).

These international pieces of legislation serve as moral and legal benchmarks against which government functions - including those of civilian intelligence services - can be assessed in liberal democracies.

3.2.5.1 The Universal Declaration of Human Rights

The United Nations General Assembly endorsed the Universal Declaration of Human Rights (UDHR), in December 1948 to protect citizens against abuse. This instrument also aimed to promote reconciliation and preservation of basic freedoms. Furthermore, it is utilised as an enabling legislative mechanism for ensuing conventions which mould geopolitics on the protection of the integrity of individuals (Du Plessis, 1999:160). Therefore, this declaration outlines the governments’ duties to protect rights and accountability among the citizenry. Article 23(4) of the Universal Declaration of Human Rights (1948) underscores freedom of association including membership in trade unions to represent employees regarding their conditions of service. However, Kaufman (2007:40) critiqued this provision, and argued that it is selective to prioritise a class of persons at the expense of the collective and therefore defies logic of “universal human right”.

It is important to note that the right to join and form a trade union is further supported in Article 22 of the International Covenant on Civil and Political Rights (1966) as an instant commitment and not an increasingly achievable right. This conceptual analysis is articulated in Article 8 of the International Covenant on Economic, Social and Cultural Rights, which directs governments to protect freedom of association including the right to form and join trade unions (Kaufman, 2007:40). Furthermore, Article 8 of the Universal Declaration of Human Rights (1948) promotes administrative justice and legal recourse in instances of indiscretion and highlights its self-executing nature and potential applicability in national courts, including those in South Africa.

Within the context of the above arguments, the International Labour Organization (ILO), is a critical institution which pursues social justice in alignment with the Universal Declaration of Human Rights (1948). Notably, it promotes the right to embark on collective bargaining and other fundamental human rights. This view is supported by Halonen and Liukkunen (2020:51–78) who singled out the importance of the Declaration on Fundamental Principles and Rights at Work (1998), which was amended in 2022, as a major milestone to protect the rights of individuals. More importantly, it plays a leading role to embed “*technical assistance and capacity-building*” into mechanisms to enhance industrial relations in emerging democracies. Equally, its principles focus on “*freedom of association, the right to collective bargaining, and the elimination of forced and child labour, as well as combating discrimination in employment*”. Therefore, collective bargaining is a platform for management and workers - with no exception - to form and join employees or employers’ representative structures without intimidation or subtle institutional instructions. Hence, these rights are embraced globally as inherent of the new labour dispensation.

The study argued that Article 8(1)(d) of the Freedom of Association and Protection of the Right to Organise Convention No. 87 of 1948 is a unique instrument because it emphasizes the right to strike as a last resort if collective bargaining fails. Thus, the application of this right cannot be selective. Hence, states are encouraged to enact domestic laws to address the limitation of this right based on the nature of work including that of SA’s civilian intelligence services. It is also aimed to protect workers from dismissal because they had resorted to strike action. However, this entitlement should be applied according to the provisions of national legislation and regulations of departments (ILO, 1948). Responding to the above international guidelines, South Africa enacted legislation to protect the employees’ fundamental rights within the workplace including the right to strike; procedures for dismissal; and related labour relations matters. However, these rights do not extend to members of the civilian intelligence services who are subject to specific statutory restrictions due to national security considerations (see Sections 2.4.2, Chapter 2; and Sections 4.2, 4.3, 4.3.1, 4.3.2, Chapter 4).

It has been suggested that the Universal Declaration of Human Rights (1948) might not necessarily be the original declaration. This argument was advanced by Du Plessis (1999:160) who referred to the Magna Carta (1215), Petition of Right (1628), and the Bill of Rights (1689) in England as instruments which introduced fundamental human rights. Similarly, the United States’ Declaration of Independence (1776), Declaration of Human Rights (1776), and the Bill of Rights (1791), along with France’s Declaration of the Rights of Man and of the Citizen (1789), strengthen the understanding of the theoretical pedigree of the UDHR (Du Plessis, 1999:160). However, unlike these earlier declarations, the UDHR is a global instrument which

establishes individual rights. It enables states to advance common values through international instruments and related conventions.

3.2.5.2 The International Covenant on Economic, Social and Cultural Rights (1966)

The 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Universal Declaration of Human Rights (UDHR) are two “*legally binding instruments*” which established the International Bill of Human Rights. Moreover, it provides an overarching legislative framework to protect “*economic, social, and cultural rights*”. Key among these is to ensure fair labour practices and protect the integrity of individuals. Therefore, it is compulsory for governments to commit and enact national legislation and regulations which align with these values. Article 2(1) directs governments to implement legal measures to enforce the rights conveyed by this Covenant. Furthermore, Article 2(2) forbids forms of exclusion and bias in the application of these rights.

The above provisions are safeguarded by Article 4 which cautions that any limitation of rights must be justified and aligned with the democratic principles. Hence, the relevance of Article 5 lies in confirming this limitation by discouraging states from the unnecessary over-reach and undermining of the rights protected under this Covenant. In this context, Section 36 of the Constitution of South Africa (1996) respond to this concern pedantically to highlight the principles which need to be considered when executing the limitation.

The ICESCR also paid attention to the application of fair labour practices to promote the right to form and join trade unions through Article 8. Consequently, Subsection (c) of this Article emphasises the employees’ representative structures autonomy in compliance with the legal provisions and any limitation must be justified, especially within the security establishments including the civilian intelligence services. This provision is strengthened by Article 8(d) which embraces the right to strike. Therefore, these principles affirm the legitimacy of collective bargaining even within secret environments such as SA’s civilian intelligence services (refer to Section 5.2, Chapter 5).

The above arguments revealed that international law exerts normative and political influence although they may not possess the coercive authority associated with national governments. Gumbrell-McCormick (2008:334–337) noted that as much as it varies from national legislation on how it imposes authority and lawfulness, its presence is acknowledged. In this regard, governments enter into bilateral and multilateral agreements to ensure alignment with domestic requirements and pursue common interests. Therefore, this demonstrates that international legislative instruments such as the United Nations (UN) and the International Labour Organization (ILO) were formed to assist states to achieve common goals.

Labour rights, as human rights, have been captured in as wide an array of international agreements and declarations of the UN and ILO respectively (Kaufman, 2007:34):

United Nations (UN):

- Universal Declaration of Human Rights (1948)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Covenant on Civil and Political Rights (1966)
- Convention on the Elimination of All Forms of Discrimination Against Women (1979)
- Convention on the Rights of the Child (1989)

International Labour Organisation (ILO):

- Convention Concerning Forced or Compulsory Labour (1930) (No. 29)
- Equal Remuneration Convention (1951) (No. 100)
- Convention Concerning the Abolition of Forced Labour (1957) (No.105)
- Freedom of Association and Protection of the Rights to Organise Convention (1948) (No. 87)
- Right to Organise and Collective Bargaining Convention (1949) (No. 98)
- Discrimination (Employment and Occupation) Convention (1958) (No. 111)
- Minimum Working Age Convention (1973) (No. 138)
- Declaration on Fundamental Principles and Rights at Work (1998)
- Worst Forms of Child Labour Convention (1999) (No. 182)

The group of conventions mentioned above has been embraced internationally as tools to protect fundamental human rights. Gumbrell-McCormick (2008:338) asserted that these conventions were initially entertained during the World Summit for Social Development which was held in Copenhagen in 1995 and subsequently formalised in the ILO's Declaration on Fundamental Principles and Rights at Work (1998). Therefore, their significance lies in the authority they have generated within governments that are signatories. Moreover, the 1998 Declaration strengthens their authority and mandates "ILO member states" to embrace their values, regardless of their endorsement status of conventions (Gumbrell-McCormick, 2008:338). Consequently, South Africa as a member of the ILO, adopted most of these conventions and aligned these with domestic legislation to advance the protection of workers' rights (see Sections 1.4, Chapter 1; 4.2, Chapter 4; 5.5 and 5.6, Chapter 5). The next section focuses on Canada - and CSIS - as examples of liberal democracy that embraces collective bargaining.

3.3 Practices and Principles of Collective Bargaining in a Liberal Democracy: The example of Canada

The study utilised collective bargaining in Canada as an example to demonstrate that certain liberal democracies had embraced a formalised indirect representative model as an effective measure to manage disputes. In this regard, it has evolved over the years due to employee pressure on management. This argument was also advanced by Farrel and Marcil (2008:1-2) who argued that it informs legislative provisions which framed labour relations including processes and procedures. Therefore, these provisions helped to discourage the employers' tendencies to over-reach and abuse of power by implementing punitive measures against the employees. Interestingly, until the 1960s, collective bargaining was restricted to business entities because it was assumed that was ill-suited for government departments. On the contrary, the SA's civilian services' reluctance to allow it is grounded in a misguided narrative of perceived threat to national security.

Furthermore, collective bargaining in Canada is implemented across all sectors irrespective of the sensitive nature of the work environment. As a result, it transformed the historical view of collective bargaining in government departments and elevated the significant role of the employees in a liberal democratic dispensation (Farrel & Marcil, 2008:2). This is a unique model which should be welcomed by the South African government.

3.3.1 Characteristics of the Canadian collective bargaining legislation

Based on the above, Giuseppe et al. (2008:35) argued that since several departments which are tasked to manage employer-employee engagement in Canada, the role is complicated by a disconnect between these institutions. Therefore, this situation is untenable because it creates uncertainty in terms of the classification of government employees. An example is the Public Service Staff Relations Board, a *"quasi-judicial tribunal"*, which is mandated to enhance fair practices through collective bargaining in federal government departments. Its mandate is to oversee *"collective bargaining and grievance adjudication; issuing applications for bargaining agent certification; ensuring revocation of such certification; and receiving complaints on unfair labour practices"* (Giuseppe et al., 2008:35).

The SA civilian intelligence services is confronted by a similar contradiction of whether the members of civilian intelligence services are employees. This confusion is prevalent although intelligence services are classified as departments under the Department of Public Service and Administration. Despite the criticism of the perceived disjointed mechanisms within the

Canadian system, the civilian intelligence services may borrow from its model to resolve disputes.

3.3.1.1 Dispute resolution mechanisms

The unique feature of the Canadian legislation is its Public Sector Dispute Resolution Act of 1997 which serves as a vehicle to resolve disputes within the workplace through, *inter alia*, labour courts or tribunals, and adjudication boards. In this regard, this Act established the Public Service Staff Relations Board which is mandated to resolve disputes through mediation and conciliation (Giuseppe et al., 2008:40). Importantly, this intervention platform is decentralised to facilitate easy access; resolve disputes within specific sectors; and enhance efficiency and accountability.

3.3.1.2 Workers' participation in collective bargaining

The criticism of multiple agencies assigned to manage labour relations was also expressed by Farrel and Marcil (2008:1) which reflected the level of frustration with the system. For example, in Quebec, Saskatchewan and British Columbia, there is a single legislative framework which regulates management and employees - whether in government or business - through the Quebec Labour Code, Saskatchewan Trade Union Act, and the British Columbian Industrial Relations Act respectively. However, there are few cases where there is more than one legislative paradigm for government and business employees.

There is a resemblance between the Canadian legislation and the Wagner Act although there may be certain unique features which were developed according to the nature of the collective bargaining process “(*i.e. the acquisition of collective bargaining rights; the use of economic sanctions; compulsory grievance arbitration; union security legislation; and the protection of striking workers*)”. Therefore, it enables a marginally “*simple certification procedure whereby a trade union can acquire collective bargaining rights*”. Thus, the procedure is for employee representative structures to submit to the labour board to determine whether it advances the interest of the collective. Based hereon, it will then acquire a certificate to confirm that it has the sole right to represent workers in the bargaining unit (Farrel & Marcil, 2008:2). The study does not advocate similar procedures but maintains that there is a need to strengthen the current mechanisms to promote employee participation and avoid the right to strike.

3.3.1.3 Right to strike

According to Giuseppe et al. (2008:35), the Canadian collective bargaining legislation does not permit any form of punishment against striking workers for grievances arising from disputes related to the implementation of collective agreements. Equally, employees may not

withdraw their labour when the process to register a trade union is not finalised. Similarly, they cannot embark on strike action or lockout if they have not considered alternative dispute resolution mechanisms. Unfortunately, this legislative limitation may be perceived as denying the right and therefore, unfair. Nonetheless, it is an international norm that one cannot strike until all avenues have been exhausted.

However, the above prerequisite makes provision for the final instructive alternative mechanism to resolve disputes to reach consensus. In this context, dispute resolution mechanisms are broadly recognised and further institutionalised through the Federal Public Sector Labour Relations Act (2003) which also applies to the Canadian Security Intelligence Service (CSIS).

3.3.2 Parties to public service collective bargaining

The Canadian labour relations dispensation shares several similarities with the South African framework, especially the institutionalisation of engagement in government departments excluding the civilian intelligence services. Giuseppe et al. (2008:37) explained that it defines stakeholders to employment relations, namely, workers' organisations and public sector employers such that it resonates with South Africa's tripartite labour system. In this context, the Canadian Union of Public Employees (CUPE) is the largest public sector union which advances the employees interests in municipal departments including certain part-time workers. Another important aspect is the National Union of Public and General Employees (NUPGE) which is affiliated to the Canadian Labour Congress. However, the majority of membership and collective bargaining coverage is primarily in government entities than in business organisations (Giuseppe et al., 2008:37) which is similar to the trend in South Africa's public administration, *e.g.*, trade union participation is comparatively influential. On the employer side, the Treasury Board of Canada serves as the key management representative at the federal level, while provincial and municipal bodies engage directly with trade unions. Therefore, this decentralised approach is similar to South Africa's labour dispensation, *i.e.*, the three spheres of government engage with organised labour through bargaining councils and other internal mechanisms.

There is no doubt that Canada exemplifies a system that legitimises and protects collective bargaining and collective agreements as pillars of democratic labour relations. Similarly, South Africa embraces collective bargaining as a mechanism to ensure equality, worker participation, and stability within the workplace.

3.3.3 Labour rights within the Canadian Security Intelligence Services

The Canadian civilian intelligence service is established under the Canadian Security Intelligence Service Act C-23 of 1985. It is expected of the civilian intelligence service to conduct its functions and duties in accordance with the rule of law and in such a manner that it respects the Canadian Charter of Rights and Freedoms of 1982. The Charter guarantees rights and freedoms except where limitations are justified within the confines of the law and conforms with democratic principles and protects the fundamental freedom of individuals.

The above fundamental freedom which is prescribed in *'the Canadian Charter of Rights and Freedoms (1982)'* is the same as the Bill of Rights in the Constitution of South Africa (1996). Therefore, these legislative requirements ensure the protection of fundamental human rights including those of employees of civilian intelligence services. They further serve as pillars of liberal democracy, protects civil liberties and affirms the government's mandate to respect individuals' integrity.

In the Canadian context, the Charter endeavours to advance the principles of a free and democratic society, avoid unfair state over-reach and infringement of human rights (Canada, 1982). Therefore, it functions as a dynamic tool to emancipate individuals and contribute towards a more responsive governance. Furthermore, it appreciates that rights may never be absolute which speaks to Section 36 of the Constitution of South Africa (1996). More specifically, Section 1 of the Charter enables the government to limit rights and freedom if that limit is *"set out in law; pursues an important goal which can be justified in a free and democratic society; and pursues that goal in a reasonable and proportionate manner"*.

The above is complemented by Section 33 of the Canadian Charter of Rights and Freedoms of 1982 which is considered a "notwithstanding clause" because it provides the federal Parliament as well as provincial and territorial legislatures the basis to introduce legislation which could supersede other Charter rights. However, this can only occur if the legislature approves the changes to promote transparency and accountability. In this context and subject to *"a five-year renewal requirement"* these would automatically lapse unless it is re-instated. Notably, there is no documented instance at which the federal Parliament invoked this clause which highlights its significance within Canada's constitutional framework (Canada, 1982).

The CSIS comprises of a Director and of whom civilian intelligence personnel are employees and defined as such by Section 3(1) of the Canadian Security Intelligence Act of 1985. In terms of Section 8(1), *"the Director has exclusive authority to appoint employees and, in relation to the human resources management of employees, other than persons attached or seconded to the Service as employees"*.

Based on the above, it is evident that there are structural similarities between the CSIS and SA's civilian intelligence services, especially with the inherent rights of the Director. However, the SA civilian intelligence services remains disadvantaged by the inadequate grievance procedures because of an absence of independent body to manage this matter.

3.3.3.1 Grievances

Section 8(2) of the Canadian Security Intelligence Service Act of 1985 empowers the Director of the Canadian Security Intelligence Service (CSIS) to institutionalise processes to oversee labour relations and preside over grievances matters. Furthermore, this authority is derived from the Federal Public Sector Labour Relations Act C-22 of 2003 and ministerial delegation including related regulations under Subsection 3. Thus, this legislative arrangement is aimed to align national security requirements with administrative justice given the exceptional operational conditions of intelligence services (Canada, 1985; Canada, 2003). In this context, a similarity can be drawn with SA's civilian intelligence services, *i.e.*, employees are excluded from the standard labour protection as stipulated in the Public Service Act 103 of 1994 and the LRA. Therefore, this anomaly is informed by limitations embedded in the Intelligence Services Act 65 of 2002 and ministerial directives. Furthermore, both legislative frameworks highlight the challenge in liberal democracies to protect the rule of law and constitutional requirements while maintain the effective and confidential role of intelligence employees. Therefore, this balance requires appreciation of the significance to adopt a practical model of governance which is sensitive to the considerations of national security and similarly ensure accountability and transparency.

3.3.3.2 Adjudication of employee grievances

According to Section 8(3) of the Canadian Security Intelligence Service Act of 1985, a full-time member of the Federal Public Sector Labour Relations and Employment Board referred to in sub-Sections 4(1) and 4(2) of the Federal Public Sector Labour Relations and Employment Board Act C-40 of 2013 is responsible to adjudicate grievances. In terms of sub-Section 4(2), *"the Board is composed of:*

- a. A full-time chairperson;*
- b. (b) Two full-time Vice-chairpersons;*
- c. (c) Twelve other full-time members; and*
- d. (d) Any part-time members that the Governor in Council considers necessary to carry out the Board's powers, duties and functions".*

Based on these provisions, the adjudication mechanism aims to promote equality and legal processes to resolve the workers' grievances. However, this instrument is absent in the SA's

civilian intelligence services labour dispensation which is against the basic principles of the Constitution of South Africa (1996). Furthermore, the fact that there is precedence in terms of organisations of similar characteristics implies that by adopting the Canadian model, it would protect employees' fundamental human rights.

3.3.3.3 Regulations on oversight

Oversight is a critical government function which holds officials and employees accountable for their actions. Therefore, the Canadian government enacted relevant pieces of legislation to address this matter. Section 8(4) of the Canadian Security Intelligence Act of 1985 dictates that the Governor in Council (who appoints the Director in terms of sub-Section 4(1) of the Act) may institutionalise these legislative requirements to ensure legitimacy and justice within the civilian intelligence services. Importantly, these structures do exist within SA's civilian intelligence services but do not provide such authoritative instructions to the Office of the Inspector General of Intelligence Services or Joint Standing Committee on Intelligence. Therefore, the roles of the two structures is confusing.

3.3.3.4 Resolution of support staff disputes: Processes

A different dispensation manages the resolution of disputes to support staff in CSIS, while SA's civilian intelligence does not make such a distinction. According to Section 9(1) of the Canadian Security Intelligence Service Act of 1985, in line with the provisions of the Federal Public Sector Labour Relations Act of 2003, the dispute resolution process for the Canadian Security Intelligence Service (CSIS) employees who fall within a recognised bargaining unit is limited to arbitration. Moreover, this prescribed mechanism may not be amended through the general provisions of the labour relations framework. Therefore, the provision represents a recognition of the distinctive nature of intelligence work where strikes or lockouts may be considered incompatible with national security interests.

On the contrary, the South African civilian intelligence services does not provide a clearly defined, formalised dispute resolution mechanism for its employees. This is despite the internal mechanisms which were meant to promote fair labour practices in conformance with Section 23 of the Constitution of South Africa (1996). This contradiction highlights discrepancies within liberal democracies, especially of how they manage the conditions of service of intelligence employees. Therefore, the absence of rights-conscious approach to dispute resolution by the employer.

3.3.3.5 Public Service Superannuation Act of 1985

This section highlights the ongoing confusion surrounding the work status of employees in the civilian intelligence services. In this regard, the distinctiveness of the Canadian Security Intelligence Service's (CSIS) labour dispensation is rooted in the Public Service Superannuation Act of 1985. The Act stipulates that the Service employees are "*deemed to be employed in the public service*" which literally implies that they are formally integrated within the broader public sector framework. Furthermore, it ensures the employees' access to key labour rights within the confines of the unique operational demands of intelligence work. However, this approach conflicts with the South African model. In this context, the Public Service Act 103 of 1994 classifies the civilian intelligence services as departments within the public service but not at the same level of clarity or institutionalised mechanisms to protect labour. Chapter 4 of the Intelligence Services Act 65 of 2002 prescribes this categorisation, however, the status is ambiguous because the Labour Relations Act 66 of 1995 is not explicit on the matter.

The principles in Section 23 of the Constitution of South Africa (1996) stipulate that "*every employee has the right to fair labour practices, including the right to form and join trade unions, to engage in collective bargaining, and to strike*". Of significance is that it does not make explicit exception for intelligence services employees. In contrast, CSIS regulations offer a more structured and rights-sensitive model, although strikes are prohibited during the negotiation or enforcement of collective agreements. Therefore, the Canadian model presents an instructive precedent for South Africa. While the latter has established internal consultation mechanisms, these remain largely discretionary and lack formal protection and procedural fairness. In contrast, the former offers a coherent institutional arrangement which protects the interests of both the employer and the employees without undermining operational integrity. Accordingly, the South African civilian intelligence services could benefit from this model by adopting a more structured labour dispensation.

3.4 Conclusion

This chapter examined the fundamental principles which underpin collective bargaining within liberal democratic systems and with specific reference to the civilian intelligence services in South Africa and Canada. A meta-analysis of relevant literature was conducted. The following five key principles were identified: employee participation in decision-making; different approaches towards collective bargaining participation; freedom of association; collective bargaining as a mechanism of social justice; and the effect of international law to protect labour rights. Thus, these democratic values help in enabling workers to participate meaningfully - whether directly or indirectly - in workplace governance.

The analysis revealed that the Canadian Security Intelligence Service (CSIS) characterises the institutionalisation of the above principles, particularly through autonomous dispute resolution mechanisms facilitated by the Federal Public Sector Labour Relations and Employment Board. However, SA's civilian intelligence services remain comparatively disadvantaged in this regard. Therefore, this limitation revealed the contradiction between the significance of the requirements of national security and constitutional rights. Moreover, it has become an impediment to establish an effective collective bargaining model within the civilian intelligence services.

The chapter also highlighted broader trends which characterises collective bargaining in liberal democracies. Although freedom of association is important, it has attracted criticism due to the link with the right to strike. Similarly, the establishment of trade unions within civilian intelligence services remains a delicate concern due to the competing needs of labour and capital. Furthermore, the ever-changing work complicates the sustainability to introduce the concept of collective bargaining within civilian intelligence services. However, the focus of the discussion should not be mandatory unionisation but strengthen consultation mechanisms with collective bargaining instruments. Consequently, this debate should be based on fairness, autonomy, and democratic principles which is evident within the Canadian model. The latter can be harmonised with collective bargaining, professional integrity, and national security interests. Ultimately, this chapter argued that collective bargaining is a pillar of democracy and should be extended to civilian intelligence services. This argument is explored further in the next chapter which interrogates the reasons for the exclusion of collective bargaining within the South African civilian intelligence services.

CHAPTER 4: COLLECTIVE BARGAINING: SOUTH AFRICAN CIVILIAN INTELLIGENCE SERVICES SINCE DEMOCRACY

4.1 Introduction

As highlighted in the previous chapters, collective bargaining is not permitted within SA's civilian intelligence services due to national security considerations although it is implemented in other government departments. This anomaly is in direct contrast with what Adams' (2010:153-164) termed as a globally embraced '*human right*' which is aimed to promote fair labour practices. Furthermore, it has direct implications on all workers without exception, including the Americans, Canadians, and the British, where these employees can either engage or not in collective bargaining. However, this option fails to meet the equality threshold which is expected in democracies. Thus, states are required to enhance access to collective bargaining and eliminate any form of discrimination and ensure that any deviation from this ideal would require legislative intervention.

The above argument was examined within the context of the ILO's Declaration of Fundamental Principles and Rights at Work (1998). In this regard, it emphasises the significance of collective bargaining as a human right which must be embedded within the workplace (see Section 3.5.2). Equally, its principles are not exclusionary and applies to all sectors of employment including SA's civilian intelligence services. Therefore, the purpose of this chapter is to explore the unique character of collective bargaining within SA's civilian intelligence services since the advent of democracy in 1994. To achieve this objective, the legislative and institutional framework which governs collective bargaining within the South African public service will be interrogated. As such, this approach serves as a benchmark against which the exclusion of collective bargaining within the civilian intelligence services can be understood. In doing so, the chapter addresses the third research objective, namely: *"to criticise and investigate the underlying reasons for the exclusion of collective bargaining within the South African civilian intelligence services."*

4.2 Collective bargaining: South African public service

Collective bargaining within the South African public service is largely centralised through bargaining councils which provides employees a proper platform to engage with the employers on conditions of service. Interestingly, South Africa, as a member of the ILO has not ratified the Labour Relations (Public Service) Convention No. 151 of 1978 (Department of Labour, 2012; Tshoose, 2022:1-43). Therefore, this is anomalous as it raises questions about how it balances its national security interests with commitment to democratic labour relations, particularly within the civilian intelligence services. At its centre, this Convention provides an

important mechanism to regulate labour relations in the public service including the right to belong to a representative structure and collective bargaining (see Section 3.2.1.1, Chapter 3). Therefore, its relevance to SA's civilian intelligence services demands specific attention given the unique security implications.

Article 1 of Labour Relations (Public Service) Convention No. 151 of 1978 is explicit and broadly caters for workers in government departments unless there are alternative ILO legislative frameworks which fill the void. However, its striking feature is the strategic allowance it provides to those governments that ratified it, and enabling them to enact domestic laws that exclude certain groups of workers where there are compelling reasons for doing so. Therefore, these groups would include C-suite workers and those within the security establishments including SA's civilian intelligence services (ILO, 1978; Tshoose, 2022:1-43). Hence, special consultation measures have been established within these departments due to their unique circumstances. However, these have been widely criticised because the issues cited for excluding collective bargaining are unjustifiable. Instead, these mechanisms fail to consult parties to engage meaningfully with this provision and in good faith. Consequently, management's reluctance to commit to this process indicates a missed opportunity to advocate for the unique treatment of intelligence officers within the framework of international law.

The categorisation of "*public employee*" is further strengthened by Article 2 of the Convention which confirms that it is any person defined in Article 1 which emphasises the inclusive intent of the mechanism. Similarly, Article 3 suggests that it may include any association established to promote and protect the interests of public sector workers (ILO, 1978; Tshoose, 2022:1-43). Therefore, the distinct feature of this Convention is to promote fair labour practices within the public service. This is further emphasised in Article 4 which addresses the eradication of all forms of discrimination against employees within the workplace (ILO, 1978; Gernigon, Odero & Guido, 1998:35–36). These provisions are also supported by the Constitution of South Africa (1996) which reiterates that no employee shall be arbitrarily excluded from the application of global regulations. Collective bargaining within the South African public service involves a tripartite structure: the government, employee representative structures, and management, which is discussed later in this chapter.

4.2.1 The three key role players in public service labour relations

According to Katz and Kochan (1992:1), there are three important parties which play a significant role within the workplace: labour; management; and government.

a) "*Labour: is made up of employees and their aggregated assembly and interest groups;*

- b) *Management: management and employers' representative structures within the workplace; and*
- c) *Government: public sector departments and spending centres responsible for policy formulation which are intended to oversee good governance and fair labour practices."*

Heery and Frege (2006:601-604) argued that efforts of collective bargaining are decreasing in several states due to lack of interest in indirect representation which necessitated an examination of the role of "new actors". Furthermore, there is an emerging trend among civil society organisations which are advocating for the protection of rights of certain groups of workers (Fine, 2014:5-26). Similarly, the management of organisations are also witnessing this pattern of alternative representation models (Kurivilla & Verma, 2006:48-51; Osterman et al., 2001:149-207). Therefore, this phenomenon indicates that there is a fundamental shift in the balance of forces; nature of relationships; how work is structured; and the environment in which it takes place.

In summary, the above role players constitute collective bargaining within the workplace. Poisat et al. (2008:184) defined the latter as a platform of engagement between trade unions and management representative structures to reach an agreement regarding conditions of work. Furthermore, they analysed the following two concepts: "collective" and "bargaining" to appreciate the actual meaning. In their view, the word "collective" implies that workers and employers assign their voice to a formal structure to raise issues on their behalf which is also called indirect participation. On the other hand, "bargaining" is an engagement process which provides a platform to advance competing needs which often result in a stalemate until a solution is found, documented, and implemented. Consequently, the negotiation process to enhance conditions in the South African public service should ideally culminate in a binding collective agreement. This process should be strengthened through national laws or policies as discussed in the following section.

4.2.2 Legislative requirements for collective bargaining within the South African public service

Legislative measures which regulate collective bargaining in South Africa have a long-standing history. However, their effectiveness and along with the fact that they are not mandatory invites considerable criticism. Vettori (2005:108) asserted that they were initially institutionalised in the South African employment framework in 1924. However, despite this legislative arrangement, the non-mandatory nature of participation has allowed both the workers and management to define the scope of their engagement independently. In this regard, the government has been reduced to a facilitating and persuasive role of promoting collective bargaining through regulations that are largely unenforceable. Similarly, the Labour

Relations Act 66 of 1995 advances a mechanism based on “*voluntary collective bargaining*” accompanied by numerous fundamental rights for workers and their representatives (Vettori, 2005:108–109). Therefore, it could also be argued that this voluntarism was introduced as a legal instrument to prevent stifling employment relations or being overly prescriptive. Furthermore, Section 64 of the LRA endorses “*the right to strike*” when conflict arises due to reluctance to engage which is aligned to Section 23 of the Constitution of South Africa (1996). Vettori (2005:108–109) contended that this imbalance between collective bargaining and a right to strike, undermines the logic of the voluntary nature of collective bargaining as the two may not be separated. Despite such limitations, the legislative framework is significant as a foundation for the employees to participate and engage in good faith during negotiations or consultation.

Bendix (2000:143) concurred with the above statement that there is a silent pressure to force engagement by centralising collective bargaining, which is presumably a non-mandatory exercise. Notably, this argument arises from the fact that workers’ representative structures enjoy significant rights which weakens management’s authority significantly and leads to a decline in participation in collective bargaining. Moreover, this situation is complicated by regulations that empower the Labour Minister to recognise bargaining councils, regardless of whether employee representative structures meet the threshold. These regulations are supported by a series of pieces of legislation which includes:

- The Constitution of the Republic of South Africa (Act 108 of 1996)
- The Public Service Act, 1997 (Act 47 of 1997)
- The Employment of Educators Act, 1994
- The South African Police Act, 1995
- The Correctional Service Act, 1995 (Act 111 of 1995)
- The National Prosecuting Act, 1998 (Act 32 of 1998)
- The Labour Relations Act, 1995 (Act 66 of 1995)
- The Basic Conditions of Employment Act, 1997 (Act 75 of 1997)
- The Skills Development Act, 1998 (Act 97 of 1998)
- The Employment Equity Act, 1998 (Act 55 of 1998)
- The Promotion of Administrative Justice Act, 2000 (Act 3 of 2000)
- The Promotion of Access to Information Act, 2000 (Act 2 of 2000)
- The Protection of Personal Information Act, 2013 (Act 4 of 2013)

The group of legislative instruments mentioned above has helped to transform South Africa’s labour relations network and promote democratic principles of fair labour practices. Thus, these are strengthened by collective agreements concluded within the Public Service

Coordinating Bargaining Council (PSCBC) and other sectoral bargaining councils. In this regard, Chapter III of the Labour Relations Act 66 of 1995, guided by Section 23 of the Constitution of South Africa (1996) encourages both the employees and the employers to establish mechanisms for collective bargaining. Furthermore, the LRA is supported by the Basic Conditions of Employment Act 75 of 1997, which is a milestone in promoting social justice by outlining processes for addressing competing needs in the workplace. Based on these developments, the following sections will explore the role of collective bargaining as enshrined in the LRA, Public Service Act 47 of 1997, and the PSCBC provisions, and highlighting its global recognition as a fundamental human right.

4.2.3 Collective bargaining and Labour Relations Act

The Labour Relations Act 66 of 1995 institutionalises Section 23 rights of the Constitution of South Africa (1996) to regulate the behaviour of employees' representative structures, promote collective bargaining, protect the right to strike, and encourage workers' engagement in decision-making and governance through internal mechanisms. More importantly, it provides for dispute resolution through alternative mechanisms (see Section 3.2, Chapter 3) as well as through judicial review in the Labour Court and Labour Appeals Court. However, the implementation of these principles of administrative and social justice varies from country to country depending on the type of regime.

The above is acknowledged by Clarke (2007:28) who postulated that there was a complicated dispensation of collective bargaining in South Africa before the dawn of democracy. There were parallel and uncoordinated forms of collective bargaining in government departments. Consequently, the Public Service Labour Relations Act (PSLRA) and the Education Labour Relations Act (ELRA) were passed in 1993 to promote and protect the fundamental rights of the employees in government. Ngcukaitobi (2005:3) concurred that these were deliberately excluded from the Labour Relations Act of 1956. Consequently, the "1980's and 1990's" experienced a surge in strike action and most of the employees joined representative structures. To mitigate against this instability, the PSLRA introduced the Public Service Bargaining Council (PSBC) which comprised of *"bargaining chambers at central level; a chamber for each department at departmental level; and a chamber for each provincial administration"*. Therefore, there was a need for employee structures to register, engage with the PSBC, and provide adequate proof of representativity that reflects the needs of the workers, which should be represented in the Chamber (Ngcukaitobi, 2005:5-7). However, these practices are not applicable within SA's civilian intelligence services due to the deliberate exclusion by the LRA. Furthermore, the issue has not been tested in a court of law.

In summary, the formation of a trade union is not permitted within SA's civilian intelligence services due to the highly sensitive nature of the intelligence work. However, its absence does not deny the departments the right to establish fora in which they can consult their employees. Moreover, the consultation fora within the civilian intelligence services is not meant to replace collective bargaining structures in the public service. Hence, there is the need for an autonomous mechanism to promote collective bargaining with enforceable agreements and dispute resolution within this sensitive environment.

4.2.4 Collective agreements

The Labour Relations Act 66 of 1995 provides a structured framework to establish and enforce collective agreements within South Africa's labour relations dispensation. According to Section 213 of the LRA, a "*collective agreement*" is defined as a formal document that outlines the conditions of service and matters of interest agreed upon by "*one or more registered trade unions and either one or more employers, registered employers' organisations, or a combination thereof*". In essence, this definition illustrates the formal and representative nature of collective bargaining which ensures that agreements are concluded by acknowledged employee and employer associations.

Once concluded, Section 23 of the LRA enforces the agreement including members who are not represented in the bargaining structure. Furthermore, its terms supersede any inconsistent provisions found in individual contracts of employment for its duration. Thus, it reinforces the collective nature of labour regulations and ensures consistency and fairness in the workplace. Similarly, Section 31 of the LRA extends this principle and binding nature to bargaining councils. Importantly, Section 32 of the LRA, allows such agreements to be extended to members who are not affiliated within the registered scope of the council by ministerial determination. Therefore, these pieces of legislation further promote equality and justice within the workplace.

According to Nel et al. (2008:123), the authenticity of a collective agreement relies on certain preconditions which include formal documentation; recognised worker representative structure; and focus on work requirements and needs. By doing so, these needs would inadvertently be linked to matters of significance to all stakeholders within the workplace. In addition, the foundations of "*contract law*" would apply to all the employees including non-members of representative structures in such agreements. Furthermore, any contradictory requirements in a contract must complement the collective agreement. Therefore, this legislative requirement highlights the significance of collective bargaining in South African labour relations by institutionalising the principle that negotiated outcomes between employee representatives and employers hold more authority than individual employment contracts.

From a liberal democratic perspective, such arrangements promote inclusive participation in governance and in pursuit of social justice to ensure that workers' collective demands are met through binding legal instruments (Gernigon, Otero & Guido, 2000:35–36; Bendix, 2019:87).

Considering the above theoretical arguments, collective bargaining strongly resonates with liberal democratic values because it extends democratic participation into the socio-economic sphere. Thus, the law enforces the protection of fundamental human rights by promoting the right to negotiate collectively, which is central to democratic governance (Held, 2006:220). In this context, collective agreements serve as mechanisms of workplace democracy, to correct imbalances during negotiations with management. This assertion is further supported by ILO conventions that entrench collective bargaining as a means to promote justice, as reflected in Section 23 of the Constitution of South Africa (1996). Therefore, it is the responsibility of the states to enact domestic laws that promote collective agreements not only as instruments of ensuring stability but also in advancing the broader democratic principles.

4.2.5 Bargaining councils

Bargaining councils play a critical role in South Africa's collective bargaining framework. These were introduced under the Labour Relations Act 66 of 1995 to replace the former industrial councils, to modernise sectoral and industry-level negotiations. Furthermore, they are voluntary structures which were established in terms of Section 29 of the said Act which requires the employees and the employers' representative structures may establish a bargaining council within a specific industry to centralise bargaining. However, the Act incorporates several incentives to encourage employer and union involvement to enable a council to extend its agreements to all the employers and employees within the designated sector provided that the required representation thresholds are met.

The mandate of bargaining councils is two-fold: (a) facilitate negotiations and conclude collective agreements on matters of mutual interest; and (b) resolve disputes arising within the industry or sector. The Labour Relations Act 66 of 1995 prescribes that an agreement may only be extended if the parties are represented fairly. However, "*the Minister of Labour*" retains the discretion to extend agreements if the threshold is deemed adequate. Consequently, failing to extend such agreements risks undermining the effectiveness of bargaining at a sectoral level. Furthermore, a council seeking extension of its agreement must establish an independent body to adjudicate exemption applications lodged by non-affiliated parties. Moreover, the agreement must outline fair and transparent criteria to guide the independent body in determining exemption appeals (Bendix, 2000:156–157).

In addition to the above, the Labour Relations Act 66 of 1995 stipulates that disputes in sectors with established bargaining councils must be processed through the relevant council rather than through the Commission for Conciliation, Mediation and Arbitration (CCMA). To this end, each bargaining council must designate a dispute resolution committee to mediate and arbitrate sectoral disputes. Moreover, councils have the power to appoint inspectors or agents, through the Minister of Labour, to monitor compliance with agreements. Equally, these agents have significant authority compared to CCMA commissioners in dispute resolution although they lack powers to issue subpoena. Therefore, their role has evolved beyond mere enforcement to encompass conciliation. As such, they become integral actors to promote labour, peace and mitigate conflict (Bendix, 2000:156–157).

In summary, bargaining councils help to advance the LRA legislative requirements which includes orderly collective bargaining; limit industrial conflict; and promote effective dispute resolution at sectoral and industry levels. Importantly, they also embody the broader values of liberal democracy by institutionalising participation; ensuring representation of diverse stakeholders; and enhancing accountability within the labour relations environment.

4.2.6 Bargaining councils in the public service

The Labour Relations Act 66 of 1995 establishes the Public Service Coordinating Bargaining Council (PSCBC) with authority to regulate conditions of employment across the public service (Nel et al., 2008:123). Therefore, this provision was not conceptually exclusive and likely intended to include SA's civilian intelligence services. This argument also conforms with the provision of Section 37 which empowers the President, in consultation with the PSCBC, to designate a sector to establish its own bargaining council. However, this provision may be perceived as a potential overlap with ministerial authority. Similarly, the Labour Relations Act 66 of 1995 requires *“the Minister for Public Service and Administration, in consultation with NEDLAC, to establish a committee under the PSCBC”*. In this regard, this committee is intended to address competence dispute which allows unresolved matters to be referred to arbitration. Therefore, this dual approach highlights contradiction between presidential and ministerial powers which is analysed further in Section 4.3.

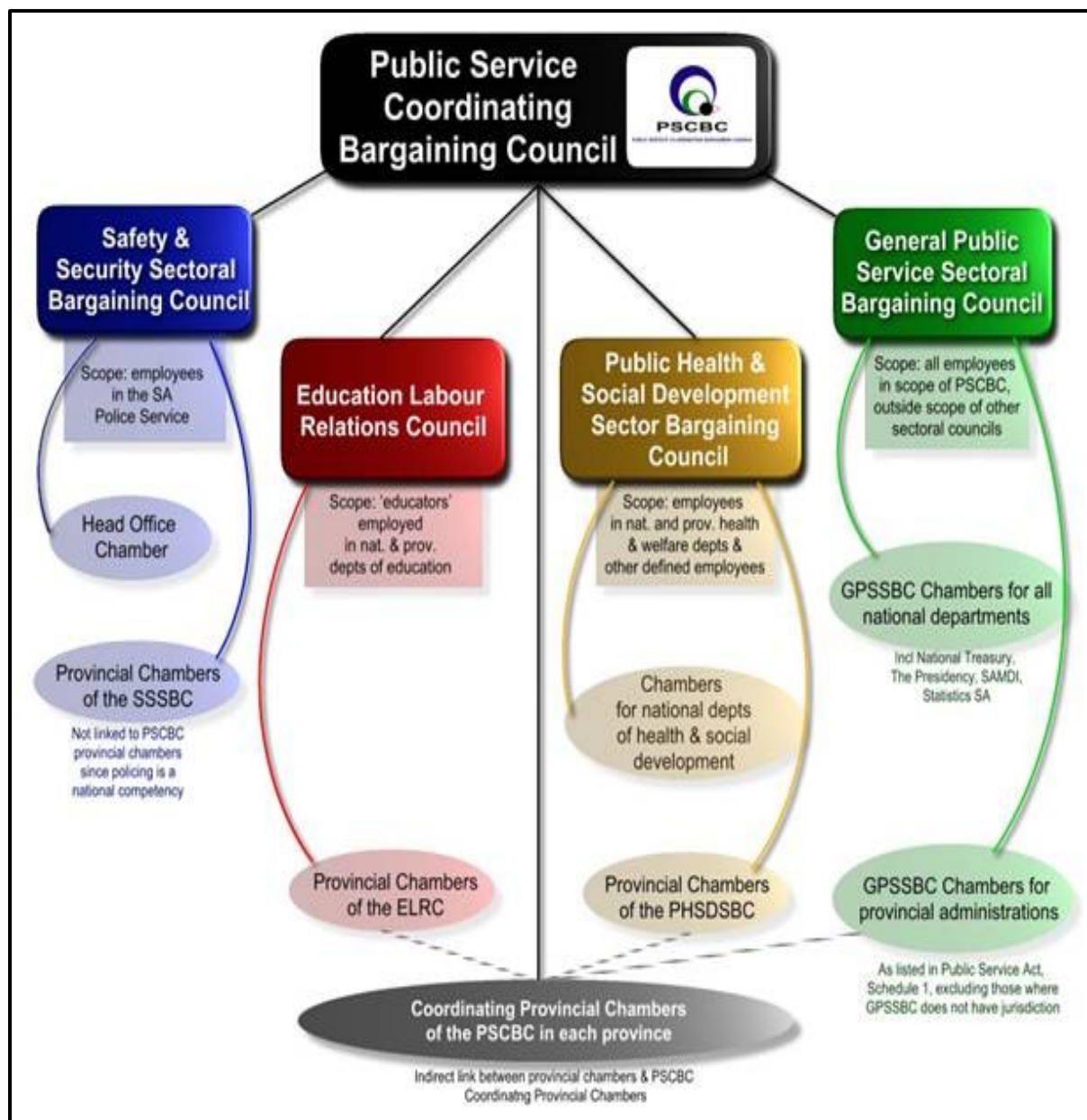
Based on the above, Figure 4.1 illustrates the PSCBC's powers and functions as listed in Section 28 of the Labour Relations Act 66 of 1995. According to this Act, the primary purpose of the PSCBC is to provide Public Service parties a platform to:

- *“Negotiate resolutions on transverse matters, including terms and conditions of the employment of public servants;*
- *Prevent and resolve disputes through mediation and arbitration;*

- *Facilitate hearings to resolve disputes that arise in the Public Service (over which the PSCBC has jurisdiction); and*
- *Promote good governance, inclusive of research and strategic partnership”.*

Despite the above provisions, the bargaining council system continues to face significant challenges, particularly regarding the representation threshold of parties and extension of agreements. Moreover, these concerns arise from the discretion granted to the “*Minister of Labour*” through the Labour Relations Act 66 of 1995, particularly in instances where a party does not meet the representation thresholds. However, empirical evidence has shown that the Department of Labour has adopted a stricter interpretation in exercising this discretion (Godfrey et al., 2007:14–15). Furthermore, the call for enhanced flexibility within bargaining councils has become a persistent concern. In this regard, many councils have attempted to address this issue by incorporating disparities into their agreements, often differentiating along regional lines. Similarly, another area of contention is the relationship between sectoral bargaining at council level and negotiations at the plant level. However, there is evidence which suggests that this matter has been resolved in favour of centralised bargaining. Thus, most council agreements explicitly prohibit plant-level negotiations on issues already managed in the council framework (Godfrey et al., 2007:14-15).

The dynamics revealed the inherent difficulty to introduce collective bargaining structures which function effectively. Hence, statutory councils are not immune to these challenges despite the overarching objective to preserve peace through structured negotiations and autonomous dispute resolution mechanisms. Moreover, the challenges in these councils highlight the contradiction between efficiency and fairness in collective bargaining. From a liberal democratic perspective, these institutions serve as instruments of social justice; enables inclusive participation; balances power between labour and capital; and strengthens democratic values through negotiated outcomes.

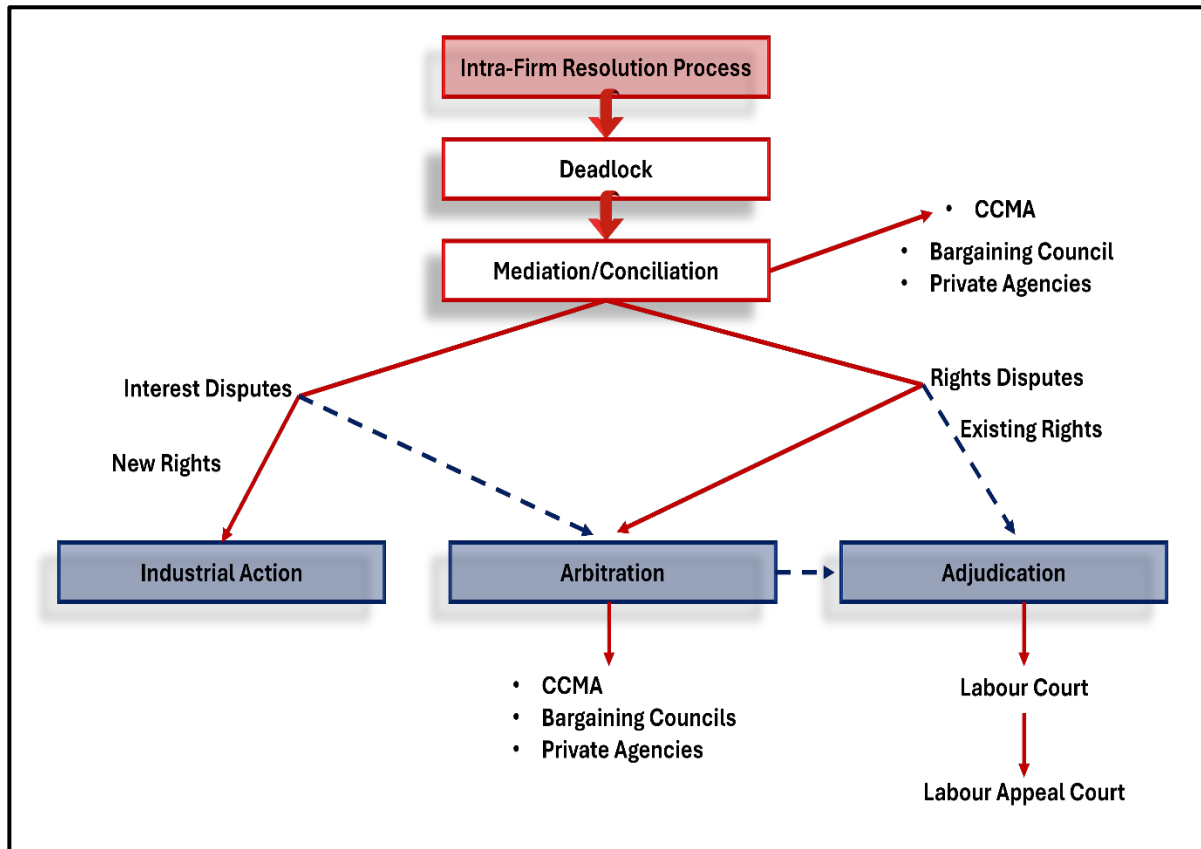


Source: Public Service Coordinating Bargaining Council

Figure 4.1: The current collective bargaining structures in the public service

Figure 4.2 illustrates the power bestowed upon both bargaining and statutory councils to resolve any dispute on matters of interest through conciliation and arbitration. Furthermore, this authority is further highlighted in Section 51(2)(b) of the Labour Relations Act 66 of 1995 which provides employees equal access to administrative justice. In this regard, any stakeholder, regardless of status, and falls within the registered scope may refer the dispute to the council in writing. Therefore, this provision is further strengthened by Section 51(3) of the same Act which dictates that the council must attempt to resolve the dispute through

conciliation or arbitration if a referred dispute remains unresolved. Furthermore, this also applies to any stakeholder involved in the dispute who is not a party to the council.



Source: Author's own construction

Figure 4.2: Structure of dispute resolutions in South Africa

4.2.7 Statutory councils

The above-mentioned instruments are further complemented by statutory councils which serve as mechanisms to conclude collective agreements within the workplace. However, the limitations generally possess limited bargaining power than bargaining councils. In this regard, statutory councils are established in accordance with Section 39 of the Labour Relations Act 66 of 1995. Section 39 of the LRA defines such a body as *"a representative trade union or trade unions and a representative employers' organisation or employers' organisations whose membership constitutes at least thirty (30) per cent of the employees respectively and are registered in terms of the requirements of the Act"*. Furthermore, statutory councils may be institutionalised on request by either worker or management associations only if the stakeholder meets the lower representation threshold than a bargaining council. Therefore, this flexibility allows smaller or less organised sectors to institutionalise collective bargaining structures at various levels of employment.

Despite their formal recognition, statutory councils are constrained by their limited scope of authority and bargaining capacity. According to Section 39 of the LRA, their functions are primarily restricted to conclude agreements on specific matters, including:

- (a) “carrying out dispute resolution functions;*
- (b) promoting and establishing education and training schemes; and*
- (c) establishing and administering pension, provident fund, medical aid, sick pay, holiday and unemployment schemes, or any similar schemes or funds for the benefit of the parties to the statutory council or their members”.*

This limited jurisdiction aims to balance inclusivity with practicality, ensuring that statutory councils provide a platform for representation in less formalised sectors. However, they still reserve full collective bargaining functions. Nonetheless, this restricted bargaining mandate may raise concerns about their effectiveness in addressing broader conditions of service and challenges within their respective sectors. The provisions may be expanded to include collective bargaining in terms of Section 28 of the LRA. Furthermore, stakeholders may refer their disputes regarding the interpretation or application of a determination in writing to the CCMA for both conciliation and arbitration (Godfrey et al., 2007:16). However, Godfrey et al. (2007:16) cautioned that the primary problem with the statutory council approach is that the compulsory model embedded in it is very difficult to implement. This argument is based on instances where there is no recourse when employers are opposed to the council. Once statutory councils are established, the implementation process of bargaining system often takes longer. Consequently, the statutory councils face similar challenges as bargaining councils particularly regarding their limited bargaining power. In this regard, the workplace fora like the consultation approach in SA’s civilian intelligence services are based on good faith and face similar frustrations, as illustrated in the following section.

4.2.8 Workplace forum

The workplace forum is legislated by Chapter 5 of the Labour Relations Act 66 of 1995 to minimise conflict and promote joint decision-making at the industry-specific workplace level, e.g., SA’s civilian intelligence services. Accordingly, Section 85 of the Act provides guidance, stating that employers must consult the forum regarding proposals on a wide range of issues. Furthermore, it requires full disclosure relevant to any prospective intervention. Substantially, this institutional arrangement resembles the Consultation Committee of SA’s civilian intelligence services and was likely intended to serve the same purpose. However, it lacks the legitimacy that comes with joint decision-making which will be discussed in Section 4.3.2 of this chapter. Similarly, it is important to draw a distinction between collective bargaining and the consultation mechanism within workplace forums. This submission assumes that existing

consultation mechanisms of civilian intelligence services regulations are modelled around workplace forums as provided for by the LRA. However, this assumption might not be entirely accurate, as there are notable points of difference.

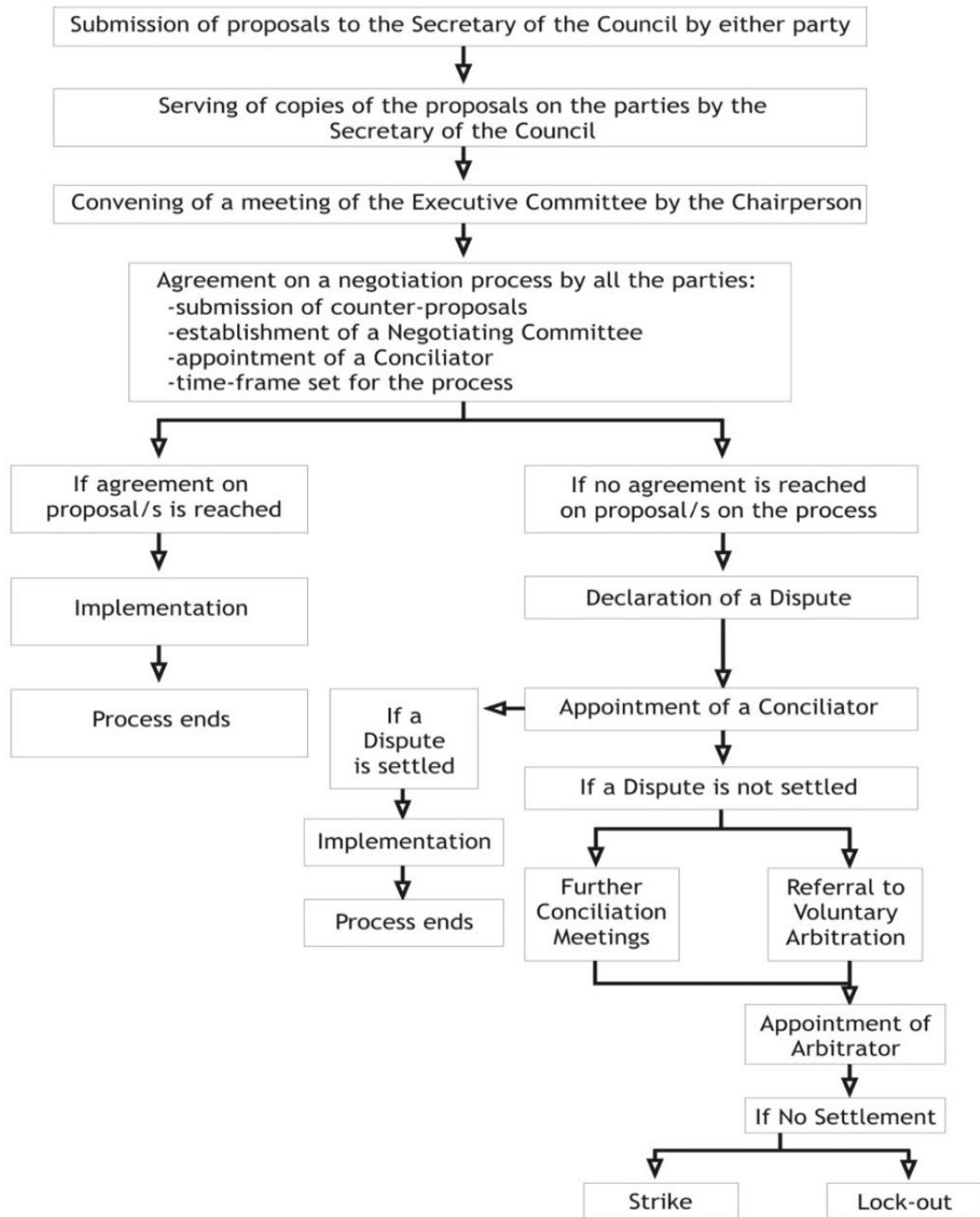
The above critique is supported by Grogan's (2009:340) remarks that parties to both bargaining and statutory councils are mandated to resolve disputes regarding matters of mutual interest through conciliation and arbitration (see Figure 4.3). Therefore, the CCMA can also allow them to "*arbitrate rights disputes*". Furthermore, disputes must be referred to the CCMA if there is a challenge from a non-accredited council. Equally, workers and their representative structures can agree to negotiate or consult at industry level although the Labour Relations Act 66 of 1995 prefers sectoral-level bargaining. Therefore, the negotiations may take place either directly between the employer and recognised union or through workplace forums. Written agreements from these engagements will be binding on the associations and their members. However, council agreements will take precedence over plant level agreements in instances where the parties fall within the registered scope of a bargaining council (Grogan, 2009:340-341). It appears that the civilian intelligence services have numerous options to rely on when addressing disputes between parties, notably when there is the will and commitment to do so.

Based on the above arguments, it is undisputed that collective bargaining within the public service can be effective when the nature of negotiations is structured and institutionalised. However, for this to materialise, systems and procedures must be established to facilitate amicable solutions in decision-making processes, particularly within the SA's civilian intelligence services. Poisat et al., (2008:184) suggested the following key elements that make collective bargaining complete:

- a) *"Representation: it has to be grounded on the appetite of principles of democracy and the representation of the collective interests;*
- b) *Power: joint decision-making and collective agreements on governance matters;*
- c) *Common ground: peaceful work environment; and*
- d) *Conflict: find a balance between profit and protecting employees' interests and rights".*

Within the South African context, collective bargaining in the public service is a highly politicised process and generally characterised by competing needs and interests. Essentially, the overall objective is to reach a collective agreement. However, contested issues of representation and power prominently feature when negotiating conditions of service and matters of interest in the public service. This is due to the tripartite nature of labour relations (government, employer and employees) which, if not managed carefully, can result in strikes and lockouts, which is discussed in the following section.

The following flow diagram graphically illustrates the Negotiation Procedure in the PSCBC (Public Service Coordinating Bargaining Council): Disputes of Interests.



Source: Public Service Coordinating Bargaining Council

Figure 4.2: The collective bargaining process in PSCBC

4.2.9 Right to strike and lockout

The right to strike is a constitutional right under Section 23 of the Constitution of South Africa (1996) and represents the most contentious event that employers strive to avoid. Hence, in selected instances, secondary pieces of legislation are utilised to restrict the execution of this right (Le Roux & Cohen, 2016:3). Furthermore, Spero and Capozzola (1973:239) cautioned that it is an immediate, contested and conflict characterised issue within the workplace. In this regard, the Labour Relations Act 66 of 1995 defines a strike as *“either the refusal to work, the obstruction of work, or the retardation of work, if this is instituted for the purpose of remedying a grievance or resolving a dispute on any matter of mutual interest between an employer and employee”*. Kearney (1984:214) argued that the guiding philosophy of workers in public institution is that autonomy resides with employees and that government intervention during strike actions constitutes a violation of fundamental human rights in a democracy. Importantly, the right to strike can only be invoked when contract negotiations remain unresolved after mediation or fact finding. In short, there must be legitimate grounds to deny employees their right to embark on a legal strike, especially when they followed the proper procedures.

The above objection is supported by Le Roux and Cohen (2016:3) who argued that the right to strike is an important outcome of ILO Conventions No. 87 of 1948 (freedom of association) and 98 of 1949 (right to organise and collective bargaining) respectively. Therefore, the legislative guidance of international oversight structures is the key element of protection when this right is under threat. Globally, this constitutional principle reflects respect for the right to strike and an understanding of relatively limited grounds for restricting it. This legislative framework does not endorse a general exclusion of strikes in the public service. This is also supported by ILO to protect the workers’ right to strike in state departments (Le Roux & Cohen, 2016:3-4). Therefore, the workers’ and employers’ association are always aware of when to exercise the right to strike or lockout, particularly when there is a collective agreement in place.

Based on the above, Bendix (2000:171) contended that the employee option to embark on a strike and the employer’s recourse of a lockout is prohibited when the contested issue is *“part of an existing agreement, award or determination”*. Furthermore, the employees and the employers may not activate these options if the issue is still under arbitration or if there is still an alternative to refer the matter to the Labour Court for adjudication. Moreover, employees in essential and maintenance services may not strike. However, the anomaly is that these options may be activated concerning the organisational rights of workers’ associations even when arbitration is available (Bendix, 2000:171). Equally, neither the workers nor management can retract their agreement once the collective agreement has been reached. Subsequently, the LRA protects the rights of workers and management associations’ right in the event of a legal strike or lockout by indemnifying the parties against breaches of contract.

Therefore, employees who engage in a legal strike cannot be dismissed. However, it is evident that these provisions would vary when dealing with essential services. Coincidentally, 'essential services' excludes SA's civilian intelligence services as they are not classified or covered by the provisions of the LRA regarding collective bargaining and the right to strike.

4.3 Collective bargaining: South African Civilian Intelligence Services

Collective bargaining mechanisms are non-existent within SA's civilian intelligence services because of the absence of legislative provisions within the LRA. However, this exclusion is anomalous as it is in direct violation with Section 23 of the Constitution of South Africa (1996) as illustrated earlier in this chapter. More importantly, this section is specific with regard to the mandatory engagement in collective bargaining by workers and their representative structures, employers, and their associations. Furthermore, it becomes instructive since government is mandated to enact legislation to regulate collective bargaining. Therefore, it is evident that the current labour relations dispensation within the civilian intelligence services is neither legally nor constitutionally adequate to promote sound labour relations.

Contrary to the spirit of the Constitution of South Africa (1996), the labour relations dispensation within the civilian intelligence services is regulated by Sections 21 and 22 of the Intelligence Services Act 65 of 2002. In this regard, Section 21(1) of the Act is explicit as it forbids strikes in the workplace. Moreover, Section 21(2) of the same Act provides the Minister powers to institutionalise rules to manage complaints, grievances and consultations on the conditions of service and human resources within the Academy and intelligence services. This provision was intended to deal with the limitation of rights to join or establish a trade union or engage in collective bargaining. However, this objective was not met because the consultation mechanism deliberately excluded collective bargaining and collective agreements as illustrated in Figure 4.4 below. As a result, it established an unusual precedence by granting the Intelligence Services Council on Conditions of Service (ISCCS) the authority to make recommendations to the Minister, whose decisions on matters of interest and disputes are final and binding on all parties (South Africa, 2002). (There is a further reflection of this matter in Section 4.3.2 of the chapter).

Based on a review of publicly available legal databases, including Southern African Legal Information Institute (SAFLII), up to date, no reported judgments reflecting such judicial intervention were located. However, this conclusion is necessarily limited to publicly accessible case law. Importantly, this is despite the precedence which was set within the South African National Defence Force (SANDF), which is interrogated in the following chapter. As a result, the limitation of rights remains unopposed despite South Africa being a liberal

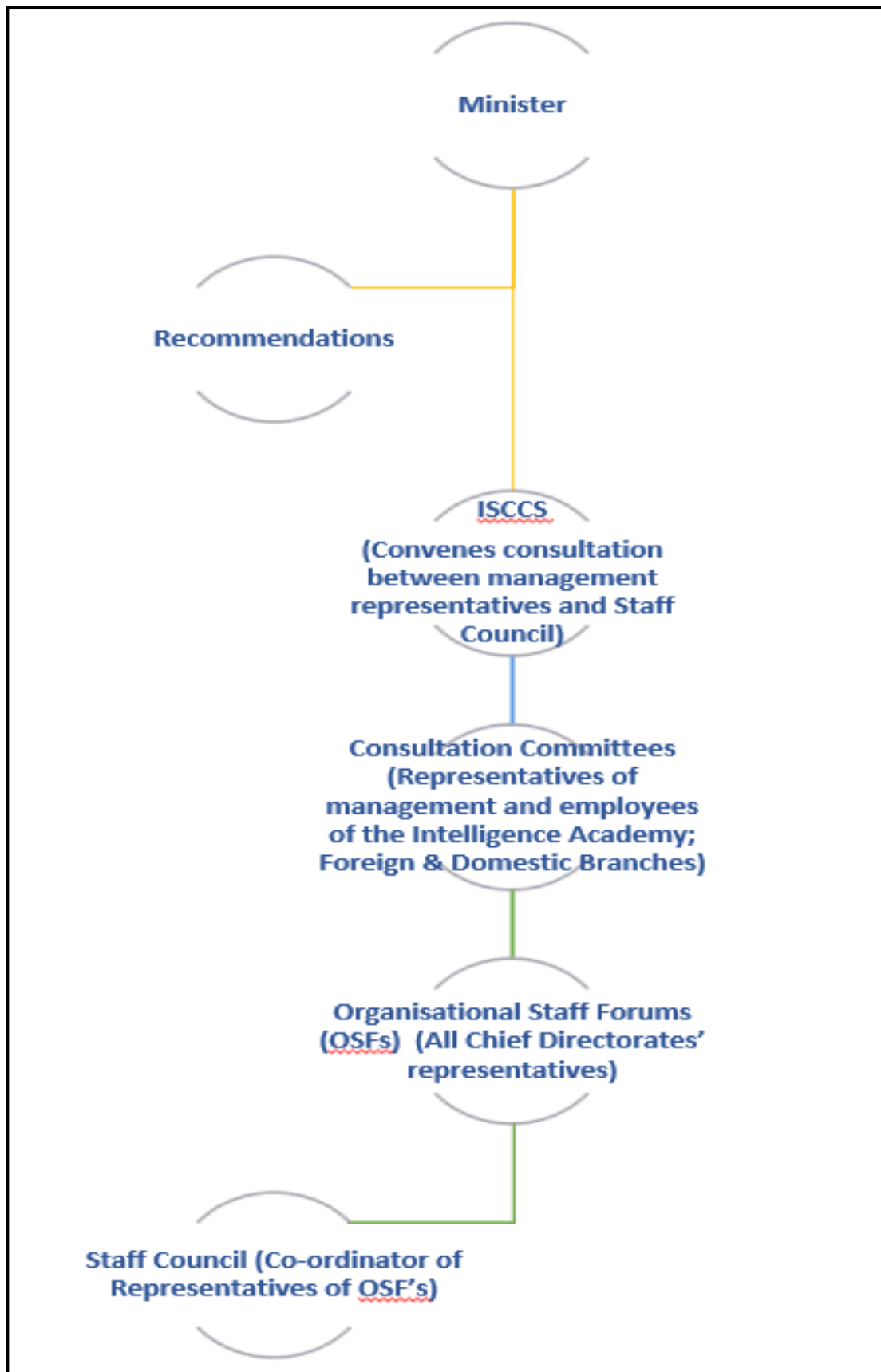
democracy and a champion of fundamental human rights. Equally, this standoff is necessitated by the secret and confidential nature of the intelligence environment.

According to Kearney (1984:80), the above limitation promotes two unsatisfactory outcomes:

- a) management is reluctant to commit to collective bargaining because the legislation is silent on the matter and does not protect their needs; and*
- b) there is no emphasis and role clarification in terms of the essence of engagement within the workplace which creates unfavourable conditions.*

The above-mentioned factors indicate that consultation mechanism within the SA's civilian intelligence services is loosely arranged, lacking proper frameworks and procedures. Therefore, this unfavourable condition advances a lack of accountability and undermines the principles of good governance. However, the situation differs in other state departments in South Africa where collective bargaining is centralised. Furthermore, this is compounded by unclear management responsibilities for labour relations, leading to motivational issues. Consequently, it results in a dereliction of duty, as the employer fails to recognise its mandate to protect management interests, including negotiations with workers' associations (Shaw & Clark, 1972:875; Kearney, 1984:81). Consequently, Kearney (1984:81) argued that this impasse creates a hostile work environment due to the lack of role clarification; management overreach; and conditions that favour employees to undermine legitimate structures when collective bargaining is initiated. As a result, these contradictions are also evident within SA's civilian intelligence services, stemming from legislative gaps and the historical context of these institutions.

The lack of clarity regarding authority during collective bargaining manifests in nearly every sphere of government, including critical organs of the state and departments. Section 195(6) of the Constitution of South Africa (1996) cautions that the nature and functions of various sectors, administrations or institutions of public administration are factors which must be considered in legislation that regulates public administration. Subsequently, this provision lays the groundwork to evaluate the viability of collective bargaining within the SA's civilian intelligence services. Section 196 of the Constitution of South Africa (1996) declares that there is a single Public Service Commission for the Republic. Therefore, there is no contestation that civilian intelligence services are part of the broader public administration and listed as such under Schedule 1 of the Public Service Act 103 of 1994.



Source: Author's own Construction

Figure 4.4: Consultation mechanism within the State Security Agency

The provisions of the Public Service Act 103 of 1994 apply to civilian intelligence services only in the absence of any conflict with the Intelligence Services Act 65 of 2002. Therefore, the exclusion of the collective bargaining mechanism within the civilian intelligence services is examined in Section 4.4 of the chapter. To further complicate this irrationality, it is essential for civilian intelligence services to consider Section 199(5) of the Constitution of South Africa (1996) which specifically instructs security services (including intelligence services) to *“act, teach and require their members to act, in accordance with the Constitution and the law, including customary international law and international agreements binding on the Republic”*. Furthermore, Section 198(c) of the Constitution of South Africa (1996) clearly states that national security must be pursued in accordance with the law. Therefore, the limitation of employee rights in the civilian intelligence services should be in harmony with the provisions of the Constitution of South Africa (1996) and international law. Thus, the exclusion of collective bargaining within these institutions does not imply compliance with legislative requirements and principles of liberal democracy.

4.3.1 Collective bargaining and limitation of rights: Civilian Intelligence Services

Collective bargaining in democracies, is a fundamental human right which is guaranteed by legislative instruments. Consequently, to the extent that the legislation may limit a right in this context, it must comply with Section 36(1) of the Constitution (1996). This section provides guidance on how to approach this limitation by suggesting that *“the rights in the Bill of Rights may be limited in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom considering all relevant factors including:*

- a) the nature of the right;*
- b) the importance of the purpose of the limitation;*
- c) the nature and extent of the limitation;*
- d) the relation between the limitation and its purpose; and*
- e) less restrictive means to achieve the purpose.”*

Contrary to the above factors, SA’s civilian intelligence services relied on Section 2 of the Labour Relations Act 66 of 1995 which excludes the South African civilian intelligence services from this Act. Therefore, it can be inferred that their members (employees) are not permitted to belong to a trade union; may not engage in collective bargaining processes; protests; or strikes. To comply with provisions of Section 23 of the Constitution (1996), which requires the enactment of a national legislation to regulate collective bargaining within the civilian intelligence services, an alternative forum referred to as *“consultation mechanism”* was introduced. However, this mechanism lacks legitimacy as it does not provide management

and the staff council an instrument (which represents the employees) to negotiate and enter into collective agreements. Hence, there are no deadlocks in a consultation process. Nevertheless, there would be no recourse even if such circumstances prevailed because there are no dispute resolution mechanisms. The consulting parties agree to disagree, and recommendations, including areas of disagreement, would be made to the Minister of Intelligence (State Security). Therefore, this situation is antagonistic as it does not protect the interests of both the employer and the employees, and the entire process is de-legitimised. This issue is further complicated because the Minister is not obliged to consider either party's submission on matters of interest (see Section 4.3 and Figure 4.4 of the chapter). As a result, to understand the rationale behind this anomaly, this study considers the political, legal, and security considerations that have historically shaped the regulation of employment in intelligence organisations.

4.3.2 Consultation mechanisms: Civilian Intelligence Services

As alluded earlier, the consultation mechanism within the civilian intelligence services is regulated by the Intelligence Service Act 65 of 2002. Therefore, it is important to outline this process to highlight its unique features and difference with the collective bargaining model. Consultation takes place between management and the employees through the staff fora and the consultation committee on matters of interest. In this context, it was adapted from the workplace forums which are regulated by Section 85 of the Labour Relations Act 66 of 1995 as outlined in Section 4.4 of the chapter. Furthermore, it is complemented by the functions of the Intelligence Services Council on Conditions of Services (ISCCS) as stipulated in Section 22 of the Intelligence Services Act 65 of 2002. According to Section 22(3)(a), the ISCCS is assigned an oversight role to formulate and review human resource policies and conditions of service. However, this oversight role is often confused as facilitation of consultation between the employees and the civilian intelligence services management.

The purpose of consultation in the staff fora and the consultation committee is to advance a mutual understanding between management and members or employees on matters of interest. Therefore, these representative structures are expected to negotiate issues related to the conditions of service; review and formulate policies; and strive for consensus. However, unlike in the broader public service, lawmakers did not envision absolute consensus between management and employees in civilian intelligence services, but rather sufficient consensus. Consequently, the lack of common appreciation of what consensus entails is further compounded by the Intelligence Services Act 65 of 2002 which does not explicitly provide for dispute resolution options arising out of this consultation process. Furthermore, this situation

is exacerbated by the overlap of the ISCCS functions and the consultation committee, where management is expected to consult the employees.

4.3.3 Concomitant role of consultation committee and the ISCCS

Section 4.3 of the chapter highlighted that Section 22 of the Intelligence Services Act 65 of 2002 introduced the consultation committee as a structure for consultations between the employer and the employees within respective departments, *e.g.*, Foreign Branch; Domestic Branch; Intelligence Academy; National Intelligence Co-ordinating Committee (NICOC); and the Ministry of Intelligence (State Security), on matters with reference to, *inter alia*;

- a) *“restructuring;*
- b) *workplace organisation;*
- c) *all regulations issued by the Minister;*
- d) *all directives issued by the Director-General on conditions of service; and*
- e) *any changes in conditions of service, salaries and fringe benefits”.*

Contextually, the above consultation committee provisions were designed to deal with sectoral issues in line with the provisions of Sections 21 and 22 of the Intelligence Services Act 65 of 2002. As such, these sections deal specifically with labour relations and the establishment and mandate of the ISCCS. However, the absence of authoritative employer representation and lack of accountability limits its efficiency. Consequently, this challenge by default conflates the jurisdiction of the ISCCS with the expectation that it should act as the secretariat, facilitator or mediator in consultations between management and the staff council. Therefore, this platform reviewed the conditions of service including related pieces of legislation which fall within the *“staff fora and the consultation committee”* mandate. Accordingly, the ISCCS is expected to play a similar role as the PSCBC within the public service. However, it has taken on a dual role of judge and complainant as it represents the employer and engages as such in the consultation committee.

Section 22 of the Intelligence Services Act 65 of 2002 further stipulated that the ISCCS performs functions related to matters of interest and to provide recommendations to the Minister on:

- a) *“Policy development on human resources and conditions of service; and*
- b) *review of salaries and fringe benefits on an annual basis”.*

To make the above recommendations to the Minister, the ISCCS, according to Section 22 of the Intelligence Services Act 65 of 2002 must:

- *“conduct research;*
- *review the policies;*

- *evaluate and monitor the implementation of policies;*
- *invite the Director-General, the chairpersons of the staff fora, employees, and any interested party to give representations on the matter falling within its purview of its functions;*
- *evaluate the representation of the parties; and*
- *confer with the Public Service Commission.”*

The scope of the consultation mechanism is largely based on Section 22 (g) (f) and (h) of the Intelligence Services Act 65 of 2002 which enables employees to occupy strategic space by formulating policy-related contributions. Ideally, for the purposes of evaluating written representations, the ISCCS is expected to invite, within a reasonable time, *“the Director-General, chairperson of the staff council, staff of the ISCCS, a representative of the Minister and any member or interested party who submitted the written representation for oral hearing”*. After assessing the representations and supporting information, the ISCCS must prepare a report with a motivation and where applicable recommend options to support its recommendations. Ordinarily, reasons must be provided if the recommendations of the ISCCS differ from representatives of the consulting parties. However, this process does not unfold as expected and further is complicated by Section 22(a) of the Intelligence Services Act 65 of 2002 which gives the Minister the power to make final and binding decision in this regard. Furthermore, this dilemma undermines the principle of negotiating in good faith since the process is biased toward management.

The functions of the ISCCS are expected to be conducted impartially, without fear, favour or prejudice. However, the overlapping role between the consultation committee functions and the ISCCS reflects no clear boundary between the functions of the two structures (see Figure 4.4 of the chapter). Equally, attempts to address these blatant deficits through administrative measures should not replace the statutory mandates of each role player and the forums established under these laws, in line with Sections 21 and 22 of the Intelligence Services Act 65 of 2002. Hence, this overlapping role is characterised by the deliberate and dysfunctional nature of the staff fora and the consultation committee. It is deliberate because the inefficiency of the consultation structures benefits the SSA executive.

All the arguments confirmed that SA’s civilian intelligence services does not have a collective bargaining mechanism to enhance employees’ indirect participation in decision-making and governance processes. However, the Constitution of South Africa (1996) is supreme and any law inconsistent therewith is invalid. Therefore, it is important that the interpretation and application of national laws and supporting legislation must be aligned with the Constitution of South Africa (1996). It can be inferred that Intelligence Services Act 65 of 2002 may be inconsistent with Section 23 of the Constitution of South Africa (1996). As such, it does not

pass the limitation test articulated in Sections 23(4) and (5) read with Section 36. Therefore, the limitation is unjustifiable and unreasonable in an open and democratic society. However, Sections 21 and 22 of the Intelligence Services Act 65 of 2002 have never been subjected to judicial scrutiny. Moreover, this limitation is further complicated by the civilian intelligence services which is not classified as essential services. This gives rise to the possibility of the employees embarking on the establishment of or join a trade union. Despite these challenges, the study does not advocate for such an outcome, considering the nature of intelligence work.

4.3.4 South African Civilian Intelligence Services: ‘Not essential services’

There is no common understanding of the term “essential services” due to stakeholder’s competing interests. However, to interpret this correctly, the study relied on Section 123 of the Labour Relations Act 66 of 1995. In this context, the term is aligned with those “*services whose interruption would endanger the personal safety or health of the whole or part of the population, the parliamentary service and the South African Police Service*”. There is no mention of SA’s civilian intelligence services in this definition. According to the Labour Relations Act, “*maintenance services are those services whose interruption would cause physical destruction to a working area, plant or machinery*”. Again, it is difficult to locate SA’s civilian intelligence services within this broader context. There is a distinct feature, according to Leroux and Cohen (2016:4-8), which focuses on the right to strike because certain departments are categorised as essential services. In their view, collective bargaining is instrumental to reach an agreement to avert strikes even in departments classified as essential services. Similarly, it is asserted that the Labour Court can also be approached to halt strike action in essential services, and non-compliance resulting into contempt of court. Considering this argument, the designation of departments as essential services largely depends on the type of work and the roles employees play within the workplace. Similarly, an employer in South Africa’s civilian intelligence services has never attempted to apply for such designated status. Therefore, if they qualify as essential services according to Section 213 of the LRA and by virtue of the secret and confidential nature of information which they manage, there has never been legal or constitutional recourse to validate such an argument.

Based on the above submission, the Public Service Act 103 of 1994 provides departments with guidelines to be designated as essential services:

- a) *“The decision to approach the Essential Services Committee to designate a service of a department as an essential service lies with the relevant department.*
- b) *Before a decision is taken, the relevant department should consult with the Department of Public Service and Administration (DPSA) to determine what the impact of the designation of the service could be on the public service as a whole.*

- c) *Before approaching the Essential Services Committee, a department must ensure (through legal opinion if necessary) that the service that it wishes to have designated an essential service complies with paragraph (a) of the definition of an essential services in section 213 of the LRA.*
- d) *Departments individually, or the employer in sectors, in which services have been designated essential services, may consider entering into collective agreements with the relevant trade unions on the maintenance of minimum services within such essential services.*
- e) *Where a trade union approaches the Essential Services Committee for the designation of a service of a department as an essential service, the department should approach the Department of Public Service and Administration (DPSA) to determine the position to be taken by the department in this regard”.*

Therefore, the process outlined above suggests that there is no uniform approach to grant departments or functions the designation of essential services. Hence, SA's civilian intelligence services must subscribe to the conditions as prescribed by the Public Service Act 103 of 1994 if they intend to be classified as essential services. Importantly, being designated as essential services does not automatically exclude collective bargaining within the requesting department. Therefore, even if the civilian intelligence services was designated as an essential services department, it would not have granted the SSA permission to exclude a collective agreement within its labour relations dispensation.

The argument suggests that, aside from the armed forces and the police, limitations are acceptable only in the case of public servants exercising authority on behalf of the state. Alternatively, they should perform essential services unless an immediate remedy is provided. However, strike action does occur in essential services within liberal democratic South Africa despite its controversy. The basic premise of the LRA is that strikes in essential services are prohibited and subject to compulsory arbitration. Consequently, employees who go on strike may be dismissed for misconduct, while hold both unions and employees liable for damages.

It is evident that workers' power is derived from collective bargaining and contribute towards institutional governance. Therefore, SA's civilian intelligence services are not immune to factors that may lead to the establishment of trade unions. According to Davey (1982:41), this development is driven by legislative acceptance that employees need to belong to a trade union to protect their fundamental human rights within the workplace. Consequently, this philosophical approach became more pronounced in mid-twentieth-century United States labour legislation, which entrenched the principles of freedom of association and collective bargaining as mechanisms to limit industrial conflict and promote workplace stability. Similarly, these developments later influenced international labour standards. By extension, this has

shaped South Africa's post-apartheid labour framework, which emphasises the promotion of orderly collective bargaining and the protection of workers' rights. Accordingly, employers would benefit because business processes would not be affected by unnecessary employee action (Davey, 1982:42). Therefore, trade unions are formed to protect certain categories of employees against discriminatory policies. However, the primary challenge for the SA's civilian intelligence services is the confusion of whether their employees are part of the broader public service. If the civilian intelligence services are part of broader public service departments and not designated as essential services, then why is collective bargaining not applicable to them? The following section attempts to clarify this controversy.

4.4 Difference between collective bargaining: Public Service and Civilian Intelligence

The exclusion of collective bargaining within SA's civilian intelligence services is a deliberate legislative choice that entrenches the imbalance of power within this critical state department. However, civilian intelligence services are listed as national departments in Schedule 1 of Section 7(2) of the Public Service Act 103 of 1994 (see **Table 4.1 below**). Furthermore, the Public Service Co-ordinating Bargaining Council (PSCBC) excludes the South African National Defence Force (SANDF), former National Intelligence Agency (NIA), and South African Secret Service (SASS) (Clarke, 2007:20). Therefore, this exclusion removes civilian intelligence from the legislative mechanisms designed to protect the rights and advance the needs of the employees within the public service. Furthermore, the SA's civilian intelligence services employees are denied a right to associate freely as articulated in Section 23(2) of the Constitution of South Africa (1996).

Table 4.1: National Departments

NATIONAL DEPARTMENTS	
1.	Department of Agriculture
2.	Department of Public Service and Administration
3.	Department of Arts and Culture
4.	Department of Communications
5.	Department of Correctional Services
6.	Department of Defence
7.	Department of Education
8.	Department of Environmental Affairs and Tourism
9.	Department of Foreign Affairs
10.	Department of Government Communications and Information System
11.	Department of Health
12.	Department of Home Affairs
13.	Department of Housing
14.	Department of Justice

NATIONAL DEPARTMENTS

15. Department of Labour
16. Department of Public Works
17. Department of Safety and Security
18. Department of Science and Technology
19. Department of Social Development
20. Department of Trade and Industry
21. Department Transport
22. Department of Water Affairs and Forestry
23. National Intelligence Agency
24. National Treasury
25. Office of the Public Service Commission
26. South African Management and Development Institute
27. South African Secret Services
28. Sport and Recreation South Africa
29. Statistics South Africa
30. The Presidency
31. Department and Minerals and Energy
32. Department of Land Affairs
33. Department of Provincial and Local Government
34. Department of Public Enterprises

Source: Public Service Act 103 of 1994, Schedule 1 Section 7(2)

Budeli (2003:49) observed that relying on consultation mechanism than collective bargaining, along with exclusion from participating in PSCBC, weakens employee representative and the consultation structures. Therefore, this arrangement has presented a legislative paradox: employees are granted limited rights to associate but are denied the ability to participate in collective bargaining; strike, or legal recourse to resolve disputes. In this regard, Kearney's (1984:81) definition of collective bargaining as an ongoing and dynamic negotiation tool highlighted the critical strategic depth which is neglected in SA's civilian intelligence services.

The above inconsistency is created by imposed limitations, *i.e.*, engagement is restricted to consultation through the controversial ISCCS. This structure does not have a legislative directive, binding authority, or autonomous dispute resolution mechanism. Furthermore, the role of the ISCCS as spending centre of the State Security Agency (SSA) undermines its independence. Essentially, the Director-General serves simultaneously as the employer's representative and the accounting officer. This conflicting role creates conflict of interest that undermines its legitimacy as a forum for consultation.

This section reflected on challenges which faces the South African civilian intelligence services which is supposed to be a public service department. However, the employees in this department do not have recourse if the employer does not implement recommendations

provided by the employee representatives. This situation is inadequate, and the narrative could be summarised as follows:

- The South African civilian intelligence services are excluded from the application of the LRA.
- The civilian intelligence services employees and employer representatives do not belong to a trade union; cannot engage in collective bargaining; protests; strikes or lockout.
- The alternative collective bargaining model within the civilian intelligence services is the consultation mechanism. Negotiations are not aimed to achieve collective agreements but are based on consensus. Equally, there are no dispute resolution mechanisms because consulting parties agree to disagree, while the Minister provides the recommendations. The final decision of whether to consider or implement such recommendations lies with the Minister.
- Collective bargaining and negotiations in the public service are key pillars of engagement between employees and employers' representatives under the auspices of the PSCBC.
- The PSCBC in the public service is expected to strive for absolute consensus whereas civilian intelligence services have adopted adequate consensus through consultation process that occur at the consultation committee and the ISCCS.
- The ISCCS in the civilian intelligence services is expected to be the facilitator, secretary or mediator between the employees and the employer representatives. This is similar to the role played by the PSCBC in the public service. More importantly, the ISCCS is classified as a SSA spending centre and accounts to the same Director General as the employees' representative in staff fora and staff council. By default, the ISCCS is the extension of the accounting officer of the SSA.
- The civilian intelligence services are not designated as essential services whereas certain sectors within the public service are classified as such.
- The ISCCS's processes of oversight - receive, deliberate and evaluate representations from management and employees - are confused with the consultation process that should occur at the staff forum and consultation committee levels (see Figure 4.4 of the chapter).

These above differences provide a framework to comprehend the reasons for inconsistencies in the application of laws within the public service and the civilian intelligence services. The reasons for these eight discrepancies are discussed in the following section.

4.5 Reasons for discrepancies in collective bargaining: Public service and SA Civilian Intelligence Services

The disparity in collective bargaining within the broader government departments and SA's civilian intelligence services is due to the gap in legislation and historical experiences. The

classification of public service is derived from Chapter 10 of the Constitution of South Africa (1996), while civilian intelligence services, as part of public administration, are established under Chapter 11 (security services) of the same Constitution. Although these two institutions are distinct, they are governed by different sets of rules and principles. Furthermore, the public service is also regulated by the Public Service Act 103 of 1994, which also prescribes certain employment legislation. Conversely, SA's civilian intelligence services are regulated by the Intelligence Services Act 65 of 2002. However, despite these distinctions, the Constitution of South Africa (1996) always supersedes any other law.

4.5.1 Lack of appreciation of constitutional provisions: Civilian Intelligence Services

There is conflict in application and adherence to the constitutional provisions within SA's civilian intelligence services compared to the public service. In this regard, collective bargaining within the public service bargaining excludes municipal employees (whose labour relations dispensation is regulated by the South African Local Government Association (SALGA)); SANDF, SAPS; and the civilian intelligence services (former NIA and SASS respectively). Hence, the public sector is unionised, while the civilian intelligence services does not permit an employee to affiliate to a trade union.

The exclusion above reflects historical perceptions and lack of appreciation for the constitutional requirements regarding the conditions of employment within these departments. Furthermore, it highlights the weakness of the provisions of Section 21(2) of the Intelligence Services Act 65 of 2002 which limit employees' rights in attempt to protect these departments. The intention of the Act was to adapt the consultation framework in conformance with workplace forums as guided by Section 85 of the Labour Relations Act 66 of 1995 and further supported in Section 4.3 of the chapter. As alluded to previously, this initiative is inconsistent with Section 23 of the Constitution of South Africa (1996), because it does not pass the limitation test enshrined in Section 23(4) and (5) read with Section 36. Furthermore, this situation is compounded by the consultation mechanism which does not provide for effective dispute resolutions. Meanwhile, the exclusion of collective bargaining mechanisms within civilian intelligence services in South Africa is not a unique phenomenon. Globally, there are few civilian intelligence services which ratified the ILO conventions and permitted union activity, collective bargaining, and the right to strike. Hence, this limitation is also rooted in the historical emphasis to protect the secrecy of civilian intelligence services.

4.5.2 Confidential nature of intelligence services versus national laws and ILO conventions

The LRA, Intelligence Services Act 65 of 2002, and the Public Service Act 103 of 1994 does not make provision for collective bargaining within the civilian intelligence services although the Constitution of South Africa (1996) and the ILO conventions make provision. Therefore, the International Labour Organisation Convention No. 98 of 1949 provides for the right to organise and for collective bargaining. Furthermore, the convention guarantees the workers adequate protection against acts of anti-union discrimination in respect of their employ. In summary, it ensures the protection of broad range of the employee's fundamental human rights.

Article 1 of ILO Convention No. 151 of 1978 prescribes that *“the extent to which the guarantees provided for in this Convention shall apply to high-level employees whose functions are normally considered as policy-making or managerial, or to employees whose duties are of a highly confidential nature, shall be determined by national laws or regulations. The extent to which the guarantees provided in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations”*. In this instance, the South African civilian intelligence services had an opportune moment to assert that their employees' duties are highly confidential in nature, and therefore, their labour relations network should be determined by national laws or regulations. As such, this would justify why the collective bargaining mechanism within the public service differs from that in the civilian intelligence services. However, despite the limitations, these domestic laws were enacted to create such a unique consultation environment without exhausting the provisions of the Convention.

Based on the above, the national laws failed to provide the civilian intelligence services with alternative and effective collective bargaining mechanisms. Furthermore, this contradiction is advanced by South Africa's failure to ratify ILO Convention No. 151 of 1978 which could have provided the employees protection against acts of anti-union discrimination. Importantly, it applies to all individuals employed in public institutions and protects the right their right to associate, especially in cases where the employer prohibits trade union membership or dismisses employees based on membership of representative structures. Nonetheless, the ILO still monitors the application of Convention 151 regardless of whether states have ratified it or not.

4.5.3 Absence of dispute resolution mechanisms in Civilian Intelligence Services

There are no dispute resolution mechanisms within the civilian intelligence services, whereas the broader public service is supported through conciliation, mediation and arbitration at the PSCBC level. This is despite Article 8 of the ILO Convention No. 151 of 1978 which prescribes

the settlement of disputes through independent and impartial instruments such as mediation, conciliation, and arbitration. Importantly, these mechanisms were established to ensure the confidence of the parties involved. To strengthen this strategic objective, Article 5 rejects any suppression or manipulation of the employee representative structures by management, particularly through bribery aimed to micro-manage these elected structures.

The provisions of ILO Convention No.151 of 1978 explicitly differentiate between “*armed forces and the police from the general public servants*” as well as those in the civilian intelligence services, who presumably manage secret information with national security implications. However, ILO Conventions No. 87 of 1948 and 98 of 1949 respectively are generic since these do not refer to high level employees in the public service as well as those who manage confidential information. Instead, the focus is on global freedom of association and the right to organise and collectively bargain without exception. Therefore, this distinction may provide a platform for the intelligence services to establish a labour relations framework that differs from that of the military and the police services. However, it will also allow the employer to justifiably limit certain employee rights, particularly their right to affiliate with employee representative structures and participate in strikes and protests. This argument will be explored further in Chapter 5 where the benefits of collective bargaining in the civilian intelligence services will be considered.

4.6 Conclusion

Considering the international regulatory framework and supporting domestic laws, collective bargaining in the South African public service and civilian intelligence services should be regarded as a minimum employment standard. Therefore, it requires an employee representative structure to restore the confidence of the most vulnerable workers in pursuit of this objective. In this instance, it is expected that government, as a key role-player should monitor compliance regularly with all labour relations requirements to protect these sectors. Hence, the chapter advocated for inclusive participation in decision-making and governance within SA's civilian intelligence services to advance the principles of liberal democracy.

The chapter further argued that an effective collective bargaining mechanism in the South African public service minimises strikes and restores peace within the workplace by enhancing the lives of the working class. More importantly, in the civilian intelligence services, it ensures the integrity of the employees. Moreover, the confidentiality of information is not compromised. By doing so, the threat of formation of trade union and strikes would be minimised. However, it will require decisive leadership as well as enhanced employee and management relations and investment in negotiation skills. Importantly, the designation of selected services does not imply that workers in those areas should be vulnerable and exploited because they cannot

strike. Hence, consultation structures should be strengthened through autonomous dispute resolution mechanisms. Chapter 5 highlights the role of this type of intervention. Therefore, collective bargaining model should propose a peaceful work environment with minimal disruptions and employee despondency. Hence, the following chapter investigates the SANDF and the SAPS labour relations framework (Defence Intelligence and Crime Intelligence respectively).

The consultation mechanism is criticised because it does authorise a compelling authority for the employer which could not result in collective agreements. Thus, consultation in good faith is inadequate to create a peaceful work environment. Equally, this perceived dysfunctional mechanism favours management over employees during consultation process. Therefore, there may be a need to review the effectiveness of this mechanism within the civilian intelligence services.

Based on the above, the often-secret nature of civilian intelligence services may not provide sufficient grounds to limit the constitutional rights of employees to engage in collective bargaining. Therefore, appreciating the spirit of national and international laws paves the way for the establishment of functional and effective mechanisms to advance the interests of both the employer and employees within the civilian intelligence services. The following chapter will enhance an understanding the role of an autonomous collective bargaining structure within the South African civilian intelligence services.

CHAPTER 5: THE ROLE OF AN AUTONOMOUS COLLECTIVE BARGAINING STRUCTURE WITHIN THE SA CIVILIAN INTELLIGENCE SERVICES

5.1 Introduction

An autonomous collective bargaining structure within the SA civilian intelligence services would strengthen the consultation mechanism. This chapter explores the reasons. The previous chapter demonstrated that the exclusion of collective bargaining and denial of employees' rights to form and join the trade union within the South African civilian intelligence services are inconsistent with the provisions of the Constitution of South Africa (1996). Furthermore, the chapter revealed that collective bargaining; collective agreement; and dispute resolution mechanisms, which are currently absent in the civilian intelligence services, facilitates better coordination and help maintain stability within the workplace. Importantly, international law allows countries to institutionalise more suitable and effective ways of protecting the rights of the employees and employers. Thus, contextualising centralised collective bargaining within the broader South African public service, the anomaly created by its exclusion within civilian intelligence services, helps debunk the myths surrounding the conflicting needs of the employer and employees within these services.

It remains uncontested that unions facilitate worker participation in decision-making and governance within institutions encouraging co-existence and working towards achieving common goals. However, the chapter does not advocate for the formation of trade unions or strikes as means to force management towards collective agreements. Instead, it will illustrate a deviation from the generalised support for collective bargaining based on constitutional requirements. This will be achieved by pursuing a transformation approach towards a more practical structural adjustment grounded on democratic principles. Therefore, this approach necessitates engagement with a novel understanding of civilian intelligence as a highly confidential environment, which requires a reformulation of the objectives of trade unionism.

The uniqueness of the civilian intelligence services environment does not diminish the significance of collective bargaining. Instead, it should strive to find a new approach to maintain basic constitutional rights and fairness in the workplace while protecting the integrity of the organisation. Hence, the assertion that prohibiting collective bargaining within the civilian intelligence services is justified will be invalidated by reflecting on experiences of the South African Police Services (SAPS) and the South African National Defence Force (SANDF). Both these departments have crime and defence intelligence units, yet their employees continue to enjoy the rights to collective bargaining, and to form and join trade

unions. Therefore, the chapter will address the fourth research objective: *to explore and appraise the role of an autonomous collective bargaining structure within the South African civilian intelligence services.*

5.2 Role of an autonomous collective bargaining structure in Civilian Intelligence Services

Sections 4.3, 4.4, and 4.5.2 of the previous chapters highlighted that the South African civilian intelligence services employees do not enjoy the same civil rights as other government department employees. The Constitution of South Africa (1996) protects rights of all workers as a liberal democracy (see Sections 2.2 and 2.3, Chapter 2). Gamble (1981:67) asserted that global transformations necessitated responsive constitutions aimed at protecting fundamental rights. This reflects a universal shift towards codifying principles of liberty and equality. Therefore, these historical developments became exemplary for countries and global institutions such as the United Nations which were founded on these principles. However, these changes are not the first of their kind; the English Revolution of 1640 and 1668 intensified adoption of liberalism in 1668. Hence, SA's civilian intelligence services collective bargaining model should be able to benefit from the appreciation of these historical liberal practices which were aimed at protecting civil rights.

5.2.1 Role of government in protection of civil liberties

Any government is expected to safeguard the civil liberties of its citizenry, especially under a liberal democracy. South Africa is not an exception in this case (see Section 2.3.2, Chapter 2). Brown et al. (2018:83) defined these as inherent rights, which are embraced to protect the citizens against unwarranted encroachment by those in government and wield significant power. Therefore, civil liberties aim to prioritise and restrain those who are tempted to utilise force in their official capacity to oppress the citizens. Jäger (2023:1-3) critiqued that these liberties must be limited, particularly when there is turmoil and, in the interest, to advance the shared goal. Nevertheless, this argument presents a challenge, as states may find it difficult to curtail these rights due to possible resistance and the historical significance attached to these freedoms. Essentially, these fundamental freedoms should be considered within a set of frameworks as well as establish a balance between “*security and civil liberties*”. In this context, to limit these rights, which are occasionally beyond the control of government including natural disasters and threats to national security should be considered. Therefore, uncontrollable incidents require governments to adopt legislative measures to safeguard the citizens. Inadvertently, tension between fundamental freedoms and security may be unavoidable as governments rely on buy-in from the people, which is often difficult to obtain. Moreover, this intervention may be restricted by opposition groups competing needs and

hostilities among communities (Jäger, 2023:1-3). The previous chapter discussed security considerations as a basis to limit the rights of SA's civilian intelligence services employees (see Section 4.3.1, Chapter 4) which also informed policy decisions which were made during the amalgamation in 1994.

The above argument suggests that limiting fundamental freedoms may be viewed as the beginning of erosion of democratic institutions. Therefore, it is reiterated that collective bargaining is a voluntary process between independent and autonomous parties in terms of the ILO (see Section 2.3.5, Chapter 2). Furthermore, governments are duty-bound to take appropriate measures to encourage and promote the full institutionalisation of this mechanism. Similarly, it requires that the South African civilian intelligence services re-evaluate the labour relations configuration within the prescript of the Constitution of South Africa (1996) and its liberal democracy (see Section 2.3.2, Chapter 2). Moreover, this should be undertaken to advance legitimacy and credibility of the consultation processes.

5.2.2 Legitimacy, credibility, power and influence of unions

The legitimacy of labour relations policies within the South African civilian intelligence services was scrutinised in the previous chapter (see Section 4.3.1, Chapter 4). It was concluded that these were neither popular nor accepted. However, when consultation structures were introduced, there was a probable expectation that these would advance equality within the workplace. This assertion was supported by Serrano et al. (2011:59) who posited that employee representative structures were implemented to advance the needs of their constituencies by relying on the collective effort to demand a strategic role in governance. However, this objective is not attainable with the current *status quo* within the civilian intelligence services which limits employee participation (see Section 3.2.2, Chapter 3).

The exclusion reduced negotiations to employment contract issues concerning salaries rather than addressing matters of interest and shifting the organisational directions towards achieving shared goals. On the contrary, formalised representative structures enable employees to engage indirectly with the employer to avoid unilateral decision-making in formulating policies that may have an adverse effect on the employees. Therefore, collective bargaining enables a seamless process without necessarily disrupting power relations (see Sections 4.2 and 4.3, Chapter 4). Essentially, this process should be clearly outlined when the two parties enter an employment contract. However, this does not imply that the employment contract would replace collective bargaining and collective agreements since these are two unrelated processes. Rather, this engagement enables transparency and promotes legitimate negotiation structures. Hence, the absence of trade unionism resulted in the unintended

consequence of the lack of collective agreements which subsequently led to the consulting parties relying on “good faith” to pursue their respective interests.

From the above, it can be inferred that legitimacy defines how power is exercised so that it can translate into an acceptable outcome for all parties. Therefore, the idea that employee representatives are bound to encourage their constituencies to obey legal orders cannot be contested. However, the legality is only ascribed to the authority of the office and cannot be utilised to advance selfish interests (Brown et al., 2018:321; Serrano et al., 2011:59-60). In this regard, it does not imply that the employer can act unilaterally or implement draconian rules to seek obedience. Therefore, these matters need to be addressed in formal structures without necessarily advancing a culture of micro-management. Consequently, this approach will promote peace and stability at work as both parties will be able to submit their representations in a respectful and constructive manner. Thus, the outcome being a transparent process promotes democratic practices and efficient and urgent way to manage disputes. As such, the SA’s civilian intelligence services could greatly benefit from this approach which presents an opportunity to strengthen consultation mechanisms and encourage worker participation. Essentially, it will help to overcome the challenges posed by the rigid Intelligence Services Act 65 of 2002 as outlined in Sections 4.2, 4.3, 4.3.1 and 4.3.2, of Chapter 4.

5.2.3 Intelligence Services Act 65 of 2002

The legitimacy and credibility issues highlighted in the previous section stem from the Intelligence Services Act 65 of 2002 (see Sections 2.3.1, Chapter 2 and 4.3, Chapter 4) which denies employees the right to engage in collective bargaining. Therefore, these restrictions have led to the inefficiency of the staff fora and consultation committee as highlighted in Sections 4.3 and 4.5 of Chapter 4. Furthermore, the previous chapter reflected on the limitations of Section 21(2) of the Act which established the consultation mechanism. The issue is compounded by Section 21(1) of the same Act which prohibits the right to strike. Consequently, the principles governing the consultation mechanisms and internal processes are characterised by resistance and lack of legitimacy.

5.2.3.1 Principles of consultation mechanism

The consultation mechanism within the civilian intelligence services may be marked by a legitimacy crisis due to careful selection of concepts intended to circumvent collective bargaining namely: “consultation; good faith; and consensus” (see 4.3.2, Chapter 4). These concepts also find their expression in key values which are protected by the Intelligence Services Act 65 of 2002 which are intended to:

- a) *“To promote sound employee and employer relations in the Intelligence Services and the Academy;*
- b) *To provide for effective consultation, in good faith, on matters of interest; and*
- c) *To strive to reach consensus with the participants”.*

Based on these principles, it is crucial to explain the key concepts of *“consultation, good faith and consensus”* to appreciate the intricate nature of labour relations dispensation within the civilian intelligence services.

i. *Consultation*

Consultation impacts on how individuals engage with one another and determines the quality of leadership as well as how community challenges can be addressed effectively and acceptably. Hence, there is uncertainty of what stakeholder consultation entails in practice. Keast et al. (2007:12-19) defined the term as a *“top-down approach”* of political engagement which is prescribed by either the state or business. In this regard, non-state actors - whether at personal or collective level - also provide inputs on legislation or any other related matter for government or management to consider. However, it differs from *“collaboration”* which requires vigorous stakeholder participation which is aimed at creating a shared value. Therefore, this top-down approach is like SA’s civilian intelligence services consultation process which requires employees to accept management or the executive’s independent decisions without reasonable recourse (see Figure 4.4, Chapter 4). Hence, the difficulty to embrace this *“closed participation”* undermines the democratic values intended to promote fair labour practices. Instead, it advances a hostile work environment which lacks trust, respect and transparency.

The above argument aligns with Fraussen et al. (2020:473-477) who shared certain perspectives of consultation, which were categorised into three approaches: open, closed and hybrid. An *“open approach”* provides an unrestricted platform - which may include web-based consultation questionnaire for voluntary participation in the process. Therefore, this process may be regarded as an *“open consultation approach”* which intends to solicit opinions from a wide spectrum of audience on a variety of issues which will be affected by the intended legislative interventions. However, a *“closed consultation approach”* is aimed at a specific category of individuals who have an interest in policy matters at hand and can utilise various channels to invite opinions, such as SA’s civilian intelligence services. Lastly, the *“hybrid consultation approaches”* adopts both methods of engagement.

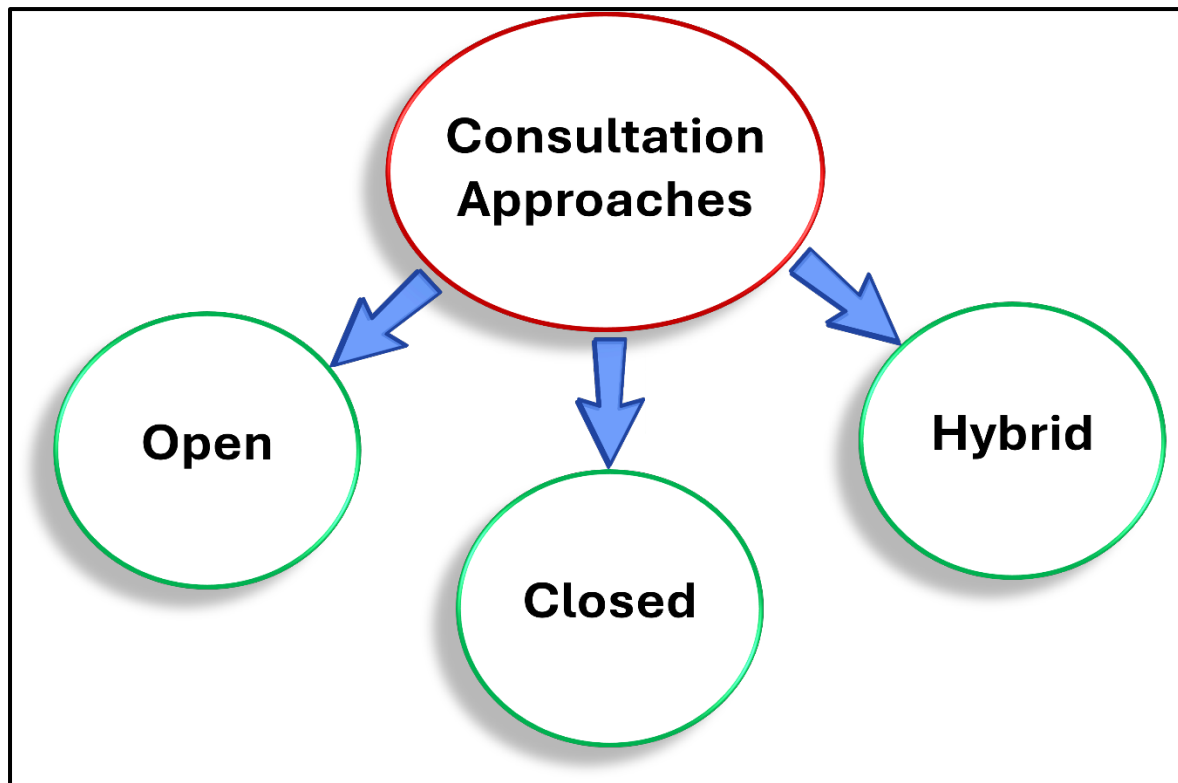


Figure 5.1: Consultation approaches (Adapted from Fraussen et al., 2020)

The dilemma confronting SA's civilian intelligence services with its '*closed consultation approach*' is that by participating, employees' representatives inadvertently legitimise the entire process. This implies that, employees participate as an organised group which represents the interests of the employees. Hence, the primary disadvantage of this process is the continued imbalance of power in terms of decision-making. Despite its limitation, Johnson and Howsam (2018:253-268) held that consultation may be a successful "*collaborative governance*" instrument if it is accompanied by authority, legitimacy and strategic value. However, it is doubtful that the legislation would allow such delegation of authority for as long as it serves the interests of those in power. Therefore, it functions as a "*political-bargaining process*" alluded to in Section 4.3.2 of Chapter 4 aimed to assert management control and enforce integrity at the expense of the workers interests.

The reluctance to adopt collaborative approaches focused on introducing autonomous collective bargaining and formal dispute resolution mechanisms within SA's civilian intelligence services can largely be attributed to the desire to preserve the *status quo*. To address concerns about potential challenges to authority, Sections 21 and 22 of the Intelligence Services Act 65 of 2002 selectively reference Section 85 of the Labour Relations Act 66 of 1995 to establish consultation processes. However, the

effectiveness of these mechanisms is limited by the absence of key provisions that govern genuine collective bargaining.

Firstly, Sections 84(1) and 85 of the Labour Relations Act 66 of 1995 requires that, *“before implementing proposals on matters such as restructuring, organisational changes, mergers, or operational dismissals, an employer must consult the workplace forum and attempt to reach consensus”*. On the contrary, Section 21 of the Intelligence Services Act 65 of 2002 does not include provisions for collective agreements. Therefore, the LRA framework presupposes a collective agreement which provides the formal basis for consultation and enables meaningful negotiations. On the other hand, the Intelligence Services Act 65 of 2002 renders consultation within the intelligence services largely consultation than deliberative and limits the potential for substantive negotiation.

Secondly, Section 85(1)(c) of Labour Relations Act 66 of 1995 obliges employers to consider and respond to workplace forums representations and if disagreement persists, provide reasons for rejecting the proposals. Within the intelligence service, this principle is undermined by Section 22 of the Intelligence Services Act 65 of 2002 which provides the Minister the ultimate decision-making power which effectively centralises authority and minimises the influence of staff forums.

Thirdly, Section 85(1)(d) of the LRA prescribes that parties must follow agreed procedures to resolve disputes before implementation if consensus cannot be reached. By contrast, civilian intelligence legislation lacks a specific mechanism to resolve differences. By doing so, it further limits the employees to influence outcomes and institutionalise unilateral decision-making.

Considering the above contradictions, the absence of enforceable collective agreements and dispute resolution mechanisms renders consultation within the intelligence services procedural rather than substantive. Furthermore, this demonstrates that the Intelligence Services Act 65 of 2002 ultimately maintains hierarchical control and restricts the development of autonomous collective bargaining mechanisms within the civilian intelligence services. The illustration confirms that the challenge of a consultation mechanism within the civilian intelligence services is that it is designed to suffocate the process and create despondency. By doing so, it allows the executive to make important and controversial decisions frequently, which further undermines the legitimacy of the decision-making process. Hence, intelligence regulations do not make provision for a joint decision-making process in cases where consultation fails due to the absence of collective agreements (see Section 4.3.1 and

4.32, Chapter 4). Furthermore, the limitation of active indirect participation is compounded because the participants are expected to engage in good faith without recourse.

ii. *Good faith*

The meaning of good faith in the consultation process within the SA civilian intelligence services appears to have lost value. Shafer and Aksoy (2015:1) confirm that it is vague and difficult to enforce through the courts of law because of its emotive nature and dependence on individual behaviour. Furthermore, the failure to execute it may only result in breach of promise and compromise integrity. Therefore, *“the good faith principle entitles a court to narrow down the interpretation of statutes or contracts and even to deviate from codified rules, from the wording in the law or the contract or to fill gaps. As a result, the courts use it as a last resort, if and only if the contract itself or the rules of contract law led to grossly unfair results”* (Shafer & Aksoy, 2015:1). However, Siliquini-Cineli and Hutchison (2016:73) hold that fairness or good faith has a role to play at the remedial stage of contracting. Although the definition treats this concept as a last resort, the civilian intelligence services could have adopted it as a decisive factor before exploring other means to engage. Therefore, the phrase may be utilised to advance management opportunism and self-interest, including manipulation of the consultation mandate as prescribed by legislation.

Siliquini-Cineli and Hutchison (2016:90) asserted that “good faith” is essential to protect and balance negotiating party needs. Similarly, it fosters commitment from both the employer and employees to contribute equally to the well-being of the organisation. Furthermore, it helps avoid protracted processes that may lead to court interventions. Hence, the principle of *‘pacta sunt servanda’* applies, and encompasses all details of the agreement based on a documented contract that outlines duties and responsibilities of both parties. Therefore, *“considering the essence of the process through which faith is placed with someone as unconditional abandonment to the power of the other, the understanding of specific performance as a right makes sense only in civil law countries. This is because it is only in these legal systems that there is a priori (and specifically enforceable) duty to act in good faith – that is to take the other party’s specific needs and privileges. In other words, it is precisely the structure and function of the parties’ ex ante specific duty to act with bona fides that leads to an ex-post right to claim for specific reprieve in case of breach of contract”* (Siliquini-Cineli & Hutchison, 2016:90). Clearly, the SA’s civilian intelligence services’ consultation mechanisms may not meet the minimum requirements of Siliquini-Cineli and Hutchison’s (2016:90) enforceability clause. Moreover, this may be compounded by

the absence of collective agreements and matters of interest cannot be discussed in a legal vacuum (see Section 2.3.1, Chapter 2). Hence, this situation can only be remedied if an enforceable contract exists.

The above contribution also suggests that negotiating in good faith within the context of the SA's civilian intelligence services may be a subjective concept of honesty and in terms of its application. In this regard, it may include vague terms which create a legislative gap for future negotiation. Therefore, it is important to locate it within the context of contract law which Hutchison (2011:274) maintains mandates both the employer and employees in South Africa to engage in good faith unless it is covered in "*arbitration clause*". Unfortunately, the Intelligence Service Act 65 of 2002 does not provide for arbitration or any alternative dispute resolution mechanism within the departments rendering the principle of negotiating in good faith unenforceable (see Section 4.3, Chapter 4). Furthermore, the limitation with this principle is compounded by no collective bargaining powers, as mechanisms rely on consensus without clear procedures to manage the disputes.

iii. Consensus

There is a dispute regarding the definition of the phrase "consensus" similar to the discussion of good faith mentioned in the previous section. This is because consensus can mean multiple meanings, but more importantly it can signify that an issue has been thoroughly explored without necessarily reaching a conclusion. Garret et al. (2018:116-17) concurred that consensus assumes that the interest of all parties are aligned and acceptable. Unfortunately, this may not necessarily be the case. For example, the Marxists argue that it entrenches the oppression of workers, as it overlooks competing needs. Consequently, this perspective aligns with the notion that it signifies the end of ideology, suggesting that tension is eliminated when peace is finally achieved. Coincidentally, it also found expression in the British and the West's post-war politics where it was accepted as "*cross-party agreement*" that dictated how certain matters should be executed within legislative boundaries. Thus, it accommodates various unrelated regulatory goals; social programmes; well-being of countries; and the adoption of neo-Keynesian methods of demand management to ensure permanent work (Garret et al., 2018:116). Therefore, consensus suggests that there should be a set of parameters based on a set of policy options, which are regarded as administratively possible, economically affordable, and politically acceptable. Furthermore, it accommodates certain measures of agreement about decision-making procedures but lacks legitimacy, credibility, power and influence, since the agreement might not be enforceable.

The above principles differ from negotiations, which are embraced in all spheres of life including South Africa's labour relations which forces managers to face their employees and bargain according to established rules.

5.2.3.2 Negotiation

There is expectation that negotiation by nature should result in a binding agreement between parties. Spoelstra and Pienaar (2008:3) concurred that it is a process of engagement between two people to achieve a binding agreement which focuses on shared goals; alleviate tensions; and overcome divergent positions. Therefore, it provides alternatives to achieve collective solutions to promote ownership of outcomes during the engagement process. Hence, it prioritises sharing of ideas in formulating policy positions which are intended to shape the future of the partnerships. Importantly, the key phrase in this context is reaching a binding agreement. However, this differs significantly from the outcomes of the consultation processes, which rely on good faith and the attainment of consensus.

According to Pretorius (2010:4), it is a formal and focused system of engagement rather than an unstructured interaction of solution-driven process. Importantly, it promotes bargaining between two parties who willingly engage to advance their competing interests. Consequently, this creates a platform for sharing information that helps define future interactions and achieve intended outcomes. Therefore, it has unique long-term objectives aimed to promote equality and justice within the workplace, as envisaged by the Labour Relations Act 66 of 1995. Moreover, it serves as a more effective platform to minimise workplace conflict compared to the closed system of direct employee participation of SA's civilian intelligence services which is based on consensus. Similarly, the shortcoming of this closed system is that its outcomes depend heavily on the willingness of the Minister and the executive. As such, it fails to establish a long-term relationship based on full disclosure and sharing of information in formulating policy positions.

5.2.4 Principal aims of the LRA

The general purpose of the Labour Relations Act 66 of 1995 as outlined in Chapter 3 and captured by Grogan (2009:309) is to "*advance economic development, social justice, labour peace and the democratisation of the workplace*". Therefore, its primary objects to promote this goal is prescribed in Section 1 of the LRA in order:

- a) *"To give effect to and regulate the fundamental rights conferred by Section 23 of the Constitution (1996) (regarding labour relations);*
- b) *To give effect to the obligations incurred by the Republic as a member state of the International Labour Organisation;*

- c) *To provide a framework within which employees and their trade unions, employers and employers' organisation can (i) collectively bargain to determine wages, terms and conditions of employment and matters of mutual interest; and (ii) formulate industrial policy; and*
- d) *To promote (i) orderly collective bargaining; (ii) collective bargaining at sectoral level; (iii) employee participation in decision-making in the workplace; and (iv) the effective resolution of labour disputes."*

The above principles clearly commit employers and employees to workplace democracy, which involves active promotion of co-existence; joint decision-making; and progressive contribution towards policy formulation (see Section 2.3.1, Chapter 2 and 4.3, Chapter 4). According to Grogan (2009:310), the LRA provides employee representative structures with privileges to define their own destination during the collective bargaining process within the workplace. Essentially, this is achieved by establishing and affiliating with employee representative structures. Additionally, it guarantees the existence of these structures or associations and ensures their participation in decision-making. However, the legislation is not prescriptive regarding how collective bargaining should be structured and allows negotiating parties to decide on the format and rules of engagement as seen in the case of SANDU. Unfortunately, SA's civilian intelligence services failed to embrace the provisions of the Act in enacting regulations that would have institutionalised collective bargaining without even considering the possibility of formation of trade union.

The above arguments suggest that the SA's civilian intelligence services still have an opportunity to select a specific model and a variety of dispute resolution methods to promote peace and equality within the workplace (see Section 4.3, Chapter 4). Therefore, this opportunity may help to resolve the overlapping roles of several consultation structures within these institutions which were aimed to create a platform of engagement between employer representatives and employee representatives on conditions of service (see Figure 4.4, Chapter 4). Moreover, these structures make it difficult to carry out meaningful consultations that include a dispute resolution option, despite the flexibility provided in the LRA.

5.3 SA Civilian Intelligence Services: Consultation mechanisms

Consultation between the employee representatives and the employer occurs at the consultation committee level and within the ISCCS as established by the Intelligence Services Act 65 of 2002 (see Section Figure 4.4 and Section 4.3, Chapter 4):

5.3.1 Consultation committee

According to internal mechanisms, established by Section 22 of the Intelligence Services Act 65 of 2002, consultation between the executive management and the representatives of the organisational staff fora occur at the consultation committee level. As such, senior executive management must be represented by the same number of representatives as those of the organisational staff forum on the consultation committee. However, one of the senior executive management representatives must serve as the chairperson of the consultation committee. Unfortunately, this arrangement presented an unintended bias towards management due to its failure to provide for rotational chairpersonship to ensure credibility and legitimacy. Regardless of this unfair advantage, the committee lacks authority to take binding decisions on behalf of the employer. It can only make recommendations to the Minister. Moreover, the authoritative nature of who initiates the agenda may also be problematic as it creates inequality in terms of the consulting parties. Hence, the need for an autonomous consultation mechanism would help to balance power during the negotiations because the staff council would be able to influence decision-making.

5.3.2 Staff council

The Staff Council is an employee platform which was established under Section 21 of the Intelligence Services Act 65 of 2002 to consolidate the views of all the employees through their representatives. However, the Council lacks bargaining power and is regulated like any other structure under the current labour dispensation of civilian intelligence. It presents issues to the ISCCS (see Section 4.3.3, Chapter 4) but cannot make binding decisions on behalf of the employer. This situation is further complicated by the fact that the Chairperson, who is full-time, is promoted to a management position for the duration of the term (Anon., 2023). Consequently, this anomalous arrangement impedes independent thought processes and limits ability to effect any significant changes to the *status quo*.

5.3.3 Intelligence Services Council on conditions of service

The confusing role of the ISCCS complicates the consultation mechanism, as it is perceived as a facilitator or mediator. Additionally, employer representatives engage in the consultation process without receiving a mandate from senior management. In this context, the functions of the ISCCS are outlined in Section 22 of the Intelligence Services Act 65 of 2002 (see Section 4.3.3, Chapter 3). However, there is ambiguity surrounding its role as it does not have a mandate to mediate, conciliate or arbitrate. Essentially, it is unsustainable for the ISCCS to continue acting as perceived facilitator, secretariat or mediator between management; staff fora; and the consultation committee. Therefore, this regulatory deficiency may need to be

addressed by establishing relevant structures to facilitate the consultation and/or negotiation processes within the civilian intelligence services (see Sections 4.3.1 and 4.3.3, Chapter 4).

In summary, the ISCCS is not an appropriate structure where parties are able to make effective contributions towards policy changes and negotiations matters of interest. Furthermore, it is unable to play a neutral role in adjudicating on labour disputes due to its alignment to senior executive management. Therefore, the current labour relations dispensation within the civilian intelligence services does not meet the requirements of constitutional provisions that guarantee the right to collective bargaining and the formation and joining of trade unions, as evidenced by the case of the SANDF in Section 5.6.2 of the chapter. Consequently, this lack of role clarification and effective dispute resolution mechanisms remain the primary source of conflict within the workplace. Similarly, this untenable situation is exacerbated by the absence of alternative dispute resolution mechanisms, along with subtle political issues related to attitudes; legal framework; and the behaviour of various actors.

5.4 Nature of labour relations conflict: South African Civilian Intelligence Services

The nature of labour relations conflict within the SA's civilian intelligence services originated from the secret nature of its environment. Therefore, the more employees strive for openness, equality and fairness, the more the system pushes back. This resistance is largely due to the lack of unionisation and the ability to act collectively and with a specific mandate. Inadvertently, this situation creates unnecessary conflict due to the imbalance of power. However, if managed properly by strengthening consultation mechanisms, this conflict does not need to be as a negative phenomenon. This assertion is based on a broad generalisation which suggests that conflict is an inherent part of people's lives, that it is inescapable and inevitable. In this regard, Lewin (2008:447) argued that tension is part of human ecosystem including interactions within the workplace. However, Mischke (1997:3) contended that everyday presence of this phenomenon does not imply that its existence is widely appreciated. According to Poisat et al., (2008:19-20), the concept is linked to emotions and is broadly communicated through various channels. Therefore, the inherent secrecy of the civilian intelligence environment subjects it to sensational content and misunderstandings, not only among external or non-state actors, but also between the employees and management.

5.4.1 Attitudes

An attitude refers to opinions, beliefs and feelings about aspects of a particular environment. Hence, conflict originated from competing demands and the workers "*attitudes*", trade unions, employers, and their associations (Dubin, et al., 1954:13; Fox, 1966:8). Schulze-Marmeling

(2013:20) concurred that the competing needs informs tensions within the workplace. Furthermore, it is viewed as unwanted and negative as it is based on individuals' actions. However, this argument might not necessarily be the correct as it may benefit the organisations as agent of transformation and organisational agility. Therefore, it is important to process objectively to advance common interest (Poisat et al., 2008:19-20). Furthermore, Anstey (1999:6) acknowledged that it originated from conflicting demands which are closely guarded by interested parties (manifest conflict). Therefore, it is not surprising that the consultation process is a contested terrain within the civilian intelligence services due to the employers and employees competing needs. Hence, this conflict manifests itself in various ways as discussed below.

5.4.2 Labour relations institutions, legal framework, and participants actions

Schulze-Marmeling (2013:27) identified three sets of explanations which are expected to impact on the emergence of *"latent conflict, conflict manifestation and settlement"*. These explanations are particularly relevant to understand the labour relations dispensation within SA's civilian intelligence services where limited transformation and resistance to change continue to affect the nature of engagement in the workplace as well as dispute resolution.

i. *"Latent conflict"*

Schulze-Marmeling (2013:27) postulated that *"the existence of labour relations institutions"* significantly contributes to antagonism within the workplace. Also, the relationship formed when an employer and employees enter into a contract serves as a precursor for employee workplace representation and collective bargaining arrangements. Similarly, this type of relationship may help reduce the extent of *"latent conflict"* through co-existence and collective responsibility to minimise tensions in the work environment. To achieve this, certain mechanisms need to be established to provide workers with a platform to voice their concerns.

It is also within this context that Streeck and Thelen (2009:108) cautioned that management must avoid weakening of employee representative structures to promote peace within the workplace. Consequently, there are countries that protect the autonomy of unions and their activities through regulations. Unfortunately, the command-and-control structure within SA's civilian intelligence services makes it difficult to proactively address competing demands. Thus, the hostile secretive environment in these services where employee representatives are consulted at the employer's discretion, may limit the effectiveness of the consultation mechanisms.

ii. *"Conflict manifestation"*

The above-mentioned tensions, according to Schulze-Marmeling (2013:27), are compounded by “*labour market institutions*”. Furthermore, these tensions are escalated by complicated “*labour law*” and accessibility. Similarly, these indirect role players or agents are the source of unprecedented grievances against the employer. Therefore, this situation creates “*a completely voluntarist or an interventionist state-led system*”. In this context, the “interventionist” approach may apply to the South African civilian intelligence services which are highly regulated. This issue is compounded by the ineffective consultation mechanism which originated as an initiative of the employer during the amalgamation of the intelligence services, rather than being developed by the employees or their representatives (see Sections 4.2 and 4.3, Chapter 4). Hence, it becomes difficult for employees of these institutions to approach courts in instances of disputes as the process may be costly and unaffordable.

iii. “*Settlement*”

Schulze-Marmeling (2013:27) asserted that achieving a “*settlement*” of these tensions is not always easy due to “*the individual behaviour of actors*”. This can be easily explained by considering general organisational dynamics. Consequently, the likelihood of sustained tensions is often triggered by workers’ expectations, including demands for improved salaries as well as challenges faced by employers due to external factors. Therefore, the changes within the civilian intelligence services regarding the direction which the organisation is willing to take are frequently determined by “*individual behaviour*” of management, which stems from fear of instability.

The key issue raised by Schulze-Marmeling (2013:29) is whether actors’ behaviour is influenced by organisational dynamics or the engagement of workers and management as a collective. However, Jackson (2010:66) asserted that “*the question is whether actors are seen as rule-takers or rule-makers*”. Therefore, the former is more obedient while the latter is defiant to organisational instructions (Crouch, 2005:3). However, this situation should be understood as complementary to each other (Jackson, 2010:66). In this context, conflict may arise due to continued interaction between actors, human behaviour and how institutions bargain for employer and employees’ interests as configured in the workplace. Therefore, the civilian intelligence services as the employer could be rule-makers and expect the employees to simply comply. Nonetheless, it is the history of command and control of security establishments and intelligence services which is an impediment towards progressive labour relations dispensations.

The above submission further revealed that disorganised conflict, like labour relations arrangements at SA's civilian intelligence services, occurs when collective institutions, such as trade union representation or collective bargaining mechanisms are banned at the workplace. Eventually, the tensions find expression when there is disagreement which is not aimed to find solutions (Gall & Hebdon, 2008:593-594). Subsequently, SA's civilian intelligence services implemented a consultation mechanism to sidestep the reality of having a unionised workforce. Therefore, the source of conflict within the civilian intelligence services could be a thoughtful attempt by the staff fora and staff council to fight for strategic space to influence the decision-making processes. On the other hand, management's intention may be to preserve the *status quo* based on perceived operational directives. In this regard, Anstey (1999:13-42) held that tensions are driven by scarce commodities and competing needs by both the employer and employees. Therefore, this mutual relationship demands collaboration by the stakeholders. However, it would require serious balance of power of perceived insecurities; lack of means; how people communicate; share details; and lack clarity. Equally, the source of conflict within SA's civilian intelligence services could emanate from structural imbalances wherein power is contested. Hence, this employment relationship creates competing interests for both the employers and employees which denies them absolute control and achievement of the desired goals, as illustrated by Ehlers (2007:8) in **Table 5.1** below.

Based on the above, Lewin (2008:448) highlighted that the reason for tension is the expansion of an institution which creates hierarchical and specialisation problems. Consequently, *"the triplet of global economic competition, de-regulation, and technological transformation"* significantly undermines the authority between workers and their representative structures. However, employees and management within the civilian intelligence services could choose to design an alternative form of engagement that includes a dispute resolution mechanism as a legal and binding instrument for both parties, without a threat of formation of trade unions.

Table 5.1: Differences between employer and employee needs

EMPLOYERS WANT...	EMPLOYEES WANT...
Higher profits	High wages Health and safety Training Good fringe benefits
Freedom to control labour issues	Consultation, negotiation and engagement on governance issues.
Freedom to make employment decisions	Employment stability Measures ensuring equality Assurance of non-discrimination within the workplace
Productivity	Fair conditions of service Safe occupational environment Acknowledgement of employee contribution Career advancement
Sole decision-making power	Representation by trade unions
Business to be the most important issue	Attention to political and social issues
Specific rules, procedures and methods	Freedom to decide how work is done

Source: Ehlers (2007:8)

5.4.3 Power and interests in civilian intelligence labour relations

The dysfunctionality of the staff forums, consultation committee and the staff council revolves around the issue of legitimacy and power to influence decisions as mentioned earlier (see Sections 4.3.1 and 4.3.2 of the Chapter 4). Unfortunately, the stakeholder with more “power” during negotiations decides on the outcomes of the collective bargaining process. In this instance, the authority may stem from the employer’s control over the means of production while the workers wield political power. Therefore, it is not surprising that, management of the SA’s civilian intelligence services commands more power during the consultation processes because the employees may play a minimal role to determine the terms and conditions of engagement. Consequently, this power is crucial to transform latent conflict into manifest conflict (Mischke, 1997:3) which is why both workers and management possess varying authority that can be leveraged in the decision-making processes (Ehlers, 2008:8). Ultimately, they will utilise this power to exert pressure on the negotiating partner to make concessions.

Mayer (2012:68) confirmed that power enables negotiating partners to benefit from the process to ensure that their demands are met. However, this does not imply that it is static and has the same impact; it changes throughout the process depending on the issues at hand. Historically, it was assumed that power is directly linked to the work contract to reduce the influence and relevance of workers. Mischke (1997:3) postulated that it was recently perceived as a back-and-forth evolving process which ultimately defined the type of engagement. However, Mayer (2012:67) asserted that it is a source of tension regardless of whether it is deliberate. Meanwhile, what is important is how to exploit it to the benefit of one's interests. Equally, it does not suggest that it is compulsory, hostile, escalating or aggressive although it may have some resemblance of these concepts. Therefore, its unique characteristic is its stability, which allows individuals to influence and be influenced in a constructive manner, and foster mutually beneficial relationships. This approach helps minimise damaging conflicts. Similarly, interests or needs, which require careful management, play critical roles in shaping the nature of power and conflict.

The labour relations dispensation within SA's civilian intelligence services is configured around consultation on matters of interest on conditions of service. However, Edwards (1986:28) cautioned that there is propensity to think that there are only two approaches to address interests: *"either they are equated with wants and preferences, with all attempts to identify more fundamental interests being rejected as a metaphysical or a Marxist approach, which is adopted and in which all interests are supposedly reducible to, or at least based on, class position and in which the interest of the working class is held to be the overthrow of capitalism"*. Therefore, it is crucial to analyse the configuration of this situation and how it impacts on the needs and demands of the interested party as well as its expansion in terms of relevance (Edwards, 1986:28). Furthermore, Mayer (2012:68) cautioned that individuals tend to understand power differently which is occasionally confusing. Hence, the key elements of conceptualising it is to evaluate its impact on the outcomes; execution of certain ideals; and resilience during the transformation process which is considered persuasive power (Garret et al., 2018:446). However, there is a need to locate power within a specific context, particularly when dealing with hostile situations like SA's civilian intelligence services. In this instance, SA's civilian intelligence services management acquires its power from legislation which is vague and deliberately elevates the need for national security beyond that of the workers including their interests.

Mayer (2012:69) questioned the often-cited issue of *"balance of power"* and asserted that it is a deceiving phrase as it ignores *"the dynamics of power and the interactional context in which it must be located"*. Instead, the focus should be on how to contribute positively to alleviate tension in relationships rather than assume that power can be applied. Therefore, an individual

needs sufficient power to influence the direction of a particular course which helps to protect one's rights. However, it does not mean that the party wielding more power is guaranteed to achieve the intended results; nonetheless, have an impact. This power is essential to ensure that one's contributions are not overlooked. Unfortunately, this argument does not contribute to the political discourse within South Africa's civilian intelligence services as employees' power is completely ignored. Therefore, employees are unable to advocate for their legitimate interests effectively and constructively.

The above arguments confirmed that the unavoidable reasons for conflict within the workplace is the fight for acceptable conditions of service. Standing (2009:32-97) asserted that there is a global perception that the notion of sustainable work is not applicable within the third-world countries context. However, this issue is perceived as Eurocentric and conceptualised to serve occupations in the global North (Munck, 2010:205-224). Furthermore, this has also led to the assumption that by demanding compliance with international law, the developed states are actually exploiting the masses as well as utilise child labour in the industrialised global North (Chang, 2000:221-234). In contrast, certain employee representative bodies question the provision of decent work as a means to avoid taxes in the global South (Ganguly, 1996:45; Mahendra, 1996:49). In this context, the nature and source of this conflict led to the emergence of trade unionism in the broader South African public service which is a reality that confronts the civilian intelligence services. Therefore, these developments have necessitated debates around the protection of workers' right including the right to collective bargaining; strikes and lockouts which, unfortunately, do not apply within the civilian intelligence services as explained below.

5.5 Collective bargaining as a political process and a threat to secrecy

Civilian intelligence services employees are generally expected to be apolitical to execute their duties. To ensure this compliance, the Intelligence Services Act 65 of 2002 prohibited the right to form and join a trade union; engage in collective bargaining; and to strike within the civilian intelligence services, as highlighted in Sections 2.4.3 of Chapter 2. Generally, trade unions emerged to represent the voice of the workers when critical decisions are made. This voluntary association primarily limits the power of the employer as well as ensure no unilateral decision-making within the workplace (Bendix, 2005:5). Unfortunately, the SA's civilian intelligence services are disadvantaged as the accounting officer can unilaterally decide to dismiss employees due to the limited legislative recourse within the LRA and the Intelligence Services Act 65 of 2002. This vulnerability finds expression in Kaufman's (1989:285-298) caution that being a member of a trade union is perceived as a social responsibility, while collective bargaining of employee representatives should be limited to protect the balance of power

during negotiations. Hence, collective bargaining provides both parties with an alternative to strategise to realise their goals. Consequently, it enables the employees to engage meaningfully with management during negotiations on conditions of service (see Sections 4.2 and 4.3, Chapter 4).

5.5.1 Functions of collective bargaining

According to Visser (2016:2), collective bargaining has an employee “*protective function*” which is to guarantee reasonable salaries; provide legislative framework for working hours and related matters of interest; and ensure benefits within the workplace. Similarly, it helps with the “*conflict management function*” which enables the employer to institutionalise dispute resolution mechanisms and help maintain management’s credibility through collective engagement. Therefore, it is not surprising that the plight of the employees of the civilian intelligence services are advocating for inclusive and participatory decision-making, aimed to legitimise the consultation process. Similarly, this initiative also seeks to promote collective responsibility and accountability in decision-making processes.

The above sentiments are also pursued by Aidt and Tzannatos (2001:3-8) who held that collective bargaining is informed by the following three complimentary concerns:

i. The conduct of employee and management representatives

- “*Monopoly costs*” is the primary reason for tension as workers’ representatives may demand a fair share of the output and leverage their labour as a negotiation tool. Therefore, they may threaten to withdraw their labour and force the companies to cede certain dividends to avoid strikes.
- “*Participatory benefit of unions*”: Help to create a culture of co-existence which in turn contributes towards enhanced productivity which would benefit both the employees and the employer.
- “*Unions as political organisations*”: Employee representative structures are often affiliated with political parties, and their agenda may reflect broader political interests and ideologies which is evident during bargaining.

ii. The efficacy of conflict resolution framework

- Its efficacy depends on the format and nature of engagement as well as efforts to avoid a deadlock.

iii. The institutional framework of collective bargaining

- It is largely “*centralised*” to create synergy.

- “*Corporatism*”: includes all the three stakeholders within labour relations, *i.e.*, workers, capitalists and governments.
- “*Informal coordination*”: often used as a supplementary intervention to enhance collaboration.

Considering the above, it is evident that there is no perfect collective bargaining model which can be imposed on the SA’s civilian intelligence services. By considering the available alternatives, these institutions may need to pay particular attention to the unique environment of secrecy and highly confidential information (see Section 4.5.2 of Chapter 4). While collective bargaining is largely centralised in the broader public service, it does not imply that the same model might be applicable to the civilian intelligence services. Furthermore, it is also important to note that collective bargaining may occasionally collapse which is not an appropriate. Therefore, it is important to invest in progressive policies to encourage collaboration and pursue shared goals to enhance labour relations. Similarly, the civilian intelligence services may benefit from such interventions by strengthening consultation mechanisms to ensure harmony within the workplace (see Section 5.3 of the chapter). Equally, it may help address the inherent fear within the civilian intelligence services which emanates from the political nature of trade unions and the impact that it might have on professionalism. Hence, without dispute resolution mechanisms and collective agreement, SA’s civilian intelligence services employees will remain at a disadvantage.

5.5.2 What influences collective bargaining?

Collective bargaining is characterised by structured and unstructured systems; accredited and non-accredited stakeholders; and political dynamics. Hence, it is applied differently in government and business due to the following: “*legal; financial; the nature of government services; and the role of politics*”. This difference is informed by the fact that the primary focus of business is to generate dividends, whereas government derives its legitimacy through service delivery which is labour intensive and non-competitive (Kearney, 1984:77-79). Horton (1973:123) also argued that it is “*inherently a political process*” since its origin emanate from a political agenda which is characterised by competing demands. Inadvertently, this suggests that both the employer and employees of the SA’s civilian intelligence services will consistently deploy different strategies when advancing their interests in consultation processes. For example, both the management and employees of these institutions are largely former and active members of the ANC and other former liberation movements. As such, their deployment is political and are bound to protect their party-political interests and agenda. Hence, a narrative of an apolitical culture within SA’s civilian intelligence services remains a myth often used to suppress dissenting views.

5.5.3 Strategy and organisational culture

The concept strategy generally refers to the how (action or methods) of achieving certain objectives, regardless of the outcomes of change. Therefore, it requires the deployment of policies, systems and resources to achieve the set goals. In simple terms, Brown et al. (2018:535) explained that it is derived from “*game theory which outlines the plan to address every possible move by other player(s) in a game*”. Hence, it involves compatible conduct required by institutions to define the scope of deliverables and the expectations (Mintzberg, 1978:941). Essentially, it provides a unique selling point for the institution by selecting one alternative from a group of methods to achieve institutional goals (Boxall, 2003:5-20). In short, strategy encompasses the resources, including costs, required to achieve organisational long-term objectives.

The above-mentioned components dictate the direction the organisation would like to take to execute its strategic plan. Furthermore, it also requires commitment and buy-in for this plan to materialise as certain expectations may need to be compromised during this process including shedding of jobs. Hence, Ehlers (2007:66) who concurred with Robbins et al. (2003:381) associated strategy with culture and cautioned that the latter is not consistent across sectors of society to determine the element of adaptability during the transformation process. Hence, this variety provides institutions with various options to choose from to implement changes and create a unique culture. However, to implement the transformation agenda successfully, it would require collective understanding and shared vision to avoid tension within the workplace. Kaufman (2003:199) noted that “*strategy implies choice over alternative people management approaches, and Strategic Choice Theory requires a (high) degree of managerial autonomy*”. Hence, the employer will always decide on the direction and long-term vision of the institutions regardless of the trade unions. Similarly, it is not expected that liberal relations strategies and policies should apply commonly to all institutions since some have unique characteristics, such as the South African civilian intelligence services.

Based on these statements, it is evident that organisational strategy always defines the nature of employment relations and how policies are implemented. Therefore, certain institutions would opt to adopt several strategies and responsive methods to reach a particular objective. Essentially, internal and external circumstances would determine the type of strategy and the nature of engagement in the decision-making processes (Bacon, 2008:241). As such, in selected countries, employers refuse to engage with employee representatives due to competing needs and desperation to rescue their businesses. Unfortunately, they assume that collective bargaining is a waste of time and resources and tend to shift the fundamental focus to manage a business to make a profit. However, this argument may not be sustainable as

there is evidence that a harmonious working relationship, which is an outcome of collective bargaining, enhances productivity and stability.

5.5.3.1 Management strategies in collective bargaining

As alluded in the previous section, the employer assumes the final responsibility to take decisions to sustain the growth of the organisation. In this instance, even if collective bargaining is institutionalised, Katz and Kochan (1992:123) argued that the decisions on the configuration of engagement approach, including recognition of the freedom to affiliate with recognised employee representative structures resides with the employer. Similarly, the adoption of business plans and overall human capital issues may not be delegated to employees or their representatives. Therefore, this highlights the significance and role of indirect employee participation which is based on principles of collaboration and not micro-management. Hence, if this principle is not observed, the employer would likely resort to exploit ownership of production and utilise that power during collective bargaining. Furthermore, it must be acknowledged that there are several contributory factors which shapes the nature and extent of engagement with the employees' representatives which often results in a stalemate during these negotiations.

The above narrative is further illustrated by Katz and Kochan (1992:124) in Table 5.2 below that the employer may be constrained to select the most appropriate models to implement critical human resource and management legislation. Despite the limitations, there is always an attempt to find synergy due to competing needs. Therefore, it is not surprising that the industrial relations Strategic Choice Theory prioritises the role of the employer as a key role player within the workplace (Kochan et al., 1983:1-34).

According to Bacon (2008:248), Strategic Choice Theory makes several important assumptions. Firstly, the final decision-maker in any employment relationship is the employer, particularly where such decisions do not affect the employee's available options directly. Secondly, the theory assumes that the employer possesses greater capacity to determine the future direction of the organisation (Kochan et al., 1983:21). Lastly, these decisions have implications for the entire organisational value chain (Bacon, 2008:248).

The arguments above undoubtedly highlight how labour relations have always been viewed. However, the Strategic Choice Theory is not explicit about the types of choices to be made often overlooking the potential negative impact of these options on workers. Nevertheless, there is optimism that employees, through their union representatives, would not be tempted to resist such strategic choices which might not necessarily be the case.

Table 5.2: Union and Non-union Industrial Relations Patterns

	Non-union 			 Union		
Policy	Paternalistic	Bureaucratic	Human Resources Management	Conflict	New Deal	Participatory
Rules	Informal	Formal	Flexible	Inflexible	Formal	Flexible
Management style	Managerial discretion	Rule bound	Strong corporate culture	Aggressive	Adversarial	Involvement
Complaint procedure	None	Written policies	Ombudsman	Excessive delays	Grievance system	Continuous problem solving
Work organisation	Low skill	Detailed classifications	Teams	Detailed classifications	Detailed classifications	Teams
Pay procedure	Piece rates	Job evaluation	Pay-for-knowledge & contingent pay	Standard rates	Standard rates	Pay-for-knowledge & contingent pay
Job security	Temporary work	Cyclical insecurity	Employment stabilisation	Unstable	Seniority-based layoffs	Employment security
Worker manager relations	Hierarchical and personal	Hierarchical	Individual	Combative	Arms-length	Overlapping roles

Source: Katz & Kochan, 1992:124

5.5.3.2 Trade union strategies in collective bargaining

Trade unions also have distinctive features which need to be analysed carefully. The submission is that trade unions have the strategic means to influence decisions which would finally impact on the existence of institutions (Boxall & Purcell, 2003:30-32). Therefore, their presence within the workplace provides them with opportunities to defend the employees' rights and select from various policy options. Subsequently, this would redirect the position of the employer to manage employee-related matters (Boxall, 2008:210). Equally, what gives employee representatives such immense power is their autonomy and their operation under the mandate of their own constituencies. However, their strategic importance is also aligned with the choices made by the employees. Hence, too much compromise could result in a decline in membership and the lack of legitimacy. Moreover, this is compounded by political

alliances which affects how unions interact with management. In this regard, Boxall (2008:210) cautioned against misunderstanding the concept strategy which could influence the relevance of trade unions within the workplace. Firstly, unions do not normally follow prescribed protocols of engagement. Secondly, they may not be capacitated to relate extensively with high level engagements which confront organisations. Hence, the weaknesses in the institutional systems and processes could inhibit the capacity to confront employment challenges vigorously, potentially resulting in a 'strategic drift' (Johnson & Scholes, 2002:76). Therefore, this shortcoming will ultimately weaken the strength and credibility of trade unions to advance the interests of the employees - a phenomenon observed among employee representative structures in South Africa. Similarly, this decline in employee support is also evident in the consultation forums at SA's civilian intelligence services due to the lack of confidence in the mechanisms and management's unilateral decision-making posture.

The legitimacy crisis mentioned occurs despite the fact that unions inherently possess political power. However, this is partly influenced by the way unions interact with their constituencies and the perceived benefits the representatives receive for their participation (Boxall & Haynes, 1997:567-591) which contradicts the ILO's prohibition of inducement. Importantly, their decisions and strategic approaches are shaped by numerous factors as indicated in Section 5.5 of the chapter. However, despite these vulnerabilities, it should be acknowledged that most of the unions' strategic behaviour is oriented towards organising workers and negotiating with the employers. Therefore, in playing this mediating role, unions engage with broader economic and socio-political forces. Furthermore, they operate within the confines of the communities they serve to protect the interests of employees while also being members of society (Levesque & Murray, 2002:47). Similarly, the employees of security establishment in South Africa have legitimate expectations to be represented in formal structures where working conditions are discussed.

5.6 South African Security departments: Employees labour rights

There is no contesting that labour rights are human rights and therefore warrant certain forms of protection within the framework of the emerging global economic system. Therefore, the SA's civilian intelligence services; South African Police Services (SAPS); and South African National Defence Force (SANDF) are obliged to protect entitlements which relate to the role of being a worker in these departments. Mantouvalou (2012:2) argued that certain rights protect individuals while others are directed towards a group. Amongst these are *"a right to work in a job freely chosen; to fair working conditions which may encompass issues as diverse as a just wage or protection of privacy; to be protected from arbitrary and unjustified dismissal; to belong and be represented by a trade union; and to strike"* (Mantouvalou, 2012:2). Hence,

these rights are protected in terms of domestic and international laws as explained in Section 2.3.5 of Chapter 2. However, the human rights treaties reflect a common understanding which does not deviate from the founding principles of the ILO Conventions. As such, these conventions have direct implications for security and intelligence establishments as discussed in the following sections.

5.6.1 Labour rights in the South African Police Service

Chapter 2 of this study indicated that the ILO Convention No. 151 of 1978 identifies the limitations of the LRA concerning the exclusion of trade unionism within the SA's civilian intelligence services. While the convention explicitly "*protects the right of public employees to organise*", the LRA deliberately excludes employees from security organisations including members of the civilian intelligence services. On this basis, and in alignment with international law, it is important to note that the police and intelligence officers continue to campaign actively for these rights as members of society and employees.

The Universal Declaration of Human Rights (UDHR) of 1948, although not legally binding, remains an influential global instrument to ensure that labour rights form an integral component of human rights. Article 23 of the UDHR affirms that every individual has the right to work under freely chosen conditions; receive equal pay for equal work; obtain a just salary and ensure dignified standards of living; as well as form and join trade unions. Therefore, these principles elevate the status of trade unions to advance the employees democratic rights within the workplace.

The Convention 151 of the ILO provide in its Article 1(2) states that "*The extent to which the guarantees provided for in this convention shall apply to high level employees whose functions are normally considered as policy-making or managerial, or to employees whose duties are of a highly confidential nature, shall be determined by national legislation.*"

Article 1(3) further states that "*The extent to which the guarantees are provided for in this Convention shall apply to the armed forces and the police and shall be determined by national laws or regulations*". These three key phrases within Article 1 (2) and (3) of the Convention namely (i) highly confidential nature (ii) apply to armed forces and police; and (iii) determined by national legislation is analysed below.

i. Highly confidential nature

The reference to “*highly confidential nature*” does not consequentially exclude individuals based on rank or position within the “*police or armed forces*”. Similarly, the Labour Relations Act 66 of 1995 limits the right to strike for parties which engage in essential services. According to Bendix (2010:666), ‘essential services’ includes “*any service whose interruption may endanger the lives, personal health or safety of the population in whole or in part. In this regard, Section 123 of the Labour Relations Act 66 of 1995 identifies parliamentary services and the SAPS as essential services*” (see Section 4.3.4, Chapter 4). In such sectors, disputes cannot be resolved through strikes. Instead, alternative dispute resolution mechanisms such as conciliation, mediation and arbitration should be considered.

According to Pillay (2001:57), the Essential Services Committee (ESC), which is established under the LRA, is mandated to determine which services qualify as essential and resolve disputes relating to such classification. Hence, the ESC may designate that an individual employee performs an essential service, as stipulated in sections 70(2), 71, and 73(2) of the LRA. Furthermore, it may be inaccurate to characterise an entire department as “essential”.

It can be inferred that the declaration of an essential service is not consequential or hierarchical but rather a negotiated and legislatively guided process. Similarly, the confidential nature of work performed in the security environment should not serve as a blanket justification to exclude employees from collective bargaining. Instead, the determination of appropriate collective dispute resolution mechanisms should emerge through collective agreement rather than a unilateral imposition (see Section 4.3.4, Chapter 4).

ii. Exclusion of armed forces and police

ILO Convention 151 could be argued to permit members states to determine, through national legislation, whether the guarantees of the ILO Convention apply to the “*armed forces and police*”. Thus, the prohibition of soldiers and police officials from affiliating with employee representative structures is frequently justified on the grounds that these departments constitute essential services. However, as will be discussed in Section 5.6.2 in the chapter, such justification is increasingly contested in labour relations discourse.

iii. Invoking national legislation to regulate employment relationships

The ILO deliberately made provision for the promulgation of domestic laws to settle disputes in contexts where armed forces and the police are prohibited from striking. Furthermore, this provision seeks to protect the right to organise and to mitigate anti-union discrimination where employees are barred from affiliating with a trade union. In this regard, Fleming (2007:13) argued that police unions possess the capacity to challenge undemocratic occupational cultures by promoting professional cohesion and facilitate transformation within these institutions. Therefore, such unions have secured significant enhancements in conditions of service and representation despite historical resistance to unionisation in many liberal democracies. Hence, their existence contributed substantially to advance democratic practices despite management's perceptions that structures are disruptive or resistant to change. Similarly, countries such as Canada, New Zealand, Australia and the United States formally recognised police unions as legitimate stakeholders to promote the employees' welfare and transformation (Fleming, 2007:13-14).

In South Africa, the Police and Prisons Civil Rights Union (POPCRU) is an example of transformation of labour relations dispensation within the security services. Marks (200?:557-573) argued that this union was formed on 05 November 1989 and emerged as a representative voice of the Black members in the police and correctional services who were compelled to enforce the oppressive racist apartheid regime's repressive laws. Consequently, it became the first legitimate police trade union in South Africa. Unfortunately, its establishment led to widespread dismissals and suspensions of its members by the state authorities. To confirm the earlier submission that trade unions are by nature influenced by political developments, POPCRU affiliated with the African National Congress (ANC) and the Congress of the South African Trade Unions (COSATU). Therefore, this demonstrated its early militancy which was symbolic of its struggle for equality and social justice. Hence, its activism continued into the democratic era, most notably through the 1998 occupation of the police headquarters in protest of institutional racism within the SAPS. As an affiliate of COSATU and the World Federation of Trade Unions (WFTU), POPCRU's founding philosophy is based on the principle that labour rights are inseparable from human rights (Marks, 200?:557-573). Therefore, these approaches demonstrate the ILO's recognition that while restrictions on industrial action may be justified in essential or security environment, they must be balanced by legislative guidelines that promote representation, negotiation and fairness.

The above historical and international trend reflects a growing appetite for recognition of legitimacy of police labour rights. Furthermore, these developments also highlight the

importance of collective bargaining within these institutions which may serve as a model for the SA's civilian intelligence services.

5.6.2 SANDU model: Example of effective collective bargaining structure

The limitation of constitutional and human rights based on the claim of the unique and sensitive nature of the military environment, which is similar to arguments made regarding the SA's civilian intelligence services and the SAPS, is highly contested as referenced in this chapter. Heinecken (2017:140) concurred that this opposition is historical and can be traced back to the 1970s when the British and Americans faced the possibility of union formations within the armed forces. Consequently, a paranoia of instability emerged based on the assumption that unions would threaten unit *esprit de corps* and “*break the chain of command*”. However, these arguments were not sustainable since these could not inhibit developed countries (e.g., “*Australia, Belgium, Denmark, the Netherlands, Norway, Sweden and Switzerland*”), which had embraced trade unions and their effective role within the armed forces. Therefore, South Africa is not immune to these developments and there is no scientific evidence to support threats of instability to nullify such concerns (Heinecken, 2017:141). Hence, the chapter maintains that South Africa, as a liberal democracy (see Section 2.3, Chapter 2), protects the rights of all citizens equally, and any limitations of rights must be reasonable and justifiable.

The arguments above conform with the provisions of Section 8(1) of the Constitution of South Africa (1996) which explicitly states that the Bill of Rights applies to all laws, and binds the legislature, executive, judiciary, and all organs of state. Furthermore, this submission finds expression in Section 8(2) of the Constitution, which stipulates that “*a provision of the Bill of Rights binds a natural and juristic person if, and to the extent that, it is applicable, considering the nature of the right and the nature of any duty imposed by the right*”. However, despite the international trend, Mnisi (2017:129) cautioned that the emergence of trade unionism within the South African armed forces was a significant error which also took legal practitioners and the judiciary by surprise. As a proponent of this argument and without any substantive evidence, Mnisi (2017:129) claimed that the Constitutional Court erred in its interpretation of Section 23(2) of the Constitution which deals with “*the right to form and join a trade union; to participate in the activities and programmes of a trade union; and to strike*”. However, this argument is refutable because it does not rely on any factual evidence and may instead be influenced by the historical and draconian rules of apartheid or a previously held worldview.

5.6.2.1 The Labour Relations Act 66 of 1995 and the formation of SANDU

Mnisi's (2017:129) argument appeared to have been based on South Africa's pre-1994 labour dispensation, which expressly prohibited members from the former Defence Force from joining

or establishing trade unions. Historically, Section 126(b)(1) of the Defence Act 44 of 1957 stipulated that no member of the permanent force “*shall be or become a member of any trade union.*” However, this legislative challenge reflected the restrictive labour dispensation during the apartheid era where workers’ fundamental human rights within the security establishment were suppressed deliberately. Consequently, the post-1994 constitutional reforms introduced a paradigm shift in the regulation of labour relations. In this regard, the enactment of the LRA sought to give effect to the rights contained in Section 23 of the Constitution of South Africa (1996), as discussed in preceding chapters. Hence, the previous limitations imposed by Section 126(b)(1) of the Defence Act 44 of 1957 were invalidated by Section 23(2) of the Constitution, which explicitly extended the right to form and join trade unions to “*every worker*”.

It is essential to highlight that while employees of the SA’s civilian intelligence services, the SAPS, and the SANDF remain excluded from the scope of the LRA, they are not exempt from the broader application of Section 23 of the Constitution as highlighted in Section 4.3.1 of Chapter 4. Therefore, this distinction is critical as it highlights the supremacy of the Constitution even within the sensitive security and intelligence environment. Equally, this submission was affirmed by the Constitutional Court in *South African National Defence Union v Minister of Defence* 1999 (4) SA 469 (CC); 1999 (6) BCLR 615 (CC). In this critical judgement, the Court invalidated Section 126B of the Defence Act 44 of 1957, which prohibited members from the SANDF from affiliating with trade unions or protesting. As a result, the Court held that such limitations were inconsistent with Sections 19 and 23 of the Constitution, which guarantees political freedom and labour rights respectively. Consequently, this judgment was instrumental in aligning the labour relations dispensation of the SANDF with the constitutional requirements of equality, freedom of association, and democratic participation.

Section 19 of the Constitution of South Africa (1996) explicitly guarantees the political rights of every citizen, and affirms in Section 19(1) that “*every citizen is free to make political choices,*” including the right to (a) form a political party, (b) participate in the activities of or recruit members for a political party, and (c) campaign for a political cause. Therefore, these sections consolidated democratic principles within which labour rights are situated. Furthermore, Section 23(5) of the Constitution strengthens and protects organised labour by providing that “*every trade union, employers’ organisation and employer has the right to engage in collective bargaining*”. In giving effect to this provision, the Constitution paved way for the adoption of domestic laws to regulate collective bargaining. However, under extraordinary circumstances any impediment to these rights must align with Section 36(1), which outlines the permissible conditions for such limitations. Furthermore, Section 23(6) authorises national legislation to recognise union security arrangements contained in collective

agreements. Thus, this legislative framework reflects a deliberate constitutional design to promote harmony and collaboration within the workplace.

These constitutional developments further demonstrate that while operational requirements may justify the exclusion of collective bargaining within certain departments, such limitations cannot override the fundamental rights guaranteed under the Constitution of South Africa (1996). In relation to the civilian intelligence services, this analysis raises critical questions of the continued exclusion of employees from the LRA despite the constitutional guarantees contained in Section 23. Furthermore, this situation reveals persistent tension between state security imperatives and liberal democratic values. Therefore, the exclusion of trade unionism within the civilian intelligence cannot merely be justified based on operational secrecy. Instead, it must also be interrogated against the constitutional promise of participatory rights and oversight which constitutes the critical pillars of South Africa's democracy.

5.6.2.2 Promulgation of Defence Act 42 of 2002 and formation of unions

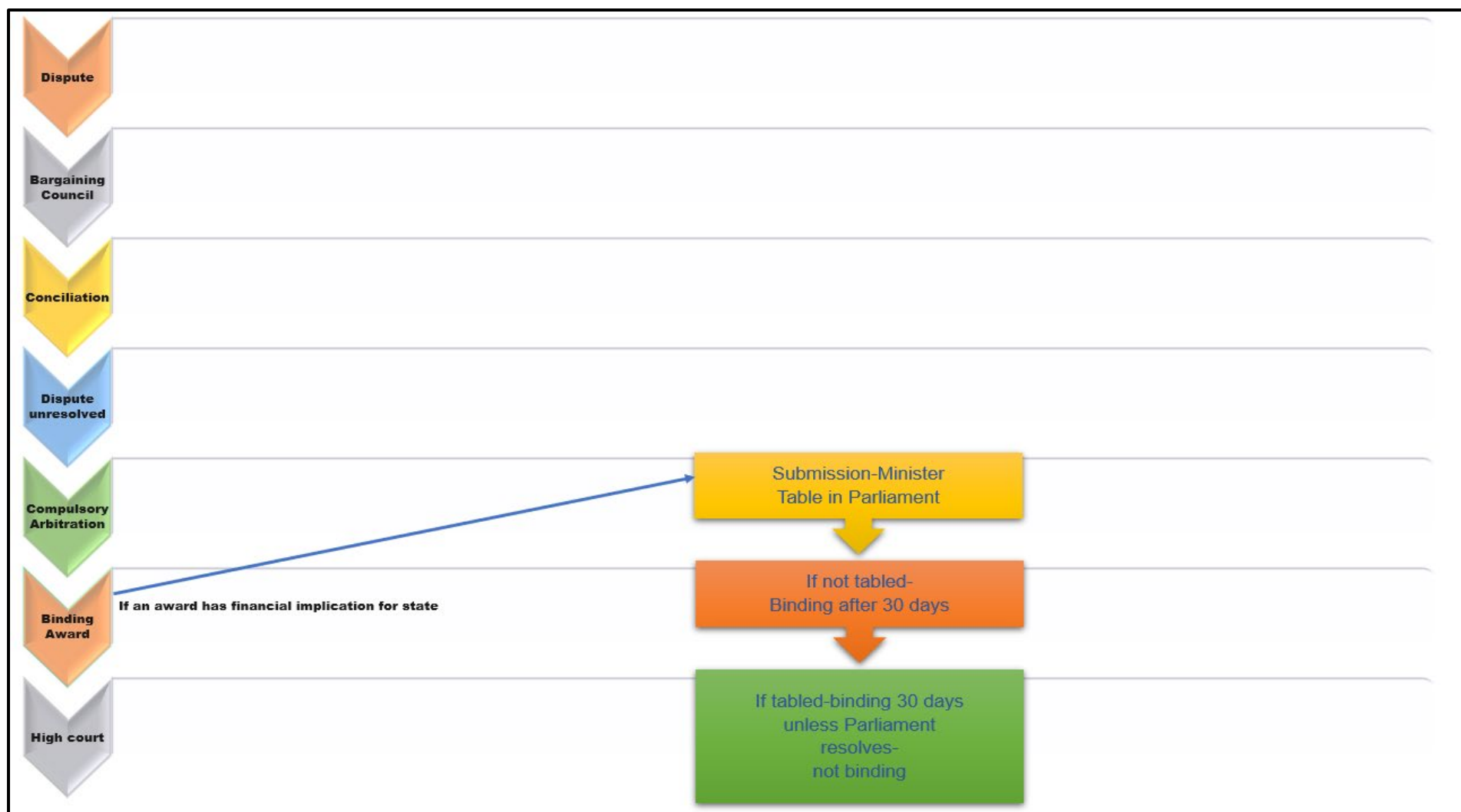
The Minister of Defence issued regulations to manage labour relations in the SANDF, which constitutes Chapter XX of General Regulations of the South African National Defence Force and the Reserve in compliance with the Constitutional Court ruling of 1999. Essentially, the regulations allow for the registration of unions that have a proven membership of five thousand (5000) SANDF members at the time of application. It should be noted that since the regulations were promulgated, the Defence Act 44 of 1957 was repealed and replaced by the Defence Act 42 of 2002. Therefore, the relevant regulations were expressly preserved according to Section 106(2) of the Defence Act 42 of 2002. Accordingly, once a union has a proven membership of 15000 SANDF personnel, it may apply to the Military Bargaining Council (MBC) for recognition in terms of Regulation 68(1). Furthermore, cognisance must be taken that a key function of the MBC is the conclusion of collective agreements between trade unions and the Department of Defence and in accordance with Regulation 63(a) of the Act.

5.6.2.3 Collective bargaining and arbitration process

Clause 5(a) of the Constitution of the MBC mandates that the *"MBC in accordance with the Defence Act 42 of 2002 and regulations, must negotiate and bargain collectively to reach agreement on matters of mutual interest between the employer and members represented by admitted military trade unions in the Council. Furthermore, it needs to prevent and resolve disputes between the employer and such military trade unions by means of negotiation, consultation or otherwise, including but not limited to, the utilisation of procedures for dealing with disputes"*.

The parties to the MBC are the Department of Defence, as the employer and any recognised military trade unions as specified in the regulations. This provision finds impetus within Clause 20 of the Constitution of the MBC which outlines the procedure to resolve disputes between the employer and unions. In this regard, it is stated that *“once a dispute is declared, the secretary of the MBC shall convene a meeting within five working days to seek to resolve the dispute (see Figure 5.2 of the chapter). However, If the dispute remains unresolved, it may be referred to the Military Arbitration Board (the MAB) for resolution”*. The most significant aspect of this clause is that the stakeholders may choose to take the matter on review or have the award made an order of court.

The MAB is also established in terms of Chapter XX of the regulations. In this instance, Regulation 73 states that it shall comprise of five independent members appointed by the Minister. Furthermore, Regulation 75 states that arbitration would be dealt with in terms of the regulations and the Arbitration Act 42 of 1965. Therefore, the SA’s civilian intelligence service may benefit from the SANDF model regarding dispute resolution mechanisms and the exclusion of the establishment of trade unions to accommodate its sensitive work environment. This demonstrates that allowing freedom of association and collective bargaining does not erode the integrity of security establishment. On the contrary, having effective and strengthened consultation mechanisms, along with autonomous dispute resolution instruments within civilian intelligence services will help to restore the legitimacy of these structures.



Source: Military Bargaining Council

Figure 5.1: SANDF Dispute Resolution Model

5.6.2.4 SANDU registration as a trade union

As alluded to in Section 5.6.2.1 of this chapter, the 1999 SANDU case ushered in a new era of trade unions in the South African National Defence Force. This paradigm shift was consolidated by “the Constitutional Court judgement in *SANDU v Minister of Defence* 2007 (CCT 65/06; 2007 ZACC 10) which held that collective bargaining is binding to both parties. Therefore, the SANDF may not impose pre-conditions for collective bargaining or withdraw unilaterally from the Bargaining Council. This pronouncement gave members the constitutional right to form and join trade unions. Hence, this landmark decision also suggested that collective bargaining between the SANDF and trade unions, such as SANDU would be implemented. Thereupon, the Minister of Defence introduced regulations to configure labour relations for engagement between the SANDF and SANDU (as well as any other trade union). Therefore, *“these regulations instituted the Military Bargaining Council (MBC) which is a forum in which collective bargaining between the trade unions and the employer, takes place”* (Kruger, 2013:2).

The Court also reaffirmed that the limitations imposed on trade union activity under certain circumstances were justifiable, if such activities interfered with the military’s ability to execute its constitutional obligation or impede its political neutrality. Furthermore, the Minister’s power to appoint the Military Arbitration Board (MAB) was inconsistent with Section 34 of the Constitution of South Africa (1996), which guarantees access to independent tribunals (Constitutional Court in *SANDU v Minister of Defence* 2007 (CCT 65/06; 2007 ZACC 10)).

Cheadle (2012:348-368) argued that in the case of SANDU, the Court based its judgement on ILO Conventions, 87 (Freedom of Association and Protection of the Right to Organise Convention) and 98 (Right to Organise and Collective Bargaining) respectively (see Section 2.3.5, Chapter 2). However, absence of reference to Convention 151 of the ILO, which pertains to the activities of intelligence services members, may be due to South Africa having ratified this Convention. Essentially, this Convention supports the limitation of the right to join trade union and engage in collective bargaining and encourages the introduction of a national legislation to address this challenge. However, this limitation must be considered in conjunction with the guaranteed fundamental human rights outlined in international labour instruments and national constitutions worldwide (ILO, 1948; 1949; Cheadle, 2012:348-364).

5.6.2.5 Application of collective bargaining

As a result of the above landmark judgement, collective bargaining was introduced in the SANDF. However, significant factors need to be revealed in terms of understanding the details of the precedence set by the SANDU. The limitations were clearly articulated including instances in which union activities could interfere with the military's ability to execute its constitutional obligation or impede its political neutrality. Furthermore, the Court cautioned that the Minister, as the employer, may be conflicted when appointing the MAB, as this compromises its impartiality and independence. Instead, this tribunal should be appointed by the Judicial Services Commission or by the Minister in consultation with the trade union. Lastly, the Court affirmed the right of association and picketing within the workplace if such activities do not interfere with good order and military discipline. Therefore, SANDU cases are generally interpreted as granting management broad discretionary powers to oversee labour relations in civilian intelligence services.

The omission of reference to Convention 151 of the ILO which governs the activities of members of intelligence services, may be attributed to South Africa failure to ratify this Convention. However, *"this Convention supports the limitation of the right to trade union membership and collective bargaining through national legislation. Importantly, this limitation, needs to be read in line with fundamental human rights, which find expression in international human rights instruments, national constitutions, and legal systems throughout the world. Those legal materials are international customary law and the possibility of common law incorporations; the Constitution and the way it articulates with international law, statute, and the common law; and the common law itself; including principally its rules of interpretation"* (Cheadle, 2012:348-364).

In summary, the rationale behind collective bargaining is grounded in the recognition that employers wield greater social and economic power than individual workers. Therefore, it aims to strike a balance between the negotiating parties in exercising their respective power during collective bargaining. Furthermore, it requires employees to act collectively and responsibly to gain such power, which helps to influence decisions. Hence, it helps to maintain harmony and promote liberal democratic principles to protect civil and individual rights. Therefore, there is no doubt that considering an autonomous collective bargaining structure similar to that institutionalised by the SANDF, would benefit both management and employees of the civilian intelligence services.

5.7 Conclusion

The benefits of considering the role of an autonomous collective bargaining structure within the South African civilian intelligence services outweigh the perceptions of instability, ill-discipline, and threat to national security. Meanwhile, such a structure would strengthen the existing consultation mechanism. However, the chapter did not suggest that the only option to the current consultation mechanisms is to permit employees to join trade unions of their choice. In this regard, SA's civilian intelligence services have no alternative means to engage in collective bargaining through other methods of dispute resolution, despite their exclusion from the LRA. This option is intended to avoid conflict and encourage inclusive decision-making process and enhance influence in the governance of institutions. Therefore, this approach could help to prevent tensions that, according to Pretorius (2010:3-11), lead to instability. Similarly, the South African civilian intelligence services could select from Pretorius' (2010:3-11) recommended strategies identified below:

- a) *"Dispute resolution processes involving private decision-making by the parties: this category includes informal discussion and problem-solving; negotiation; mediation; conciliation; facilitation; and the mini trial.*
- b) *Informal discussion and problem-solving: parties in dispute may be fortunate enough to be able to and may choose to resolve their dispute on an informal basis through discussion and problem-solving.*
- c) *Negotiation: parties may engage in a more structured and planned process of dealing with perceived or actual conflict of interest.*
- d) *Mediation: an extension of the structured negotiation process involving the services of an acceptable, impartial, and neutral third party to assist parties in dealing with their dispute and where possible, to reach an agreement".*

The above options suggest that SA's civilian intelligence services could easily adopt one of these strategies to strengthen their consultation mechanisms not only appease its members, but to promote a progressive, human rights-based approach to resolve disputes. Therefore, this intervention would conform with Heery and Adler' (2004:63-64) submission that collaboration with employee representatives have more benefits than exclusionary positions which are costly to the organisation. Furthermore, this argument highlights the fact that unions are by nature highly politicised which may exert unnecessary pressure and costs for both parties. Hence, it is important to always find common ground, especially in sensitive environments such as SA's civilian intelligence services.

Lastly, the POPCRU and SANDU provided a workable model which the civilian intelligence services could explore. The next chapter on research methodology for the empirical study will

further explore this possibility by addressing critical issues that need to be considered to align the conditions of service of SA's civilian intelligence services with other state departments.

CHAPTER 6: RESEARCH METHODOLOGY

6.1 Introduction

This chapter expounds on the adopted research methodological framework and clarifies the research design, which was summarised in Chapter 1, Sections 1.6.1 & 1.6.2. This framework clarifies how the research project was approached. According to McMeekin (2019:2), it is a formalised framework to conclude a method or simply a plan of action. It serves different purposes and has many advantages, for example: enhances uniformity; agility and communication; enhances standard of research; harmonises methods; and intensifies the reliability of outcomes (McMeekin, 2019:2). Therefore, research methodologies are like philosophical approaches which seek to analyse or enhance an understanding of certain situations or events as explained in Section 6.3 of the chapter.

6.2 Research methodological framework

The aim of the literature review was to understand SA's civilian intelligence services collective bargaining model and draw on examples of similar institutions from relevant literature (as guided by the identified problem statement of this thesis). Upon completing the literature review, it became clear that additional research or data was required to address the identified. Therefore, the empirical study aimed to address the gaps (see Section 6.4 of the chapter). The formulated questions for the semi-structured interviews (see Section 6.5) correlated with the identified gaps. Furthermore, the chapter concluded on how ethical considerations for this study were incorporated and adhered to. Figure 6.1 below illustrates the adopted research methodological framework.



Figure 6.1: Methodological Framework

The purpose of the empirical research was to discover answers to questions regarding the exclusion of the collective bargaining within SA's civilian intelligence services through the application of scientific procedures. According to Patel and Patel (2019:49), it is intended to establish the veracity of information which has yet to be revealed. Equally, each research study is classified according to certain unique objectives which can be categorised as follows: *“(i) gaining familiarity with a phenomenon or to achieve new insights into it (exploratory or formulative research studies); (ii) portraying accurately the characteristics of a particular individual, situation or a group (descriptive research studies); (iii) determining the frequency with which something occurs or with which it is associated with something else (diagnostic research studies); and (iv) testing a hypothesis of a causal relationship between variables (hypothesis-testing research studies)”* (Patel & Patel, 2019:49). Therefore, the study aimed to

understand the concept of a consultation mechanism and its limitations, while assessing the viability of collective bargaining as an alternative and effective dispute resolution mechanism within the SA's civilian intelligence services. Hence, a qualitative research method was adopted for this study as discussed in Section 6.3.

6.3 Qualitative research approach: Applicable for empirical study

As explained in Chapter 1, Sections 1.6 and 1.6.1, the study adopted a qualitative research approach. Ahmad et al. (2019:2828-2832) argued that it is *“a process of naturalistic inquiry that seeks an in-depth understanding of social phenomena within their natural setting. It focuses on the ‘why’ rather than the ‘what’ of social phenomena and relies on direct experiences of human beings as meaning-making agents in their everyday lives. Rather than by logical and statistical procedures, qualitative researchers use multiple systems of inquiry for the study of human phenomena including biography, case study, historical analysis, discourse analysis, ethnography, grounded theory, and phenomenology”* (Ahmad et al., 2019:2828-2832).

According to Creswell (2007:16), it enables the researcher to decide on a specific method of inquiry. Thus, *“these philosophical assumptions consist of a stance toward the nature of reality (ontology); how the researcher knows what she or he knows (epistemology); the role of values in the research (axiology); the language of research (rhetoric); and the methods used in the process (methodology)”*. Creswell (2007:17) outlined these assumptions in Table 6.1 below. Based on this categorisation, there is no dispute that there are several approaches to conduct qualitative research. According to Barnett-Page and Thomas (2009:1), qualitative research is evolving in response to the increasing demand for legislative changes that impact on the lives of people. *“While the terms meta-analysis (a statistical method to combine the results of primary studies), or sometimes narrative synthesis, are frequently used to describe how quantitative research is synthesised, far more terms are used to describe the synthesis of qualitative research”* (Barnett-Page & Thomas, 2009:1). Therefore, due to these developments, there is a potential to distort certain commonly used methods, which creates a difficult situation to determine the most appropriate ones.

Table 6.1: Philosophical assumptions with implications for practice

Assumption	Question	Characteristics	Implications for practice (example)
<i>Ontological</i>	What is the nature of reality?	Reality is subjective and multiple, as seen by participants in the study	Researcher uses quotes and themes in words of participants and provides evidence of different perspectives
<i>Epistemological</i>	What is the relationship between the researcher and that being researched?	Researcher attempts to lessen distance between himself or herself and that being researched	Researcher collaborates, spends time in field with participants, and becomes an insider
<i>Axiological</i>	What is the role of values?	Researcher acknowledges that research is value laden and that biases are present	Researcher openly discusses values that shape the narratives and includes his or her own interpretation in conjunction with the interpretations of participants
<i>Rhetorical</i>	What is the language of research?	Researcher writes in a literary, informal style using the personal voice and uses qualitative terms and limited definitions	Researcher uses engaging style of narrative, may use first person pronoun, and employs the language of qualitative research
<i>Methodological</i>	What is the process of research?	Researcher uses inductive logic, studies the topic within its context, and uses an emerging design	Researcher works with particulars (details) before generalisations, describes in detail the context of the study, and continually revises questions from experience in the field

Source: Creswell (2007:17)

The qualitative research design could be applied to conduct, *inter alia*, case studies, ethnography, narrative enquiry, phenomenology, grounded theory, discourse analysis, feminist qualitative research, and historical qualitative research (Tomaszewski et al., 2020:2). Table 6.2 below (which compares research approaches on key design criteria) provides a further explanation. Similarly, they argue that qualitative research is rooted in interpretivist and constructivist paradigms (see Section 6.3.1) and aims to deeply understand a research subject rather than to predict outcomes, as in the positivist paradigm. Carefully conducted qualitative research is internally consistent; rigorous; and helps to answer important questions about people and their lives. These fundamental epistemological foundations are crucial to cultivate an appropriate research mindset before designing and conducting qualitative research (Tomaszewski et al., 2020:1-2). However, it does not imply that the approaches highlighted in this section are exhaustive. Studies will select an appropriate approach. Table 6.2 below illustrates a clear distinction of selected common approaches utilised by researchers.

This empirical study adopted a qualitative case study design to obtain an in-depth understanding of the institutional, legal, and normative reasons underlying the exclusion of collective bargaining within SA's civilian intelligence services. The case study approach enabled the researcher to examine this exclusion within its specific constitutional, organisational, and national security context.

Embedded within the case study was a phenomenological dimension, aimed at exploring and interpreting the lived experiences and perceptions of participants directly affected by, or professionally engaged with, the absence of a collective bargaining framework. These participants included employees of South Africa's civilian intelligence services, human resource practitioners, subject-matter experts, and representatives from the Office of the Inspector-General of Intelligence.

Data were collected through one-on-one semi-structured interviews which is a method consistent with both case study and phenomenological inquiry. In addition to interviews, the study systematically analysed official, publicly available documents and relevant legislation to triangulate findings. Furthermore, thematic analysis was employed to identify similarities and differences concerning existing consultation mechanisms. In this regard, the conceptual foundations of collective bargaining and the extent to which national security considerations are invoked to justify limitations on employees' constitutional rights, including the right to form and join trade unions were interrogated. The case study approach is discussed in Section 6.3.1.

Table 6.2: Comparison of research approach: Key design criteria

	Case study	Ethnography	Narrative	Phenomenology
Goal	Describe case/cases to develop an in-depth understanding of the context of specific case/cases	Describe shared and learned cultural practices of a specific group of people (culture)	Describe stories people tell about their lives and lived experiences	Describe meaning of the lived experiences of a phenomenon by persons who lived it
Formulating research questions	What are the qualities/characteristics of the unique/representative case?	What are the shared practices of the culture?	What is the story of the lived experience?	What is the essence of the phenomenon of interest?
Sampling	People with roles within the boundaries/criteria/context of the case	People who participate in or experience the culture of interest	People who contribute to the story of the experience	People who have lived the phenomenon of interest
Data collection	One-on-one interviews or focus groups in which participants describe the case Observations of participants in the context of the case being studied Observations of the setting(s) where the case(s) occur Documents (physical or digital) that are representative of the case(s)	One-on-one interviews or focus groups in which participants describe the culture Observations of participants in the context of their culture; Observations of the cultural setting Documents (physical or digital) that are representative of the culture	One-on-one interviews in which participants tell a story about their experience Observations of participants during story telling or enactment of the story Documents (physical or digital) that are representative of the narrative	One-on-one interviews or focus groups in which participants describe the experience Observations of the phenomena of interest Documents (physical or digital) that are representative of the phenomena
Data analysis	Constant comparative; Thematic	Constant comparative; Thematic	Narrative analysis	Phenomenological analysis

Source Tomaszewski et al., 2020:2

6.3.1 Qualitative research through case studies

Rashid et al. (2019:1) highlighted that a case study research approach enables one to conduct a thorough investigation of complicated situations within a specific narrative. Therefore, one must be realistic and investigate a situation within the specified period so as it can have an impact. In this instance, Yin (2017:18) agreed that it explores a situation thoroughly as it unfolds and assists one to comprehend its complex nature. According to Meredith (1998:442-443), it deploys variety of instruments to gather data from various environments by observing a situation directly *“in a single, natural setting that considers temporal and contextual aspects of the contemporary phenomenon under study, but without experimental controls or manipulations”*.

Chapters 2, 3, 4, 5 of the study focused on interrelated public service and administration which impact negatively on the employees' fundamental rights in the SA's civilian intelligence services. Therefore, labour relations regimes in the SAPS, SANDF and, e.g., the CSIS were examined to highlight contradictory justifications to exclude a collective bargaining mechanism within the civilian intelligence services. Furthermore, Chapter 5 highlighted specific interventions which could have been explored to redress the existing inequalities within the civilian intelligence services, with due consideration for the secret nature of the intelligence environment. By adopting a case study approach, an in-depth analysis of similar environments with varying labour relations dispensations was explored, as well as a document analysis which aligned with the context. Chapter 8 of the study lays the groundwork for practical interventions that may be implemented by civilian intelligence services in pursuit of natural justice and a peaceful work environment based on the Bill of Rights and the Constitution of South Africa (1996). For these reasons, the case study approach facilitated an in-depth understanding of collective bargaining within the SA's civilian intelligence services and was well-suited for this study.

Data analysis has become increasingly more sophisticated with many qualitative software programmes vying for prominence in qualitative research. These programmes incorporate advanced sub-modules which enable researchers to output qualitative codes to spreadsheets, statistical programmes, or to concept maps. Regardless of the approach, all qualitative research tends to follow the basic process of research, for example, introduction, questions, methods of data collection and analysis, etc (Creswell, 2007:4-6). Therefore, the researcher is expected to balance or interrogate the diverse perspectives in qualitative research and utilise the most appropriate approach suitable for the specific research problem. However, gaps could be encountered, which would require attention as explained in Section 6.4.

6.4 Literature review: Gaps

A research gap is, simply, exploring something that is missing, and makes it difficult to arrive at a particular conclusion. Therefore, Müller-Bloch and Kranz (2015:1) maintained that it is important to locate this missing piece of information as an important component to interrogate existing literature. However, this process is complicated due to the lack of a standardised format to locate these gaps in a qualitative literature review. Chapter 1 highlighted the significance of a literature review and the rationale for complementing it with the qualitative research method of semi-structured interviews.

As established in Chapter 2, Liberal Democratic Theory served as the normative framework of this study. As such, this theoretical approach did not only guide the literature review but directly informed the qualitative research design and formulation of the semi-structured interview questions. Furthermore, it emphasises constitutionalism, equality, freedom of association, participatory governance, and legitimacy of authority. Similarly, these principles are entrenched in the Constitution of South Africa (1996). They also shaped the empirical inquiry by directing attention to whether the exclusion of collective bargaining within SA's civilian intelligence services is compatible with liberal democratic standards of fairness and justified limitation of rights.

Chapter 3 described the fundamental principles which govern collective bargaining within liberal democracies. The chapter illustrated the fundamental principles which are required for effective collective bargaining within liberal democracies. This included freedom of association and a right to belong or form a trade union, as well as to participate in critical decision-making processes within the workplace. Therefore, collective bargaining in liberal democracies provides workers the right to influence the rules under which they work and the ability to counter the employer's bargaining power.

The aim of Chapter 4 was to assess and convey the unique nature of collective bargaining in SA's civilian intelligence services. An overview of how collective bargaining is regulated and conducted within the SA public service in general was discussed. Furthermore, the chapter interrogated the second research question, *i.e.*, the reasons for excluding collective bargaining within SA's civilian intelligence services. The chapter concluded that the secret or confidential nature of civilian intelligence services may not serve as adequate grounds to limit the employees' constitutional rights to engage in collective bargaining. Moreover, this submission was based on the provisions of the national and international laws which facilitated the establishment of a functional and effective mechanism to advance the interests of both the employer and employees within the civilian intelligence services.

In Chapter 5, it was concluded that having an autonomous collective bargaining structure within the civilian intelligence services outweighs the perceptions of instability, ill-discipline and threat to national security. However, the chapter did not suggest that the only option for the current consultation mechanisms is to permit employees to join trade unions of their choice. As such, it was suggested that civilian intelligence services could engage in collective bargaining by considering available methods to resolve disputes, despite being excluded from the LRA. This alternative was proposed to avoid conflict and encourage a participatory decision-making process including collective ownership. Therefore, the aim of the chapter was to address the following research question: *what is the role of having an autonomous collective bargaining structure within the SA's civilian intelligence services?* However, this question was not fully exhausted in Chapter 5 due to the lack of an appropriate model to replace the current mechanism with collective bargaining. There are numerous options. Thus, the semi-structured interviews helped to address this gap, by focusing on alternative models to engage effectively with the employees including the challenges posed by the current *status quo*.

The empirical research involved gathering primary data from the field to analysis and address gaps found in the secondary data, or the reviewed literature. This approach filled the gaps and ensured that all the research questions could be answered (see Section 1.4, Chapter 1). The following five gaps which were identified are applicable to the empirical research:

- i. validate the theoretical context for collective bargaining within liberal democracies;
- ii. describe the fundamental principles which governs collective bargaining within liberal democracies;
- iii. explore the reasons for the exclusion of collective bargaining mechanisms which literally undermines civil rights as enshrined in the Constitution;
- iv. expose the role of an autonomous collective bargaining structure within the SA's civilian intelligence services; and
- v. explore an appropriate collective bargaining model for the SA's civilian intelligence services.

The following sections explain how the empirical data generated through these interviews was integrated with the secondary data to provide a comprehensive analysis of the research questions.

6.5 Data collection instrument: Qualitative study

Based on the arguments presented above, the study utilised semi-structured interviews as the main data collection tool to address the gaps identified in the previous section. This approach was utilised because it offers an exploratory interview format which is commonly used in social studies for qualitative research purposes. Adams (2015:492) asserted the utilisation of *“closed- and open-ended questions”* is typically accompanied by supplementary inquiries. Therefore, the flexibility of discussions allows the interviewer to extend beyond the prepared questions in a follow-up to an enhanced understanding of the phenomenon. This method inevitably promotes clarity and follow-up in cases where the researcher may have overlooked certain phenomena.

The questions designed for the semi-structured interviews aimed to gather information to thoroughly address the issues under investigation. Furthermore, the gathered data were used to explore collective bargaining as a right of employees in terms of the Constitution of South Africa (1996) as well as assess the impact of its exclusion by the LRA within the SA's civilian intelligence services. The overall objective was to determine the most appropriate collective bargaining practices within the SA's civilian intelligence services. In this context, the findings from the empirical study were discussed in Chapter 7, while the reviewed literature was integrated with the empirical study as explained in Chapter 8. Similarly, the problem statement was addressed and respond to the general research question in Section 1.4 in Chapter 1. Furthermore, the chapter outlined the details of the population, sampling techniques, data collection instrument, and data collection procedures.

6.6 Population and sampling

According to Thacker II (2020:1), a *‘population’* is a group of persons who are identified for sampling when conducting research because of similar behaviour or expertise. However, a sample is a constituent part of the population. Furthermore, it defines the target population before the research is conducted. Therefore, these could be persons of interest who could add value towards understanding the complex situation under investigation and assist the researcher to reach specific conclusions (Miner et al., 2012:248). The study identified the population as experts with experience related to consultation mechanisms and knowledge or exposure to collective bargaining dispensation, ideally within the SA's civilian intelligence services or the SSA. SA's civilian intelligence services comprises of an external and a domestic branch and its headquarters are based in Pretoria, South Africa. According to the Intelligence Services Act 65 of 2002 and *“regulations on consultation mechanisms, each province is expected to be represented on the staff forum and staff council. In this context, the latter comprises of chairpersons and deputy chairpersons of the staff fora which is*

approximately forty (40) employees from the provinces and headquarters” (Anon., 2023). The study targeted ten (10) employees; subject matter experts; and employer representatives from which the researcher could draw a sample (see next section).

6.6.1 Rationale for the sample

Bernard (2013:130) argued that *“the first thing that one needs for a good sample is a good sampling frame: a list of units of analysis, from which one takes a sample and from which one generalises”*. Therefore, to enhance the validity of the findings, the researcher considered the relevance and expertise of the interviewees to acquire a balanced view of the issues under investigation. This approach is supported by Palinkas et al. (2015:533-544) who asserted that ‘purposeful sampling’ is commonly utilised in qualitative research to identify candidates who could provide valuable insight and are accessible during the inquiry. Therefore, it relies on the limited scope of involvement from individuals who are knowledgeable and can provide valuable contributions during the process (Morgan, 2008:800; Palinkas et al., 2015:1).

Based on the above arguments, certain inclusion criteria were utilised to identify suitable respondents. According to Patino and Ferreira (2018:84), these criteria are crucial to identify individuals who would assist the researcher to reach a specific conclusion. Additionally, there were no age or gender restrictions in this study. The participants expertise and experience were underscored in the following matters:

- an in-depth knowledge of the SA civilian intelligence services consultation mechanisms;
- fair understanding of collective bargaining;
- good comprehension of the English language;
- participated in or are involved in consultation processes;
- employed or are employed in human resources/labour department;
- involved in management of or exposed to consultation mechanisms;
- legal understanding and appreciation of constitutional matters; and
- fair understanding of labour relations.

The respondents of this group were selected carefully to ensure the representation of provincial and headquarters’ employees as well as employer representatives. Correspondingly, actual consultation took place at the headquarters, where consultation committees meet, although consultation between employees’ and management’s representatives also takes place at provincial level. Importantly, this was due to the size and number of employees at the provincial offices as well as the strategic labour-related issues discussed at a national level which are common across the board (Anon.,2023). Ultimately, a sample size of ten (10) respondents was formed, including all the affected parties. This included employees and management from nine provinces as well as representatives from

the headquarters of SA's civilian intelligence services. The respondents comprised of a group of individuals with unique yet interrelated expertise, which included:

- Knowledge and expertise in labour relations and consultation mechanisms within the civilian intelligence services of South Africa; France; Ivory Coast and Canada.
- Expertise in consultation mechanisms, the Staff Council, and the subject matter experts including staff representatives and management.
- Expertise in collective bargaining and constitutional rights.
- General knowledge and expertise in employee or labour relations in general.

6.7 Data collection process (Empirical)

As stated in Chapter 1, Section 1.6.1, some of the most common methods of data collection include document study, (non-) participant observations, semi-structured interviews and focus groups. In this context, semi-structured in-depth interviews were employed for this qualitative research. According to DeJonckheere and Vaughn (2019:1), this approach enables discussions between the interviewer and the interviewee as well as flexibility in terms of enhancing the enquiry. Therefore, semi-structured interviews were employed to understand the phenomenon of excluding collective bargaining with the sensitive civilian intelligence environment by interacting with participants who could provide valuable insight to achieve the objectives of the study (see Section 6.5, Chapter 6).

Knott et al. (2022:1) concur that in-depth interviews allow for transparent discussions and follow-up questions which helps to build a particular framework. This format enables the respondents to respond and pose questions if there is a misunderstanding or need clarity based on their personal experiences. However, in-depth interviews vary and involve more than one interviewee or interviewer and require a thorough understanding of the nature of this relationship which must be clearly defined (Knott et al., 2022:2). In this context, the researcher used a topic guide to ensure thorough knowledge and preparation to acquire a deeper insight into the respondents' experiences. Moreover, the researcher followed the interviewee's narrative and generated questions spontaneously based on that discussion.

Due to face-to-face and repeated interaction between the interviewer and the interviewee, the assumption, Kumar (2014:193) suggested that *"the rapport was enhanced, and that the corresponding understanding and confidence between the interviewer and interviewees led to in-depth and accurate information"*. Moreover, carefully selected questions addressing the research objectives were posed to the most experienced interviewees, that is, those capable of providing the best information, over a period of six months. Additionally, the interviews were conducted in boardrooms, restaurants or wherever the participants felt comfortable.

Face-to-face semi-structured interviews were held with key participants who were purposively selected. Furthermore, in-person semi-structured interviews allowed the researcher to evaluate feedback in real time and respond to any misunderstanding immediately (Walliman, 2011:92; Brinkmann, 2014:290). Similarly, the sample and the identification of eligible participants who agreed to participate voluntarily in the research was explained in Section 6.5. The interview questionnaire comprised of 10 questions linked to the knowledge gaps identified in the literature study (see Section 6.5.3). Furthermore, the questions aimed to address these five knowledge gaps and capture additional insight into solving the research questions, including the primary research question: *what would be a suitable collective bargaining model for the South African civilian intelligence services?* In this context, the questionnaire is attached for reference in Annexure C.

According to Sutton and Austin (2015:227), the choice of instruments (e.g., focus group, one-on-one interviews) and worldview is less important as the approach will always require the collection of substantial information. More importantly, it is essential to document data during interactions including notes or video recording. Furthermore, this data must be captured verbatim before any form of analysis. In this instance, the researcher adhered to this practice and audio-recorded the interviews and transcribed these verbatim.

It is important to consider strategies to access respondents, e.g., offices; premises; or any other institutions where participants are located when planning data collection. In this context, the researcher would need to request permission from the employer to access the premises or interview employees. However, this would not necessarily be required in selected circumstances. The researcher must adhere to protocol when conducting research with employees at SA's civilian intelligence services due to the sensitive nature of the information they have access to. However, there was no need to acquire permission from the employer in this instance because the investigation was based on legislative documents which are available in the public domain (Bos, 2020:260). Hence, there was no need for a gatekeeper's letter. The participants were readily accessible on a voluntary basis. Nonetheless, an ethical process was followed to acquire consent from the respondents (see Section 6.8.1).

6.8 Implementation of ethical considerations

In line with the ethical considerations discussed in Section 1.8 of Chapter 1, it was confirmed that the presented data accurately reflects how events unfolded during the interviews and essentially within the work environment of South Africa's civilian intelligence services. Therefore, the credibility of the information was established through data saturation. Similarly, the case study findings were generalised to theoretical propositions rather than populations. Hence, the findings of this study can be generalised to other civilian intelligence services

because workers' rights are protected by ILO proclamations including respective domestic legislation. In this context, the dependability of the information was established through effective interviewing and administrative skills. Thus, there was no need to revise the data collection process. Lastly, the findings corresponded with the Constitutional Court in *SANDU v Minister of Defence (1999) and (2007)* that workers' rights are constitutional and protected by the Bill of Rights as per the Constitution of South Africa (1996). Invariably, the objectivity and conformability of the results are beyond doubt. Consequently, the study was transformative and contributed to the body of knowledge on collective bargaining within the SA's civilian intelligence services.

The semi-structured interviews were guided by a topic outline that included a set of key questions, which were based on the research aims. This approach shaped the framework for engagement to pose probing questions and a structured format for questioning. Moreover, it also provided the participants an opportunity to raise concerns which might have been overlooked during the interview. The interviewees were informed of this provision, and they could withdraw at any time if they so wished. Hence, the research was not designed to manipulate responses or the behaviour of the participants. Furthermore, ethical considerations for the researcher were considered when designing and conducting interview-based research alongside the potential for engagement in these interviews to serve as a catalyst for professional learning in practice.

The participants gave consent to participate voluntarily in the research before the interviews commenced. In this context, all the participants were provided with a brief explanation of what the interviews would entail when securing their personal appointments. A written consent form (see Annexure C) was provided, and each participant was requested to sign it. Anonymity was guaranteed by a non-disclosure clause, and their identities were protected. Only the researcher is aware of the identities of the respondents. Furthermore, the integrated data from the interviews, including all the transcripts, were stored in a cabinet by the researcher, which would be disposed of after five years of the completion of this study.

Based on the above protocols, the signed forms and recorded interviews were stored electronically, and these are in the possession of the researcher. The participants were informed that the information they provided would be utilised only for academic purposes. They were also assured that their names would not be disclosed. The venue for the interviews was not in the individual respondents' offices but in boardrooms outside the workplace, homes and restaurants which were secured to minimise disturbances.

Lastly, it is essential that the gathered data during interviews and literature review be accurate. Importantly, the researcher endeavoured to remain neutral and did not manipulate the

outcome for any reason with the understanding that such behaviour could result in disciplinary action (Creswell, 2014:99; Babbie, 2007:67). It can be confirmed that this study reflects the researchers own work and is in compliance with the required scholarly norms (Preissle, 2008:276).

6.9 Conclusion

The chapter outlined the methodology and research design for the empirical study. The study was guided by the transformative research paradigm or Critical Theory which was based on induction. In this context, qualitative research describes the way data was collected and analysed. The research reviewed literature, which was explorative in nature and focused on the empirical study to gather primary data through case study research. This approach enabled the collection of in-depth data by determining the causes and effects of excluding collective bargaining within the SA's intelligence services. Furthermore, the empirical data collection method for this case study involved face-to-face semi-structured interviews with key participants. The participants were purposively sampled by utilising the snowball technique based on their expertise in consultation mechanisms, collective bargaining and the SA's civilian intelligence services.

Based on the above, the interviews concluded when data saturation was reached. The empirical research was conducted from May 2023 to September 2023. Consequently, the outcomes from the gathered data revealed consistency – an indication of the trustworthiness and authenticity of the research process. Essentially, there is no evidence of prior research that was conducted on exclusion of collective bargaining within the South African civilian intelligence services which makes it difficult to compare with other published studies. However, the empirical results and findings will be presented in the next chapter of this study.

CHAPTER 7: FINDINGS: EMPIRICAL RESEARCH

7.1 Introduction

This chapter presents the findings derived from the empirical research conducted to address the study's primary research questions, notably: *(i) the reasons for excluding collective bargaining within the South African civilian intelligence services* and, *(ii) the role of an autonomous collective bargaining within these institutions*. Furthermore, it addresses knowledge gaps identified during the literature review (see Section 6.4, Chapter 6). The empirical research was designed to gather additional insight into the theoretical context which underpins collective bargaining within liberal democracies; understand reasons for the exclusion of collective bargaining within the SA's civilian intelligence services; as well as disclose the role of an autonomous collective bargaining organisation within the SA civilian intelligence services.

The respondents' responses were codified and grouped under six comparable headings:

- i. Perceptions of the current consultation mechanism and collective bargaining in general.
- ii. Critique of the *status quo* and more specifically reliance on consultation mechanisms rather than collective bargaining within the civilian intelligence services.
- iii. Views of an appropriate form of collective bargaining.
- iv. Considerations to institute a collective bargaining framework designed for the civilian intelligence sector.
- v. Recommendations for an appropriate labour relations model for engagement between employer and employees.
- vi. Opinions on the optimal organisational level for the consultation process.

Based on these thematic issues, the chapter was designed to analyse the connection between labour rights, security considerations and governance within the SA's civilian intelligence services.

7.2 Views of established consultation mechanisms and collective bargaining

The questions within this theme aimed to assess the reasons for and the differences between the consultation mechanism and collective bargaining. The findings were discussed in two sections: (i) consultation mechanism, and (ii) expressed need for collective bargaining within the SA's civilian intelligence services.

7.2.1 Consultation mechanism

Respondent C attributed the absence of collective bargaining to practices from the apartheid-era National Intelligence Service (NIS), which justified the exclusion based purportedly on sensitive or secret nature of the civilian intelligence services. According to this respondent, the NIS aimed to conceal discrepancies in benefits between its own former employees and the defunct security service of the African National Congress (ANC); Department of Intelligence and Security (DIS); as well as other former liberation movements' intelligence structures. Furthermore, the adopted National Intelligence Agency (NIA) doctrine was that of a para-military force. A consultation mechanism was only introduced after engagements with the Canadian Security and Intelligence Services (CSIS). However, this mechanism was limited to discussions on salary increments and excluded substantive matters which affected conditions of service. Respondent A insisted that no formal consultation mechanism was implemented during the amalgamation of the former NIS and the liberation armed forces and intelligence structures.

All the respondents demonstrated a similar understanding of the difference between the *"consultation mechanism"* and *"collective bargaining"*. They collectively viewed the consultation mechanism as a subordinate to the SSA executive's discretion, which served primarily as a compliance measure rather than a participatory and inclusive process of negotiation. Consequently, the respondents underscored that the process lacked enforceability as it did not result in binding collective agreements. This in turn, diminished the employees' influence over decisions which affected the conditions of service.

There is significant concern regarding the efficiency of this mechanism as articulated by Respondent D who described it as *"just a talk show by management"* since the power of decision-making rests solely with the SSA executive. Correspondingly, this view was also shared by Respondent I. Based on their experience, engagement between the employee representatives and the SSA executive did not result in legally binding agreement. Invariably, Respondents A, C, D, E, F, G, H, I and J all concurred that the consultation mechanism lacks provisions for dispute resolution. Therefore, it leaves employees without legal or institutional recourse in cases of disagreement. Additionally, these respondents highlighted the SSA executive's failure to consult employees on matters of interest including filling of critical positions.

The above sentiments were also shared by Respondent C who asserted that the consultation mechanism was deliberately designed to shield the employer from potential litigation under the disguise of maintaining the historic secrecy of the civilian intelligence services. Alarmingly, findings indicated that this deliberate distinction between consultation and collective

bargaining serves to exclude employees from meaningful participation in critical decision-making processes such as salary increment, promotions, equity matters, sexual harassment allegations, and concerns about nepotism. Therefore, these views aligned with the theoretical argument presented in Section 4.3.2 of Chapter 4 and Sections 5.2.3.1 and 5.2.3.1.(I) of Chapter 5 which expounded upon the absence of legally binding collective agreements.

Adding to this apparent oversight and management failure, Respondents E and F criticised the Intelligence Services Council on Conditions of Service (ISCCS) and referred to these as ineffective and lacked the authority to influence ministerial decisions. Consequently, the Minister remains the final arbiter in employer-employee consultations (see Section 4.3; Section 5.3.2.1, Chapter 5). While Respondent F acknowledged the Minister as the only relevant presiding figure, this arrangement posed a challenge due to the person's possible redeployment which could result in instability. As a result, Respondent A reiterated that the existing structural arrangement was deliberately configured to protect the employer's interests and perpetuate inequality whilst oppressing the employee's dissenting views.

Consequently, the consultation mechanism had become a deliberate attempt by the civilian intelligence services to circumvent the introduction of collective bargaining as a legitimate dispute resolution mechanism. Nevertheless, Respondent B acknowledged a persistent need for effective consultation and dispute resolution mechanisms that should be mandatory if fully fledged collective bargaining remains unimplemented. Therefore, these arguments explained the SSA's executive's resistance to consult with employees meaningfully on conditions of service.

7.2.2 Collective bargaining in Civilian Intelligence Services

Respondents F, G, H and I held that there is no justification to exclude collective bargaining within the SSA and attributed it to misalignment between the Intelligence Service Act 6 of 2002 and the Constitution of South Africa (1996). Although the Act empowers the Minister to deal with grievances, it is silent on a dispute resolution mechanism. While the LRA established the framework for workplace fora and clarified the exclusion of collective bargaining within civilian intelligence services, it remains at odds with the spirit of the Constitution. Despite these criticisms, opinions on the appropriateness of collective bargaining within the civilian intelligence services were not unanimous. Unlike the SANDF and SAPS there was no consensus on an appropriate bargaining model given the sensitive nature of the intelligence environment (see Sections 4.2 and 4.3, Chapter 4; Section 5.2, Chapter 5). However, the dissenting opinions do not negate the argument that the exclusion of collective bargaining within the civilian intelligence services is unjustified.

Respondents A, G, and I argued that the exclusion infringes on the employees' constitutional rights. Furthermore, Respondent A identified this exclusion as a continuation of the NIS-era framework which is incompatible with democratic governance. Conversely, Respondents B, C, D, E, G, and I justified the exclusion and cited the secret nature of intelligence operations. Furthermore, it necessitates protection of both employer and employee interests as well as prioritise national security. Additionally, these respondents noted that globally it typically restricts employee participation in labour matters to safeguard the employees' identities and maintain operational secrecy. They contended that this exclusion was essential to preserve command and control within the departments. However, the respondents misinterpreted the Constitution of South Africa (1996) incorrectly as being ambiguous on the application of fair labour practices within the intelligence context. In this regard, Chapter Two of the Bill of Rights of the Constitution, explicitly outlines limitations on rights, as articulated in the Constitutional Court's ruling in the *South African National Defence Union (SANDU) v Minister of Defence (1999(4))*.

The reasons for the exclusion of collective bargaining within the civilian intelligence services emanated from the LRA which is in direct conflict with the provisions of the Constitution and other international instruments, as guided by the ILO. Therefore, the SSA management capitalises on this legislative vacuum to undermine the employees' fundamental rights. More importantly, the SSA utilises the secret nature of the civilian intelligence services as the primary reason to exclude collective bargaining mechanisms. This argument is unsustainable, because the SANDF and SAPS has shown that collective bargaining cannot compromise the security of employees or the employer nor expose secret operations of the military or the police.

7.3 Critique of *status quo* (Consultation mechanisms vs collective bargaining): Civilian Intelligence Services

The findings revealed a systemic and entrenched reluctance within the civilian intelligence services to adopt collective bargaining. Invariably, this reluctance was due to a combination of legislative, institutional, and cultural or historical factors. However, it propagates an imbalance of power between the employer and employees. Therefore, this development empowers the employer to retain unilateral control over conditions of service by confining the employees to consultation forums which lack legitimacy. This submission was confirmed by the respondents who consistently cautioned that the consultation mechanism served as a management tool to control and limit employee participation rather than facilitate meaningful dialogue. Furthermore, the lack of enforceable collective agreements weakened the employees' ability to influence decision-making processes. Hence, due to this dynamic, the

employees' grievances and concerns were routinely disregarded or inadequately addressed. Hence, trust and morale were compromised.

The discontent was further compounded by the failure to align the South African legislative framework which regulates security establishment with employees' fundamental human rights. This legislative gap is exacerbated by the ineffective oversight role played by the Intelligence Services Council on Conditions of Service (ISCCS) since it lacks the authority and independence to enforce fair labour practices within the civilian intelligence sector. Consequently, the fundamental *status quo* sustains structural inequalities and undermines the principles of transparency, accountability, and fairness. Furthermore, the exclusionary approach affects the development of a motivated and professionally committed intelligence workforce negatively. Hence, the need to strengthen consultation processes by introducing autonomous collective bargaining mechanisms which respect both the security sensitivities and the fundamental employees labour rights aimed to enhance the legitimacy of these structures.

7.3.1 Challenges of managerial legitimacy

A prominent feature among respondents was the perceived lack of legitimacy of representative structures. In this context, Respondent A held that the staff fora and consultation committee are illegitimate, because they do not hold a popular mandate from the constituency which they are expected to represent. Furthermore, this view was corroborated by Respondents G and I, who held that these mechanisms serve the interests of the SSA executive at the expense of the employees. Moreover, the contested issue of legitimacy is ascribed to managerial shortcomings. The executive management's attitude impedes effective consultation with the employees (Respondent C). This sentiment was expressed by Respondents F, G, H, I and J. The participants highlighted the inherent imbalance of power which disadvantaged the employees and limited the consultation process to a compliance consequence which lacked binding outcomes. Furthermore, funding for employee representative activities, as observed by Respondents D and I, emanated exclusively from the employer which compromised the autonomy and independence of the employee structures. Consequently, this financial dependence limited their capacity to advance employee interests which rendered them susceptible to employer influence.

The above discontent was exacerbated by the lack of adherence to the implementation of policy. In this context, meetings between the employer and the employees did not take place as required to promote unilateral decision-making (Respondents C, G and I). Hence, Respondent F lamented that the consultation process was limited to issues of human

resources and not matters of interest, e.g., discuss policy initiatives and its impact on the well-being of the employees.

7.3.2 Legislative matters

Respondents F, I and J identified legislative shortcomings as a primary obstacle to effective labour relations within the SSA. They attributed the ineffectiveness of existing consultation forums to the Intelligence Services Act 65 of 2002 which fails to manage conditions of services and dispute resolutions to an impartial authority, such as the Office of the Inspector General of Intelligence. Respondents F, G and I held that consultation mechanisms need to be strengthened to add value. Furthermore, the same respondents reiterated collectively the inconsistencies between Intelligence Services Act 65 of 2002 and LRA with the Constitution of South Africa (1996). The accounting officer's attitude towards the mechanism was highlighted as well as the lack of political will, including reluctance of the Joint Standing Committee on Intelligence (JSCI) to address this discrepancy.

As analysed in Chapter 5 (Section 5.2), the current consultation framework fails to deliver tangible benefits to either the employees or the employer due to the lack of an autonomous collective bargaining structure. This significant limitation persists despite constitutional court rulings in the *South African National Defence Union (SANDU) v Minister of Defence (1999)* which affirm the necessity of collective bargaining in similar public institutions.

7.3.3 Views on a suitable form of collective bargaining

When considering appropriate models for collective bargaining, Respondents A and J advocated the formation of a trade union to institutionalise collective bargaining and facilitate dispute resolution mechanisms such as conciliation, mediation and arbitration. They proposed that SSA employees should be allowed to affiliate with established public service unions similar to arrangements within the French intelligence agencies and Canada's CSIS. In contrast, Respondent B expressed concerns about allowing an impartial body to adjudicate matters related to civilian intelligence services. It was also argued that it could compromise the identities of the operatives as well as undermine intelligence operations. Instead, Respondents B, G and I recommended that internal mechanisms located within the Office of the Inspector General of Intelligence be strengthened to protect the states secrets. Overall, the respondents appeared generally uncomfortable with the idea to establish a trade union due to the secretive nature of the intelligence environment, which is discussed in the next section.

Question 7 of the interview focused on the possibility to establish trade unions or amend certain consultation mechanisms which would benefit both the SSA employers and the

employees. This question was based on Chapter 5 of the study which referred to a Constitutional Court finding against the SANDF (see Section 5.6.2.1, Chapter 5); precedence of selected similar services (CSIS) (see Section 3.3, Chapter 3); and the limitations of the LRA. Whilst there was a general perception that there is a need for change, Respondents A, C, D, E, F, G and I did not favour the establishment of a trade union. However, the lack of willingness by management to engage with employees was the primary challenge. Therefore, consultation mechanisms need to be strengthened to resolve labour related impasse (see Section 8.6, Chapter 8).

Similar sentiments were echoed by Respondents D, G and I who held that the establishment of a trade union would destabilise the SSA and compromise the operatives' identities. Respondent D attributed the lack of coherence in the current legislative arrangements to ambiguity of whether the SSA is an essential service. Nonetheless, Respondents E, F and G argued that the establishment of a trade union would not be in the best interest of the employer or employees. In this context, Respondents F and I contended that the only solution was to strengthen existing mechanisms and allow the Inspector General to preside over disputes on matters of interest. They expressed concerns that the ISCCS is conflicted and lacks the willingness to implement meaningful changes. Respondent B took a divergent stance and argued that the establishment of a trade union would help to limit management's powers and facilitate meaningful engagement, particularly to promote collective bargaining. The respondent stated firmly that there was no legal justification to exclude trade unionism and collective bargaining within the SSA. Therefore, legislation must be reviewed to manage this limitation, and the Minister's powers should be restricted to ensure neutrality and inhibit the potential abuse of power. Furthermore, the respondent also proposed that the SSA should consider a Labour Forum which reports directly to the Office of the Inspector General of Intelligence. By doing so, the mediation and arbitration of disputes would be neutral and minimise conflict within the workplace, as well as safeguard the secret nature of intelligence. The views expressed by the eight (8) respondents suggested a general lack of interest to establish a trade union. Instead, they advocated the review of legislation to strengthen the consultation mechanism.

The purpose of Question 8 was to establish whether the formation of a trade union would have an impact on the SSA's operational functions. In this context, the Liberal Democratic Theory underscores the protection of civil and political rights. The fundamental value is persuasion rather than coercion to achieve the citizenry's cooperation. Equally, this approach promotes fair labour practices and protects employees' rights to express themselves in pursuit of fair conditions of employment. Consequently, this implied that even within the highly concealed environment of the SA civilian intelligence services, the decisions taken in secret and in

disguise of protecting lives, should be shaped by democratic processes and systems. Such an approach would lead to greater accountability.

Despite conflicting views, there was consensus amongst most of the respondents that legislative reformation is imperative. However, this should be executed by either facilitating the establishment of trade unions under stringent circumstances or strengthen existing consultation mechanisms to enhance meaningful employee participation. Similarly, Respondent E was cautious about the possibility that the formation of a trade union could lead to strikes, which could pose a threat to the SSA's operational functions. In contrast, Respondent F expressed uncertainty regarding any potential impact on the SSA's operations. The respondent argued that the manner in which a trade union is established would determine its functionality and the impact. Nonetheless, this respondent raised a key concern about the probable risk of compromising the identities of individual employees, which are meant to be protected. Therefore, it was suggested that the SSA could benefit from bench-marking with the SAPS and the SANDF, both of which have similar arrangements and have permitted the formation of trade unions resorting to strikes (see Section 5.2, Chapter 5).

Despite an earlier submission, Respondent B suggested that the formation of a trade union may or may not impact on the SSA's operations. The "may" indicated that while the current *status quo* is ineffective, the establishment of a trade union is not a viable option, because it would expose the confidential nature of the intelligence environment. Furthermore, the respondent held that intelligence officers are by nature expected to suffer in silence. In this context, the formation of a trade union "may not" impact on the operations based on the following reasons: formation would provide the employees more rights and harmonise the work environment; serve as a comparative study for services of a similar nature; and picketing during lunch hour breaks would not necessarily compromise the secrecy and SSA information. The respondent maintained that certain limitations would need to be considered if Option B. *i.e.*, formation of trade union was recognised.

7.3.4 Other proposed interventions

The respondents proposed alternative interventions during the interviews. In this context, Respondent A claimed that there is a need to review consultation mechanisms which was suggested by the ISCCS; Mathews Commission; and the IG Report. However, the respondent cautioned that the Minister, IG and the JSCI could not intervene during disputes on matters of interests. Therefore, the employees would be vulnerable and exposed to probable abuse by management. Respondent C proposed that the ISCCS mandate be amended to focus on broader employee issues including medical aid benefits, salary structures, and build a culture of an officer for life. However, limitations of employee rights were due to the lack of clarity of

the duties of the ISCCS and its independence. It appears that the ISCCS cannot act impartially because it is the beneficiary of the same unjust system, and it does not have veto powers in cases where the Minister issues differing pronouncements. Conversely, Respondent D suggested that since the Inspector General's Office is better located as an independent body to adjudicate disputes, the mandate of the office should be extended to focus on the employees' conditions of service. However, Respondent E attributed the blame to the fragmented government and lack of constitutional direction to address the well-being of the intelligence officers. Similarly, drawing from the current labour dispensation within the SANDF, the respondent held the SA's civilian intelligence services could benefit from this dispensation which has facilitated internal collective bargaining and dispute resolution (see Section 5.6.2.1, Chapter 5).

7.4 Specific considerations: Institute framework for collective bargaining: Civilian Intelligence Sector

The respondents identified the following four factors which should be considered to construct an appropriate framework for collective bargaining: *(i) legislative changes; (ii) balancing of powers; (iii) ensuring trust and good faith; and (iv) recourse in case of disputes*. These four factors are discussed in the following sections.

7.4.1 Mandatory legislative amendments

Respondents F and J unequivocally maintained that the consultation process would never work within the SSA because it is inherently ineffective due to legislative and structural constraints. These constraints impede the establishment of an autonomous mechanism which would allow the employees to engage as equal partners with management on matters of mutual interest. A significant barrier is the legislative vacuum that empowers management to classify critical policy documents and thereby exclude the employees from meaningful engagement. Consequently, it is evident that the consultation process is not positioned at the appropriate level and grants management the power to deny employees the opportunity to participate in strategic discussions.

The sentiments expressed above were widely shared among the respondents who accused the employer of bias and intentionally suppressing employees' participation in critical decision-making processes. Respondent B further explained that this situation creates an enabling environment for discontent and insider threats. Similarly, Respondent D attributed this challenge to the vagueness of the legislation which was deliberately crafted to oppress the employees. Surprisingly, this participant, who was supported by Respondent E, suggested the need to establish a trade union without pronouncing it publicly. However, the respondents

could not articulate the details of a secret trade union. Equally, Respondent D proposed several amendments: revise legislation to allow for collective bargaining; review the ISCCS mandate; declare the Inspector General's Office as a Section 9 Institution with the authority to adjudicate any dispute within the civilian intelligence services; and remove the SAPS CI from the jurisdiction of the Inspector General. Essentially, this responded argued against the establishment of trade unions and argued that it would create a fertile ground for unwanted foreign intelligence activities.

Question 9 aimed to assess whether there was a common understanding of the implications of the limitations of rights, including the right to form and join a trade union, to strike and to participate in collective bargaining. Collective bargaining advocates for social justice, joint decision-making and collective responsibility by employees and employers (see Sections 3.2, Chapter 3). In this context, it was not contested that one of the primary objectives of collective bargaining is to reach a collective agreement which is binding to both parties (see Sections 3.3, Chapter 3; Sections 4.2 and 4.3, Chapter 4). Hence, freedom of association and the right to collective bargaining are the fundamental rights of the workers and are recognised in most liberal democracies and South Africa in particular.

All the respondents were aware of the exclusion of collective bargaining and a trade union within the SSA as well as it is against the constitutional prescripts. Respondents A and J explained that the Chief State Law Advisors and the Staff Council cautioned the Minister of State Security of the implications of Sections 23(1), (2) and (3) of the Constitution, as well as that these limitations are unlawful. However, Respondent D and I cautioned that the intelligence environment differs from other state departments and cannot permit strikes and the establishment of trade unions. Equally, the respondents were adamant that such strikes and trade unions would promote anarchy and disregard elements of command and control. Respondent E also cautioned that the primary challenge lies in the SSA executive's lack of understanding of fair labour practices and attribute the blame to the leadership of the African National Congress (ANC).

Based on the views expressed, there are substantive issues that contribute to the abnormality of the labour dispensation. Respondents A, I and J asserted that the lack of directives to protect the interests of the employees including job evaluation, prevention of sexual harassment, talent management, promotion, lack of implementation of regulations and the failures of staff influences policy discussions. According to Respondents A and I, an urgent introduction of an independent internal collective bargaining dispensation from the accounting officer would replace the consultation mechanism. Respondents B, F and G concurred that there is a need for an internal collective bargaining mechanism to minimise the leakage of sensitive information and alleviate possible strike action and trade unionism. However, there

is lack of clarity of the actual structuring or location of such an internal collective bargaining mechanism.

7.4.2 Balancing of powers

Respondents A, I and J claimed that there is no balance of power between the employer and employees. Moreover, the assumption that management would engage in good faith did not even arise. This discontentment was shared by Respondents B and G who proposed an internal platform to force both parties to engage in good faith. They suggested the establishment of a platform at which an independent body or the Minister of State Security be appointed and adjudicate in cases of significant discrepancies. Hence, Respondent B cautioned that failure to enact such changes would continue to promote discontent which would lead to leaking of sensitive information and insider threats. This submission was also shared by Respondent C, who accused management of contributing to this challenge.

7.4.3 Ensure trust and “good faith”

Respondent D asserted that the phrase ‘good faith’ is used to patronise employees and therefore lacks real meaning. The respondent further attributed dissatisfaction to the legislative vacuum and cited inadequate rules to regulate the engagement between two consulting parties. In contrast, Respondents E and G argued that SSA management is too quick to impose punitive measures and victimise the participants during disagreements which emanated from legislative limitations. Consequently, the employer exploited the lack of legal recourse and the costs associated with approaching the courts for relief.

7.4.4 Recourse instances of disputes

According to Respondents F, G and H, discussions began at the political level to reassess - the current consultation dispensation. However, they noted that the accounting officer refused to engage on this matter and resorted to bullying tactics against employees’ representatives to stifle debates. Similarly, Respondents F, G and I also highlighted that to approach the courts, including the Constitutional Court is costly particularly since they are not allowed to make contributions due to the absence of a trade union. They cautioned even if a trade union existed, the limited number of participants would impede contributions because SSA employees who are eligible to participate in consultation mechanisms are significantly fewer compared to the SANDF and SAPS.

7.5 Suitable form of labour relations: Engagement between employer and employees

Question 4 aimed to identify the most suitable form of labour relations for engagement between the employer and employees. According to Respondents F and G, the most suitable form of labour relations could be to permit collective bargaining. Furthermore, the members who are not in the core business of the SSA to affiliate with reputable public service unions. Alternatively, the SSA should amend legislation and introduce an internal collective bargaining structure to facilitate collective agreements which would be binding to both the employer and the employees. Therefore, legislation must be amended to institutionalise a dispute resolution mechanism; strengthen the consultation mechanism; and empower the Office of the Inspector General to preside over matters of interest.

7.6 Ideal organisational locus for consultations

The purpose of Question 5 was to establish whether the consultation processes took place at an appropriate organisational level; and all the parties enjoy the same status, especially in the absence of a formal collective bargaining agreement. According to the respondents, a consultation process was not taking place at an appropriate organisational level due to the peculiarity of the intelligence environment. In this context, Respondents F, G, H and I argued that the process took place at the ISCCS level, and the Chairperson of the Committee was also an employee of the SSA; reports were presented to the Director General of the service; and the budget was sourced from the same department. Therefore, they argued that the ISCCS Chairperson could not take independent decisions or preside over disputes between the employer and the employees. However, Respondents C and H were unambiguous about the level at which the consultation process took place to promote a culture of victimisation.

Question 6 aimed to explore the recourse available if one party failed to consult or negotiate in good faith as well as the rights that employees hold under the current employee/employer consultation process. Chapter 4 of this study alluded that there was no form of recourse, because the employees cannot approach the Commission on Conciliation, Mediation and Arbitration (CCMA). Moreover, the Intelligence Services Act 65 of 2002 failed to consider mechanisms to manage disputes. This argument was complemented by responses from all the participants who maintained that there was no recourse in the advent of disputes. Therefore, the response to this research question was that there is no recourse if parties in a consultation forum disagreed or in the instance of a deadlock. Unfortunately, the employees are left to fend for themselves and this led to growing discontent. To address this challenge, Respondent C proposed that the mandate of the Inspector General's Office be expanded to focus on conditions of service and dispute resolution. However, Respondent E expressed

concern that the consultation mechanisms often serve as a platform to promote employees who align themselves with management. According to Respondent F, the only structure which could address the current situation is the JSCI, which can facilitate amendments of the Intelligence Services Act 65 of 2002, internal directives and the LRA, and ensure alignment with the Constitution of South Africa (1996). The respondent urged that a consultation mechanism be elevated and granted certain powers and legitimacy within the Intelligence Services Act 65 of 2002.

7.7 Summary: Issues of concern and related proposals

The semi-structured interviews highlighted several key issues and recommendations which are summarised below (also see Table 7.1):

- Policy-related matters: It is important to introduce policies that protect employees' interests including job evaluation, prevention of sexual harassment, talent management, promotion, management's refusal to implement regulations and deny staff council strategic space to influence policy discussions;
- Collective bargaining dispensation: There is a need to introduce internal collective bargaining mechanisms which would either replace or strengthen the consultation;
- Mandate of the Inspector General: The expansion of the Inspector General's mandate to focus on conditions of service and dispute resolution remains crucial;
- Intelligence Services Council on Conditions of Service: The ISCCS mandate must be reviewed;
- Declaration of the Office of the Inspector General of Intelligence (OIGI) as a Section 9 Institution: It is recommended that the OIGI be declared a Section 9 institution and be allowed to adjudicate on any dispute within the civilian intelligence services. Concurrently, it is also proposed that the SAPS CI withdraw from the ambit of the OIGI;
- Trade union formation: Concerns were raised that the formation of a trade union within SA's civilian intelligence services would facilitate a fertile ground for unwanted foreign intelligence activities and insider threats;
- Consultation process: The consultation mechanism must be elevated and allocated formal powers be increased to promote efficiency; and
- Joint Standing Committee on Intelligence (JSCI): The JSCI was identified as a platform to facilitate the amendment of the Intelligence Services Act 65 of 2002, internal directives, LRA as well as align these pieces of legislation to the Constitution of 1996.

Table 7.1: Findings and proposals from the semi-structured interviews

FINDINGS					
Deficiencies in policy related matters					
Transformation agenda	Institutionalise prevention of sexual harassment legislation and punish perpetrators.	Introduce talent management interventions.	Introduce progressive policies to advance promotion of employees	Ensure implementation of intelligence regulations	Create enabling environment for Staff Council to influence policy initiatives and discussions
Inadequate consultation mechanism					
A need for urgent introduction of internal collective bargaining dispensation to either replace or strengthen the consultation mechanism.					
Limited mandate of the Inspector General					
Mandate of Office of the Inspector General of Intelligence be expanded and focus on conditions of service and dispute resolution.					
Ineffective ISCCS					
Review ISCCS' mandate or collapse the structure since it does not serve the interests of the employees.					
Lack of autonomy - Office of the Inspector General of Intelligence					
Declare OIGI a Chapter 9 Institution Extend the authority to allow resolution of any dispute within the civilian intelligence services.			SAPS CI be removed from the ambit of the IG		

FINDINGS		
Formation of trade union as a risk of foreign intelligence exploitation		
Resist formation of a trade union within the SA's civilian intelligence services		
Consultation process lacks legitimacy		
Serves as a vehicle to promote those employees who align themselves with management and work against interests of employees. Consultation process in its current form does not serve the interests of employees.		The mechanism needs to be strengthened and granted certain powers and legitimacy within the Intelligence Services Act 65 of 2002 to level the playing field.
Legislative misalignment of JSCI		
Facilitate amendment of the Intelligence Services Act 65 of 2002	Facilitate amendment of internal directives	Align relevant pieces of legislation to the Constitution

Source: Author's own illustration

7.8 Conclusion

The semi-structured interview schedule for empirical research employed a two-pronged approach. The first six questions focused on the alignment between the consultation mechanism and collective bargaining. These questions aimed to understand the rationale behind the exclusion of collective bargaining within the South African civilian intelligence services (Research Objective ii); and the role of collective bargaining within the civilian intelligence services (Research Objective iii). The outstanding questions were constructed to appraise and comprehend the constitutional implications and limitations of employee rights as per the Intelligence Services Act 65 of 2002 and the LRA (Research Objective iv) to forbid employees to form and join a trade union; as well as strike and embark on collective bargaining. This section of the semi-structured interview schedule also intended to construct a suitable collective bargaining model within the civilian intelligence services (Research Objective v).

The objective of the empirical research was to bridge the gap and validate the essence of literature which suggested that South Africa is a liberal democracy that embraces principles of civil liberties. According to Grogan (2009:10-11), historically, worker-employer engagement was defined through personal contracts that bound both parties. Nonetheless, this arrangement transformed with the introduction of other related pieces of legislation. Hence, the LRA provided a legislative framework to enforce collective agreements including other labour rights regardless of whether stakeholders signed these. However, the Act has become a source of discontent within the SA's civilian intelligence services, as it excludes collective bargaining and formation of a trade union on grounds that are not pertinent to intelligence work such as the issue of essential services.

The limitation imposed by the LRA created an environment which discourages the management of the SA's civilian intelligence services to consult in good faith. In this context, the SSA executive perceives the provision of establishment of a workplace forum (staff fora) as an attempt by employees to micro-manage the institution. As a result, these gaps in legislation and the structural deficiencies created inequality, abuse of power, harassment and other punitive measures against the employees. Similarly, the intelligence environment is inherently insensitive to the individual rights of employees and advances elements of discontent and the phenomenon of quiet quitting. This situation was also revealed by the empirical research which suggested that the lack of a collective bargaining mechanism denies the employees their basic constitutional rights. The only approach to address this weakness is to amend legislation and align the Intelligence Services Act 65 of 2002 and the LRA with the Constitution of South Africa (1996). Therefore, a collective bargaining model with a binding

collective agreement; and a neutral body or person assigned to manage with disputes is recommended. This issue is also considered in the next chapter.

No benefits were identified with the current *status quo* because the employees are disadvantaged and excluded from the critical decision-making processes. The participants responses revealed that there is a need for an independent body to adjudicate on labour related disputes. Despite this agreement, the respondents' perspectives were divided regarding the formation of a trade union on operational functioning of the SSA. In summary, there was lack of certainty surrounding the matter due to the sensitive nature of the intelligence environment.

The South African legislative bodies and the judiciary oppose any form of interference with the fundamental rights of employees, because negligence of these rights could result in instability in the workplace (see Section 3.2, Chapter 3; Sections 4.3.1, Chapter 4). They advocate for employees' indirect participation (see Sections 3.2, 3.2.3, 3.3.3, Chapter 3) in decision-making processes. There is also growing concurrence that democracy within the workplace has been widely achieved through the collective bargaining system (see Section 4.3, Chapter 4). Therefore, freedom of association is a constitutional requirement in South Africa (see Section 3.2.3, Chapter 3) and is largely based on the Universal Declaration of Human Rights of 1948 and international law (see Section 3.2.5). Thus, the absence of a viable collective bargaining model with well-defined bargaining structures within the SA civilian intelligence services may be perceived as a source of conflict in the workplace (see Sections 2.4.1, Chapter 2; Sections 4.2, 4.3; Sections 5.2, 5.3, 5.4, 5.5 Chapter 5). Correspondingly, these opinions of respondents will be considered when developing a suitable collective bargaining model for the SA civilian intelligence services in the next chapter.

CHAPTER 8: SOUTH AFRICAN CIVILIAN INTELLIGENCE SERVICES: APPROPRIATE COLLECTIVE BARGAINING MODEL

8.1 Introduction

This chapter consolidates the key perceptions derived from both the reviewed literature and the empirical findings to outline a framework for an appropriate collective bargaining model within SA's civilian intelligence services. Chapter 9 extends this discussion and provides specific recommendations for implementation. Accordingly, this chapter contributes to address the central research question which guided this study: *"What would be a suitable collective bargaining model for the South African civilian intelligence services?"*. Furthermore, the core findings and interpretation of the study in relation to the broader liberal democratic context within which SA's civilian intelligence services operate is integrated. This chapter is structured to present and analyse the findings in the following four themes:

- Liberal democratic theory
- Collective bargaining in liberal democracies
- Nature and dynamics of 'collective bargaining' in the RSA civilian intelligence services
- Formulation of an autonomous collective bargaining structure

The following discussions reveal how the findings inform the design of an ideal collective bargaining process which forms part of recommendations of legislative and structural amendments to Chapter 9.

8.2 Liberal Democratic Theory

Chapter 2 addressed the research question: *What is the theoretical context of collective bargaining within liberal democracies?* The premise of the thesis was grounded on the Liberal Democratic Theory to assess the possibilities to include collective bargaining within SA's civilian intelligence services. South Africa is a liberal democracy, and the theory was considered appropriate. Furthermore, this argument was based on the principle that the Liberal Democratic Theory embraces the protection of civil rights. Furthermore, it was grounded on equality; fairness; rules of administrative justice; regular elections; right to belong to organised structures; and protection of a broad range of fundamental human rights.

The view of liberal democracy, just like democracy, continues to evolve as scholars attach varying interpretations thereto. Rhoden (2015:565) argued that when democracy is understood in its purest form as government which represents the aspirations of the masses, it excludes the emphasis on *"executive rule of law or constraints, judicial independence or review, civil liberty, property rights, religious freedom, media independence, or minority rights"*. As a result, these rights which are viewed as sacrosanct are not taken seriously in liberal

democracies. Hence, these are emotionally considered as emerging and secondary principles of democracy. Despite this neglect, these extend beyond liberalism's key principles which encompass protection of fundamental human rights (see Sections 2.3 and 2.4, Chapter 2).

According to Kaina (2022:201), governments often establish institutions which appear to promote democracy whereas the motive is to suppress political activism and consolidate state control of the citizenry. Accordingly, liberal democracy comprises of: "*electoral rights, civil liberties and the rule of law*". Effectively, these principles require collaboration and inclusivity; co-existence; acceptance of diversity; and good faith. Therefore, these arguments confirm the assertion in Section 2.3 of Chapter 2 that liberalism is embedded on tolerance and respect of each other's rights.

Based on the above critique, it is evident that the Liberal Democratic Theory may easily be associated with oppression of the proletariat by the bourgeoisie, *i.e.*, state becomes a prominent actor to sustain this type of behaviour. Hence, workers are always subjected to harsh labour practices and expected to commit to business ethics and discourse. Despite these practices, there is an expectation of efficient delivery of services and the need for government to protect the rights of the workers. However, it is still disputed, especially in developing countries like South Africa, whether liberal democracy is justified due to its oversight role and limitation of certain rights which are purportedly based on racial composition. Despite this oversight, it is meant to regulate the government's over-reach (Cheibub & Przeworski, 1999:22) and promote smooth transition during elections (Popper, 2015:223-242). In this regard, the liberal democratic South Africa ensures that all fundamental human rights are safeguarded including the right to affiliate to employee representative structures and engage in collective bargaining. However, it is acknowledged that these liberties may somewhat be restricted due to certain prevalent circumstances.

8.3 Collective bargaining in liberal democracies

Chapter 3 addressed three fundamental issues: (i) collective bargaining within the broader public service; (ii) consultation mechanisms within the civilian intelligence services; and (iii) differences between the two. Through a meta-analysis of the reviewed literature, five fundamental principles which guides collective bargaining in general were identified, namely: (i) dynamics of employee participation in decision-making; (ii) direct and indirect participation of collective bargaining; (iii) freedom of association; (iv) collective bargaining as social justice; and (v) international law as a basis to protect the rights of the workers. However, consultation within the civilian intelligence services has become a form of political participation which is initiated from the top, typically by senior management. In this way, employees provide their opinions to the SSA Executive who have decision-making authority on matters of interest and

conditions of service. This is in contrast with collaboration, which, through high intensity indirect participation, strives to create a common understanding and shared values (see Section 3.2.2, Chapter 3).

Contrary to the SA experience, the Canadian example revealed that liberal democratic principles are incorporated in the CSIS. Therefore, these serve as an effective tool to protect both the employees and employers' rights in the workplace. More importantly, the CSIS provides a progressive model to adjudicate disputes by referring matters to the independent Federal Public Sector Labour Relations and Employment Board, which does not exist within the SA civilian intelligence services. Furthermore, the Canadian example also demonstrated that it is possible for SA's civilian intelligence services to introduce collective bargaining as a core principle of liberal democracy. Equally, it is possible to enact legislation which would allow employees at security establishments and intelligence services to join trade unions and to strike; participate in collective bargaining; collective agreements; and dispute resolution mechanisms as part of their labour relations dispensation.

What is intriguing about the SA's civilian intelligence services' situation is that there is no evidence that the presence of the above-mentioned mechanisms threatens the national security of the state. Significantly, collective bargaining in terms of the CSIS, takes place outside the vicinity of the intelligence service and should not in any way compromise the identity of their operatives and operations. In this regard, the Canadian legislation assigns a public element to the process of grievance resolution, whereby the legislature may intervene to amend the basic legislative framework which underlies the process. Furthermore, this process is articulated in the Federal Public Sector Labour Relations which also includes the Canadian Security Intelligence Services (also see Section 3.3, Chapter 3). Therefore, these are practical cases which demonstrate that the argument of a threat to national security or the secret nature of intelligence cannot be utilised as a motivating factor to exclude a trade union; collective bargaining and the right to strike.

The trends examined in the chapter reflected the strength of continuity, especially union and the employer's determination to maintain an element of collective bargaining, professional functions, and profits respectively. However, freedom of association is always either deliberately or by default associated with labour strikes, which literally gives it a negative connotation. Invariably, international and national legal instruments paved the way for effective collective bargaining in liberal democratic systems which permitted these labour practices. Moreover, the contested nature of trade unionism highlighted the continued reliance on regulations to manage relations. Furthermore, it is also acknowledged that collective bargaining methods would vary from one sector to the other due to the nature of the work

environment. Hence, the employees' and the employers' ability to achieve a particular end depends on choices in the decision-making process.

Based on the above submission, it should also be noted that there are alternatives to collective bargaining which could provide a better platform of engagement between employer and employees. For example, there may not necessarily be a need to establish a trade union where outcomes are mutually beneficial and especially in the absence of irreconcilable differences and unstable work environment. Hence, during the engagement with the employers, certain workers would prefer individual over collective actions. Therefore, it is not the inherent role of legislation to require unionisation and collective bargaining for all workers. Instead, it provides a fair opportunity for workers to select the model which they prefer to resolve conflict and pursue common interests with their employers. Consequently, parties may often agree to deal with disputes which differs from that prescribed in any piece of legislation. Moreover, the fact that collective bargaining in the public sector is more politicised and often a source of conflict could also lead to workers selecting a specific model of engagement.

8.4 Nature of 'collective bargaining' in SA Civilian Intelligence Services

Chapter 4 endeavoured to convey the unique nature of collective bargaining in SA's civilian intelligence services since the advent of democracy in April 1994. To provide a blueprint of how collective bargaining is regulated and conducted within the SA public service in general was required. Therefore, it was evident of how collective bargaining could differ in the civilian intelligence services from the normal practices and rights enjoyed in general by the South African public service (see Section 4.1, Chapter 1).

The reasons for SA's civilian intelligence services' preference of a consultation mechanism without binding collective agreements instead of collective bargaining was exposed. Hence, Chapter 4 distinguished between the two processes and concluded that the fundamental difference is power to influence decisions (see Section 4.5). It was submitted that both processes allow for engagement but differ in the degree of participation. In this regard, it was argued that consultation-engagement between the SSA management and employees, lacks legitimacy because it does not result in binding decisions for parties in discussions. Therefore, it was concluded that this anomaly emanated from legislative ambiguity and authorised the Minister as the sole arbiter to decide the fate of consulting parties.

Despite the above conclusion, the findings from the empirical study (see Sections 7.2, 7.4, 7.5, Chapter 7) revealed that there are perceived benefits of the *status quo* (consultation mechanism rather than collective bargaining) within the civilian intelligence services. Despite these noted benefits, the findings also revealed that the consultation mechanism lacks legitimacy due to managerial shortcomings and feelings of the consultation processes.

Moreover, the consistent conflict is due to the lack of a collective agreement. Based on the findings, there is an option to strengthen the consultation mechanism by amending relevant legislation and policies (see Sections 5.2.3, Chapter 5; 7.2, Chapter 7).

Furthermore, Chapter 4 highlighted that consultation processes are not pitched at the appropriate level. This view was also confirmed during the empirical study in Chapter 7. Moreover, the respondents agreed that the ISCCS does not have an adequate mandate to adjudicate over disputes. Similarly, this disproportionate limitation is sustained despite several legal opinions on the matter and SANDU precedence (see Sections 4.3.3, Chapter 4; and 7.7, Chapter 7). The findings also confirmed that there is no appetite to form of a specific trade union due to the secretive nature of the intelligence services; operational sensitivities; and the potential to expose the identities of the intelligence officers.

As stated above, the consultation mechanisms within the SSA are ineffective tools to manage the employees labour disputes and grievances. In this regard, Chapter 4 also established that consulting parties (management and employees) within the SSA do not enjoy the same powers of influence. Furthermore, the ISCCS faces conflict as a mediator in disputes between the SSA executive and employees, since the executives are also employees and report to the SSA accounting officer. Moreover, the Minister is the sole arbiter and could overrule the ISCCS recommendations. It is also important to accentuate that the Office of the Inspector General of Intelligence is not legislatively mandated to deal with disputes emanating from matters of interests (see Sections 4.3, Chapter 4; and 7.7 Chapter 7). Consequently, this discrepancy confirmed that civilian intelligence services employees do not have recourse in cases of disputes.

The empirical findings further revealed that SSA management failed to understand that collective agreements are not a substitute for individual contracts, and that what is agreed collectively is implied, or incorporated into each employee's contract. Since collective bargaining agreements may not be amended through collective negotiations, it enables workers to rely on these and make autonomous decisions within their parameters. As such, this would mitigate the imbalance in bargaining power between an employer and employees. It can be inferred from this argument that collective bargaining is essentially a representative process – in which the employers representatives reach agreements, or compromises, with the employee's spokespersons. Participation in critical decision-making processes implies that workers share a degree of influence and power over such decisions, whilst consultation (involvement) lacks such degree (see Sections 3.2 and 3.2.1, Chapter 3 on fundamental principles guiding collective bargaining within liberal democracies and the concept of employee participation).

The above contradicts the second view, which regards collective bargaining as an essential component of democratic governance. This is informed by the understanding that it promotes the application of administrative justice. Therefore, collective bargaining is perceived as a fundamental human right in a global society. Advocates of this perception posited that trade unions provide a collective power which enhances the provision of services in the public sector and therefore represents the interest of public policy. Furthermore, it serves as an oversight of how the state utilises its power. Hence, collective bargaining within the public service in South Africa is largely centralised which also enables parties to enter into long-term collective agreements (see Sections 3.2, Chapter 3; and 4.2, 4.3, Chapter 4).

Following this line of argument, the exclusion of collective bargaining within the civilian intelligence services is unjustifiable and fails to meet the constitutional requirements to protect the employees' rights (see Sections 4.1, 4.2, Chapter 4). For example, the SA's civilian intelligence services are not considered as "essential services" but are designated as public service departments under the Public Services Act 47 of 1997. This is compounded by the fact that the provisions of the Labour Relations Act 66 of 1995 and the Intelligence Service Act 65 of 2002 are inconsistent with the applications and spirit of the Constitution of South Africa (1996). Therefore, this legislative gap perpetrates the exclusion of civilian intelligence services employees, police and armed forces from the application of the LRA. Despite this limitation, they may not be excluded from the application of Section 23 of the Constitution. Similarly, the LRA tried to compensate through the establishment of workplace forums which are equivalent to the consultation mechanism (discussed above) within the civilian intelligence services. The chapter highlighted two fundamental concerns: (i) employees of civilian intelligence services do not enjoy the benefits of collective bargaining; and (ii) the SANDF precedence to institute collective bargaining and other security establishments of a similar nature should be considered.

The empirical findings further revealed that the consultation mechanism, in its current form, does not serve the interests of the SSA employees and is considered unlawful (see Section 7.3, Chapter 7). Hence, the principle of negotiating in good faith as enshrined in the LRA cannot be imposed by law but could only be achieved because of the voluntary and persistent efforts of both parties. Furthermore, the lack of binding decisions resulting from consultations between employees and SSA management leads to accusations that management is not negotiating in good faith. Moreover, they are blamed for utilising the mechanism to victimise the staff forum and staff council leadership (see Sections 7.2, 7.3 and 7.5, Chapter 7 on the consultation mechanism of the SA civilian intelligence services). Therefore, the SSA executive must investigate alternative methods to strengthen the consultation mechanisms if the

intention is to retain them. Any failure to transform would result in demands for formal collective bargaining and probably unionisation.

8.5 Autonomous collective bargaining structure

Chapter 5 essentially focused on the role of an autonomous collective bargaining structure within the SA civilian intelligence services and the alignment of the ILO Conventions with liberal democratic values which protect rights of individuals was focused upon. According to ILO Convention No. 151 of 1978, it is acknowledged that in the context of public administration, determining which employer (employers' organisation) should participate in collective bargaining is not always plainspoken. Therefore, government departments are at liberty to decide on a decentralised model of engagement similar to the consultation mechanism within SA's civilian intelligence services. However, the disadvantage with sectoral or centralised collective bargaining is that it is difficult to determine who is the employer. Nonetheless, these principles are also complicated by the ILO Convention No. 154 of 1981 which applies to the *"armed forces and the police"*, and the possibility of exclusion from the scope of the Convention.

The significant appreciation is that ILO allows states to formulate policies to categorise departments which may prohibit employees from joining trade unions and embark on collective bargaining. Furthermore, it makes provision for regulations to accommodate the delegation of entities to represent the interests of the employees. As such, it paved way for governments to also allow employer associations to represent the employer in collective bargaining. Therefore, the limitations of the Intelligence Services Act 65 of 2002 can be addressed by providing for collective bargaining and collective agreement between the employer and employees' representatives. Moreover, this intervention could be complemented by procedures which could be followed if parties cannot reach consensus. In this regard, the Labour Relations Act 66 of 1995 provides the civilian intelligence services with an option to implement preferred collective bargaining models and structure work relationships. Collective bargaining is a voluntary process between independent and autonomous parties in terms of the ILO. Despite this provision, states are responsible to encourage collective bargaining by enacting relevant and supportive legislation (see also Section 2.3.1, Chapter 2; Section 3.2.5, Chapter 3; Sections 4.3.1 and 4.51, Chapter 4) to harmonise the work environment.

To harmonise the workplace and promote the above principles, ILO Convention No. 154 of 1981 encourages the principle of good faith which is based on: *"(i) endeavouring to reach agreement (including a certain number of meetings and discussions); (ii) engaging in genuine and constructive negotiations, including through the provision of relevant and necessary information; (iii) avoiding unjustified delays in negotiation or obstruction thereof; (iv) taking into*

account the results of negotiations in good faith; and (v) mutually respecting the commitments entered into and results achieved through bargaining". This principle is further supported by the Collective Agreements Recommendations No.91 of 1951. Importantly, it compels signatories to abide by the outcomes of the negotiations. However, Conventions Nos 151 and 154 are not prescriptive in terms of the outcomes of the collective bargaining process. Therefore, the silence of conventions creates anonymity around the significance of collective bargaining as an alternative method of engagement between employees and management of the SA's civilian intelligence services.

Understanding the implications of this provision is crucial to contextualise the intentions of the Labour Relations Act 66 of 1995. In this regard, the exclusionary provisions of the Act when institutionalising collective bargaining within the public service are deemed to violate the Constitution of South Africa (1996). Similarly, the role of an autonomous collective bargaining structure within the SA civilian intelligence services includes in general terms, the right to organise and to bargain collectively (as articulated by the ILO) which is closely linked to other fundamental rights at work. In this regard, it promotes the right to associate as a constructive means to promote the protection of workers. Hence, this right is significant to ensure fair labour practices and social justice within the workplace.

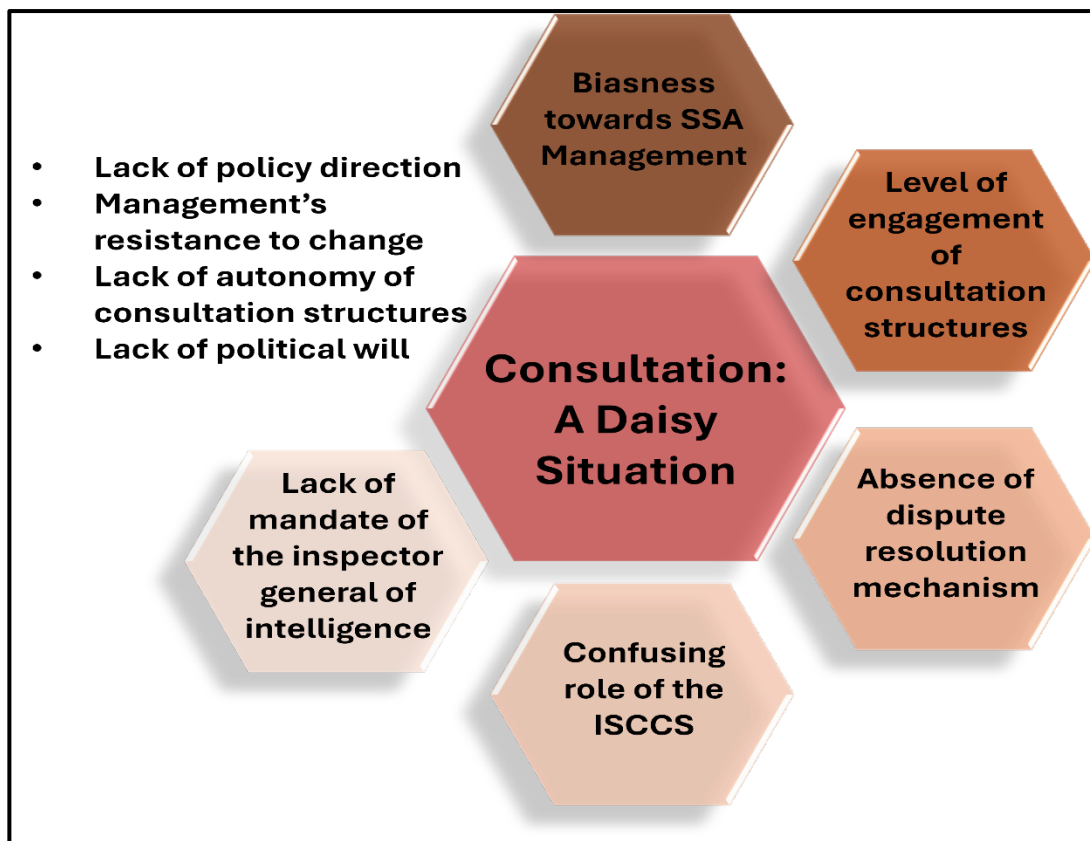
Collective bargaining within public service is inherently aligned with trade union activities which aim to protect the employees' rights. Therefore, the SSA is not immune to these developments and may need to align itself to this reality. Importantly, this view was also echoed in the findings of the empirical study (see chapter 7), which confirmed that collective bargaining has more benefits than the consultation mechanism due to the latter's binding collective agreements (see Sections 7.2 and 7.3 Chapter 7). Furthermore, the findings affirmed that collective bargaining promotes the principle to negotiate in good faith which remains a contested matter within the SA's civilian intelligence services.

8.6 Incorporate findings into ideal collective bargaining model

Chapter 2 underscored that South Africa is a signatory to several ILO Conventions which have led to the institutionalisation and protection of the fundamental rights for the employees (see Section 2.6, Chapter 2). Furthermore, the chapter acknowledged that collective bargaining competes with other alternative employment systems which are informed by both the employer' and employee's preferences. In this regard, reasons were cited why SA's civilian intelligence services preferred consultation than the collective bargaining mechanism. Moreover, it was demonstrated that national legislation does not aim to dictate the nature of engagement between employer and employees. Instead, it offers both parties an opportunity to decide on the format and method of engagement.

Considering the above, the Labour Relations Act 66 of 1995 was enacted to give effect to the principles of Bill of Rights enshrined in the Constitution of South Africa (1996). Unfortunately, by doing so, certain government departments were excluded from the provisions of collective bargaining. For example, SA's civilian intelligence services were incorrectly classified as security department although their mandate differs from that of SANDF and SAPS. As a result, their employees are unable to enter into collective agreements with the employer which contravenes the provisions of ILO Conventions Nos 151 and 154 both of which advocate for genuine engagement between stakeholders within the workplace. In this regard, both conventions recognise the diverse nature of domestic laws and how they institutionalise collective agreements and their impact in the workplace. Essentially, they are not prescriptive in nature and allow parties to select the best options to achieve common objectives. Chapter 3 summarised this view in a much broader context.

A perceived difference between a consultation mechanism and collective bargaining is prevalent, however, in essence the two processes serve the same purpose if managed properly. The two processes depend on good faith and willingness to share the same strategic space of influence. Therefore, consultation has the potential to be an effective mechanism for collaborative governance, but only if it is empowered. In this context, empowerment signifies that consultations are characterised by a degree of decision-making power, or at least the ability to influence decisions directly. Essentially, the goal of the negotiating parties in collective bargaining is to reach a binding collective agreement. Nevertheless, Figure 8.1 provides a snapshot of the challenges currently faced due to the consultation mechanism.



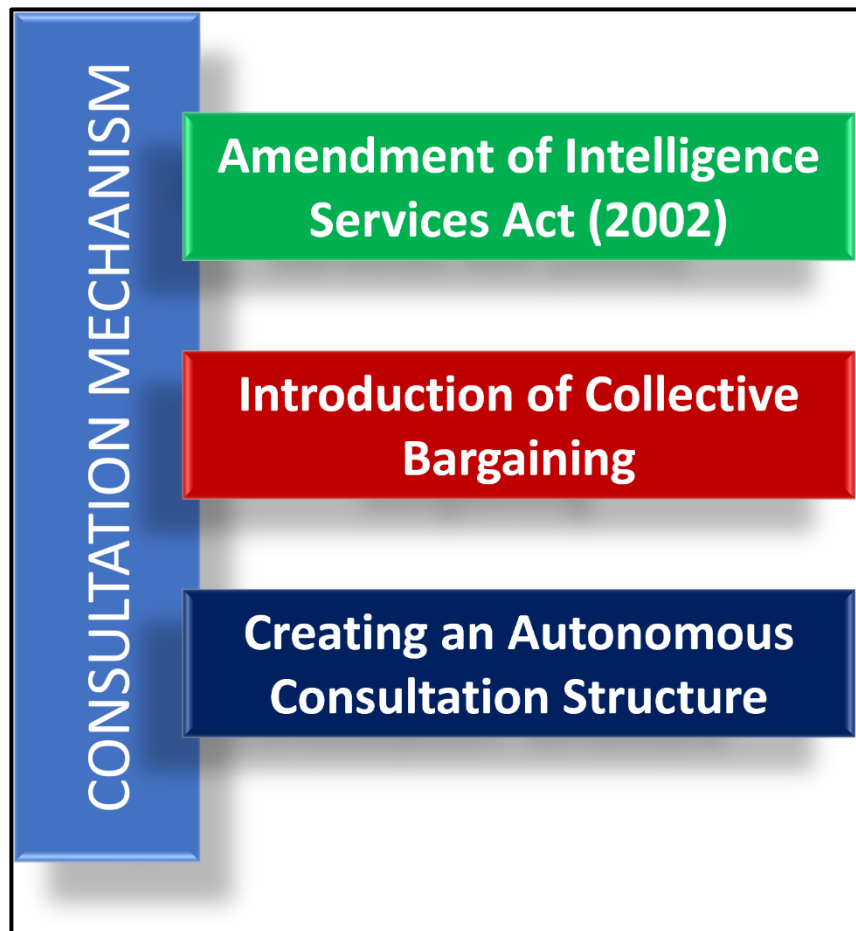
Source: Author's own illustration

Figure 8.1: Challenges of the current consultation mechanism within the SA civilian intelligence services

The SANDF provided for the formation of a trade union and collective bargaining despite reservations related to security concerns. Clause 5(a) of the Constitution of the MBC mandates that *"the MBC in accordance with the Defence Act and regulations must negotiate and bargain collectively to reach agreement on matters of mutual interest between the employer and members represented by admitted military trade unions in the Council, and to prevent and resolve disputes between the employer and such military trade unions by means of negotiation, consultation or otherwise, including but not limited to, the utilisation of procedures for dealing with disputes"* (see section 5.6.2.1, Chapter 5). Thus, these conciliation and arbitration processes proved effective within the SANDF and could be replicated in the SSA if there is a willingness to do so. Similarly, the SAPS, which includes a Department of Crime Intelligence, allowed the formation of POPCRU, the first police union registered in Southern Africa, and symbolised the potential for social and labour rights for the police in the region (see Section 5.6.1, Chapter 5).

The above recommendations considered the SANDU precedence; as well as the CSIS and consultation or collective bargaining of other intelligence services of a similar nature. Similarly, these are premised on the fact that the ILO permits such provisions (enacting national laws to

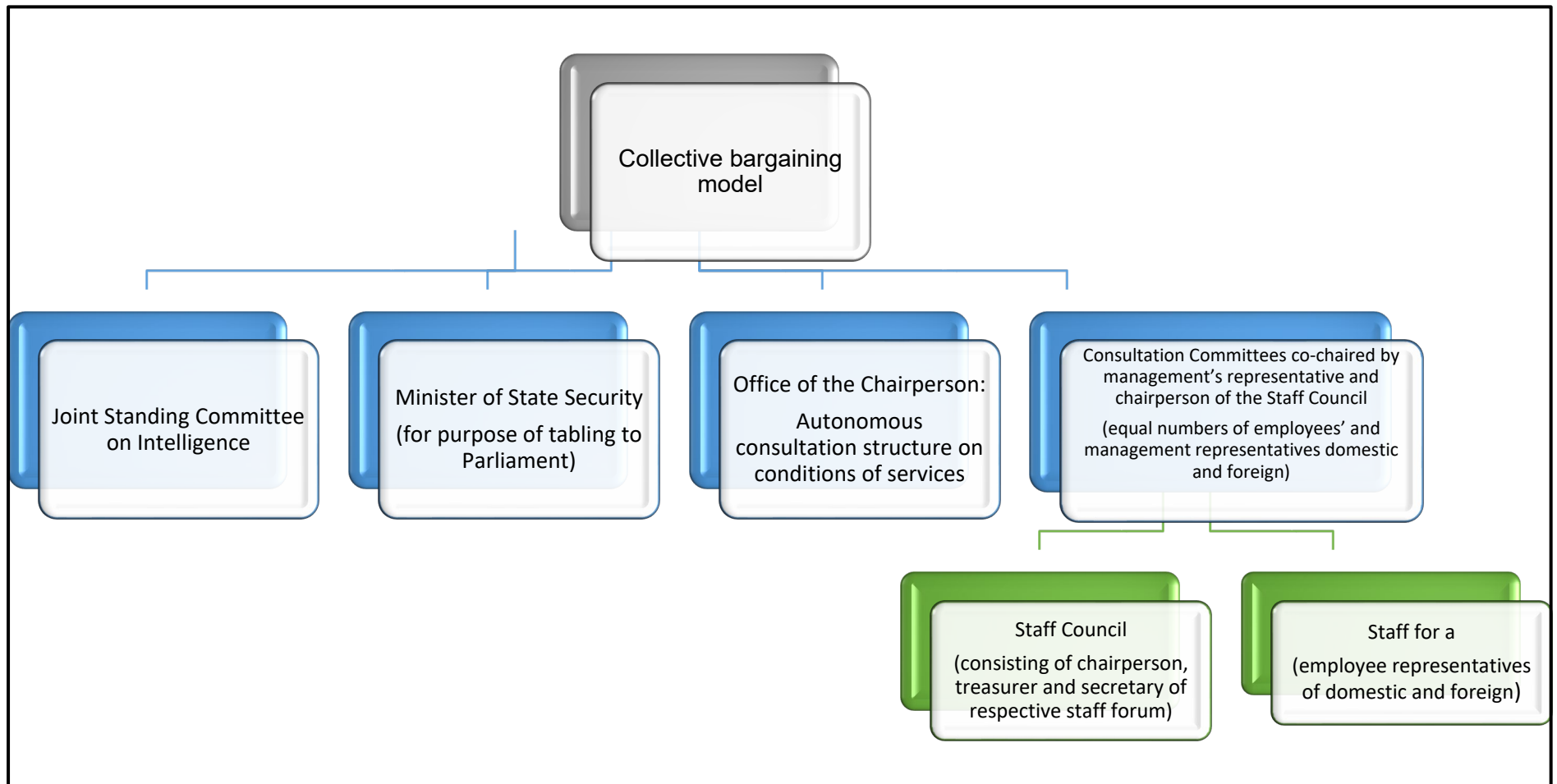
cater for peculiarity of countries' existing situations) and would help to restore legitimacy and credibility of the consultation process and its structures within the SSA. Hence, the SSA dispute resolution model would take similar shape as that of the SANDU (see Figure 5.1, Chapter 5) except that the structure would be autonomous.



Source: Author's own illustration

Figure 8.2: Proposed interventions to strengthen consultation mechanism

The current challenges of the legislative arrangements regarding labour dispensation within the SA's civilian intelligence services were comprehensively revealed in Chapters 6 and 7 respectively. Therefore, the empirical research findings pointed towards the introduction of collective bargaining and the creation of an autonomous consultation structure which would be accountable to Parliament through submissions by the Minister. Furthermore, this autonomous structure would be able to legitimise the consultation mechanism which it currently lacks. Therefore, Figure 8.3 below illustrates the proposed model for collective bargaining within the SA civilian intelligence services:



Source: Author's own illustration

Figure 8.3: Collective bargaining model for SA civilian intelligence services

In summary, the proposed structure in Figure 8.2 would disregard the confusion of the ICCS's contested powers; Office of the Inspector General of Intelligence mandate; and the Minister to manage matters of interest and conditions of service. Eventually, it would relieve the Minister from the arbitrary powers to adjudicate on disputes, and provide the consultation mechanism legitimacy, which was a discontent raised by the respondents in Chapter 7. Moreover, this structure would dissolve the possible appetite to either form or join a trade union. The latter and former would have unintended consequences and possibly compromise the SA's civilian intelligence operatives; integrity; and be apolitical. Moreover, the fact that Parliament would be the final arbiter in disputes would also minimise the employees' risk of the SSA taking management to court and to harmonise the workplace. Furthermore, the structure would address perceptions of consultation being biased toward management and empower the employees to bargain without fear of victimisation or suppression.

The proposed autonomous consultation structure within the SSA which is outlined in Figure 8.2 of the chapter is also directed by Article 5 of the Labour Relations (Public Service) Convention No. 151 of 1978 which states that:

- a) *"Public employees' organisations shall enjoy complete independence from public authorities;*
- b) *Public employees' organisations shall enjoy adequate protection against any acts of interference by a public authority in their establishment, functioning or administration; and*
- c) *In particular, acts which are designed to promote the establishment of public employees' organisations under the domination of a public authority, or to support an employees' organisation by financial or other means, with the object of placing such organisations under the control of a public authority, shall be deemed to constitute acts of interference within the meaning of this Article".*

Therefore, the SSA may leverage on this Article to ensure no interference with consultation and employees' representative structures. This paradigm shift would normalise work relations; disregard elements of victimisation; enhance balance of power; and implement effective consultation processes. However, these changes can only be implemented if there is political and management will.

8.7 Conclusion

Based on the Liberal Democratic Theory, the mechanism for consultation within the SA civilian intelligence does not meet the basic principle of a liberal democracy. Hence, the significance of an autonomous consultation structure which would strengthen this mechanism to enable an effective collective bargaining process; and which would serve as a balance of power between management and the employees to resolve disputes effectively on the conditions of

services. Owoseni (2014:13) affirmed this submission and described the objectives of collective bargaining as follows:

- i. *“The setting of working conditions and other matters of mutual interest between employer and employees in a structured, institutionalised environment;*
- ii. *Confronting and predictability through the creation of common substantive conditions and procedural rules;*
- iii. *The promotion of workplace democracy and employee participation in managerial decision; and*
- iv. *The resolution of disputes in a controlled institutionalised manner.”*

The study concluded that the primary function of collective bargaining is to reach a collective agreement which would regulate the terms and conditions of employment. Therefore, there is no dispute that collective bargaining remains a key component of a trade union which serves as a balance of power to represent the interests of the employees. However, the introduction of an autonomous consultation structure would not only inhibit the possibility of the formation of a trade union, but would also assist to harmonise the workplace and eliminate insider threats. This intervention would also conform with the provisions of international legislation which enables states to enact laws to facilitate effective employee participation in the decision-making processes. The introduction of the autonomous consultation structure would also require political willingness to, amongst others, amend the Intelligence Services Act 65 of 2002. Therefore, this would require the SSA management to adopt nimble methods to transform the current labour relations dispensation which are discussed further in the next chapter.

CHAPTER 9: CONCLUSION AND RECOMMENDATIONS

9.1 Introduction

The thesis adopted a complexity-appropriate approach to evaluate policy through a case-based model (Schimpf et al., 2021:121-123; Barbrook-Johnson et al., 2021:6-7) to respond to the Primary Research Question (see Section 1.4.1. in Chapter 1): *“What would be a suitable collective bargaining model for the South African civilian intelligence services?”*. According to Schimpf et al. (2021:121-123), *“at its core, case-based modelling involves modelling complex systems or data as a collection of distinct case types with their own properties, trajectories and relationships with other cases. Through case-based modelling an evaluator can reconceptualise a complex system/data experiencing an intervention(s) into a set of cases and seek to cluster those cases into major and minor profile groups (i.e., groups with many or few cases, respectively) to examine common trends, relationships within and across trends, and their environment and dynamics over time”* (Schimpf et al., 2021:121-123). This approach provided an understanding of collective bargaining as a policy intervention mechanism within a dynamic and unique labour relations system in the SA’s civilian intelligence services. The empirical research findings were outlined in Chapter 6. In the first instance, the study endeavoured to comprehend intelligence and collective bargaining within the Liberal Democratic Theory context. Secondly, it intended to establish the role of a collective bargaining model within the SA’s civilian intelligence services as an instrument to advance administrative justice and protect the basic rights as stipulated in the Constitution of South Africa (1996).

Based on the above approach, five objectives were identified to investigate the level of exclusion of collective bargaining within SA’s civilian intelligence services. The first two objectives were achieved through an extensive review of relevant literature (Chapters 2 to 5). The first objective was to appraise and validate the theoretical context of collective bargaining within liberal democracies. Chapter 2 provided a detailed examination of the Liberal Democratic Theory; considered the principles of liberal democracy; characteristics of collective bargaining as tools for social justice and responsibility; collective bargaining within liberal democracy; as well as international law as a basis to protect the rights of workers.

The second objective was to describe fundamental principles which guides collective bargaining within liberal democracies. In Chapter 3, the guiding principles of collective bargaining within liberal democracies was expounded upon. The chapter highlighted the role of collective bargaining, collective agreements and the presence of a strong union in liberal democracies which serve as instruments to inhibit discrimination including inequalities in the workplace by restraining the employers’ ability to impose unilateral decisions which could have

an impact on the employees' conditions of service. Generally, collective bargaining in liberal democracies provides workers a right in the formulation of rules under which they work and the ability to counter employer bargaining power.

The third objective was to assess and reflect on the reasons for excluding collective bargaining within the SA civilian intelligence services. Chapter 4 examined and investigated collective bargaining within these departments within the broader service, and the difference between collective bargaining within the public service and the civilian intelligence services including the reasons. The Constitution of South Africa (1996) is the supreme law of the Republic. Therefore, it may not be replaced by any secondary piece of legislation. Moreover, Section 2 of Labour Relations Act 66 of 1995 prescribes that exclusion from the application of this Act, would be inconsistent with the Constitution.

The fourth objective was to elucidate the function of an autonomous collective bargaining structure within South Africa's civilian intelligence services. Chapter 5 scrutinised the role of an autonomous collective bargaining structure within SA's civilian intelligence services and examined the employees' civil rights to these services; consultation mechanisms within the SSA; nature of labour relations conflict within the intelligence services; collective bargaining as a political process and protection of secrecy; and the employees labour rights of the SA security departments (SAPS and SANDF). Whilst the SSA excludes collective bargaining and inhibits the establishment of trade unions, the SAPS and SANDF are primarily compliant with the Constitution of South Africa (1996) and allow their employees to affiliate to trade unions and embark on collective bargaining.

Based on the above contributions, Chapters 6 and 7 addressed the fourth and fifth objectives. Therefore, an empirical study was conducted to propose and construct an appropriate collective bargaining model within SA's civilian intelligence services. The study concluded that a consultation forum differs qualitatively from the right to join and participate in trade union activities. However, the Intelligence Services Act 65 of 2002 is silent on matters related to dispute resolution and the powers of the ISCCS, including the Office of the Inspector General of Intelligence of how to manage disputes on matters of interest or conditions of service. Similarly, this gap in legislation, which must be addressed, is contrary to the collective bargaining dispensation which provides for dispute resolution mechanisms within the public service as well as permits several resolves and the right to approach the CCMA and the Labour Court. However, the ILO cautioned that the right to join an employer approved association did not fulfil the requirements of Convention 87, *i.e.*, employees have the right to join trade unions of their choice. Therefore, the establishment of a consultation mechanism would not justify the restrictions placed on Sections 20 and 23(2) of the Constitution of South Africa (1996). Hence, the SSA employees and management opinions demonstrated a level of

despondency and varied from, *inter alia*, lack of policy direction; management's resistance to change; lack of consultation structures autonomy; as well as the lack of political will as illustrated in Figure 8.1 below.

Therefore, based on the above reasons, Chapter 8 recommended an appropriate model for collective bargaining within the South African civilian intelligence services. This model was based on the Canadian model; SANDU experience; and lessons learnt from the PSCBC. Hence, the proposals of this model were guided by fundamental principles of liberal democracy and international law which could be utilised as guidelines to implement such an intervention.

In conclusion, Chapter 9 summarised the key points of the study, namely, essential features of the research design, and significant outcomes of the investigation. Moreover, it related directly to the primary aim of the research: "*constructing a suitable collective bargaining model for the South African civilian intelligence services*"; indicated the extent to which the research objectives were achieved; provided recommendations; summarised the key findings and outcomes; and highlighted the significance of the study.

9.2 Recommendations: Introduce collective bargaining model in SA Civilian Intelligence Services

To address the concerns outlined in Figure 8.1, it is recommended that SA's civilian intelligence services consider the introduction of a collective bargaining model which was discussed in Chapter 8. In this context, the following is recommended: an introduction of an autonomous consultation structure which would be accountable to Parliament; promote collective bargaining; as well as dispute resolution. However, to realise this structure, it would require Parliament to enact relevant legislation to amend the current provisions of the Intelligence Service Act 65 of 2002 on conditions of service.

The above proposal is based on the submission that the existing labour relations dispensation within the civilian intelligence services is not legislatively and operationally acceptable to advance equality and fair employment practices. This limitation is informed by the labour relations dispensation which is regulated by Sections 21 and 22 of the Intelligence Services Act 65 of 2002. In this context, Section 21(1) of the intelligence Services Act 65 of 2002 affirms that "*no member of the intelligence services or the Academy may strike or induce or conspire with any other member to strike*". Section 21(2) of the same Act pronounces that "*the Minister must in the prescribed manner make provision for internal rules to deal with complaints, grievances and consultation on conditions of service and human resources within the Academy and intelligence services*". Correspondingly, this provision was intended to deal with limitation of rights to join or form a trade union or embark in collective bargaining (see Section

4.3.1, Chapter 4). However, a consultation mechanism is insufficient to advance sound labour relations within the SSA.

The SA civilian intelligence services relied on provisions of the Labour Relations Act 66 of 1995 to institutionalise consultation. Accordingly, while the Act provides for extensive organisational rights, it does not contain a specific provision which obliges the parties to engage in collective bargaining. Furthermore, the Act provides that “*where the dispute concerns a refusal to bargain in different forms, after an advisory award has been made, the employees may strike*”. However, these principles which are in direct conflict with Section 23 of the Constitution of South Africa (1996) which promotes rights to fair labour practices, as illustrated earlier in Section 3.2 of Chapter 3, do not apply within the context of civilian intelligence services. Equally, this section affirms that every employee and management representative structures are entitled to participate in collective bargaining as a fundamental labour right. Consequently, it is difficult to rationalise the government’s persistent failure to promulgate domestic legislation to regulate collective bargaining within the civilian intelligence sector. Furthermore, this legislative omission exposes an inconsistency, because both the Labour Relations Act (LRA) and the Intelligence Services Act 65 of 2002, remain incongruent with the constitutional provisions, *i.e.*, prohibit collective bargaining.

The above prohibition further defies the logic of Section 199(5) of the Constitution of South Africa (1996), which prescribes that the “*security services (including intelligence services) must act, teach and require their members to act, in accordance with the Constitution and the law, including customary international law and international agreements binding on the Republic*”. Section 198(c) of the Constitution is clearer when it is pronounced that “*national security must be pursued in compliance with the law*”. Unfortunately, there has never been an attempt to question the constitutionality of this exclusion by either employees or employer of the SA civilian intelligence services.

Section 4.5 of Chapter 4 further exposed this malaise when a distinction between collective bargaining and a consultation mechanism in the public service and intelligence respectively is made. It was concluded that there is a need to strengthen the consultation mechanism within the civilian intelligence services. Similarly, the definition of public service in South Africa is not inclusive, because the PSCBC excludes certain national public service departments from its scope to apply it in the constitution and as prescribed by the LRA. The departments include the South African National Defence Force (SANDF); National Intelligence Agency (NIA); and South African Secret Services (SASS). Therefore, the chapter exposed the LRA as inconsistent with the spirit of the Constitution of South Africa (1996) by dictating such provision to the PSCBC. However, strikes are generally a last resort in the case of disputes in public service departments, because the LRA allows other means to resolve disputes. Therefore,

this argument can also not be sustained. For example, the SANDF collective bargaining model does not allow officers to embark on strikes in the case of disputes (see Section 5.6.2.1 Chapter 5) but encourages them to approach the courts.

Generally, the consultation mechanism within the SA civilian intelligence services is characterised by despondency due to the lack of collective bargaining prospects and efficiency to manage disputes, as articulated in the previous chapter. Therefore, the following amendments are required to strengthen the current consultation mechanism: (i) amend the Intelligence Services Act 65 of 2002 to strengthen the consultation mechanism; (ii) introduce collective bargaining; and (iii) establish an autonomous consultation structure. This proposal aligns with the assertion that consultation is equally important as collective bargaining, considering the unique and secret nature of intelligence services.

According to ILO Convention No. 98 (Right to Organise and Collective Bargaining) and further clarified by Convention No. 151, there is a need to acknowledge the uniqueness of every work environment to determine the nature of engagement. Hence, participation can take different forms including consultation and collective bargaining. Therefore, this flexibility implies that systems which prescribe legal rules for employees to participate in the determination of conditions of employment in SA's civilian intelligence services may be compatible with Convention No. 151 if there was consensus regarding this model. Similarly, this submission aligns with the empirical research findings and the reviewed literature, *i.e.*, whether consultation is a proper means towards engagement does not arise. Hence, the findings advocated for the amendment of the Intelligence Services Act 65 of 2002 and not the LRA.

9.2.1 Amendment of Intelligence Services Act 65 of 2002

The study recommended that the Intelligence Services Act 65 of 2002 be amended to strengthen the consultation mechanisms. The nature thereof was discussed in the previous chapter. The Act needs to be explicit; conform with Article 7 of ILO Convention No. 151; and provide for the inclusion of consultation mechanisms as an approach to participate in the determination of the employees' terms and conditions in the civilian intelligence services. Furthermore, this should be complemented by provisions for consultation on any administrative or legislative measures with reference to the terms and conditions of employment. Therefore, it is suggested that relevant draft legislation should be subject to consultation.

The above proposal recommends that it would be in the mutual interest of both management and the employees' representatives not to limit consultation to conditions of service but extend the scope covered by consultation. Therefore, matters of mutual interest, establishment of personnel policies, managerial and human resource problems which may arise following a

new structure of organisation of work or restructuring (change management) should be considered. Indeed, consultation of these thematic issues, if initiated by management or employees' representatives, is in many instances a means to inhibit the occurrence of collective disputes and establish solutions which would more likely be accepted by both parties.

9.2.2 Introduce collective bargaining

It is recommended that SSA management considers collective bargaining to protect the employees' civil rights and to arrive at a binding collective agreement. Article 6 of Labour Relations (Public Service) Convention No. 151 of 1978 remains a key instrument to protect the existence of trade unions and their significance to promote its members economic and social interests. To that end, the ILO Committee Report III of 2013 underscored that *"these organisations are required, in particular, to engage in collective bargaining on conditions of service; participate in joint bodies on economic and social matters; take part in bipartite or tripartite consultations; supervise the application of labour legislation by filing complaints and actions with the administrative and judicial authorities; ensure compliance legislation and collective agreements; or represent their members' individual interests before the administrative or judicial authorities (mediation, conciliation, arbitration, labour inspection, commissions, courts)"*. Hence, it is of significance to enact domestic legislation to promote collective bargaining and binding agreements in the negotiation of the conditions of service through organised employee representative structures. Therefore, government must play a leading role to ensure that there is harmonised work environment and encourage parties to negotiate in good faith and transparently. Furthermore, the ILO Committee Report III of 2013 cautioned that *"direct legislative intervention is often the principal method of application of Convention No. 151 at national level (adoption of industrial relations and civil service laws, labour codes, etc.), bearing in mind that it is desirable for the adoption of laws to be preceded by tripartite consultation"*. Hence, it is recommended that experts or independent persons (body) be sourced to facilitate the consultation process as part of its procedures as discussed in the next section.

9.2.3 Create autonomous consultation structure

Based on both the empirical research and the reviewed literature, the study proposed the establishment of an autonomous consultation structure and collapse the ISCCS. Inevitably, this structure should report directly to Parliament (or the JSCI), in light of probable disputes which could implicate the office of the accounting officer or the political head. Equally, the chairperson of the structure should ideally be a retired member of the civilian intelligence service who does not have any personal interests in the outcomes of any of the consultation

processes. The basic principles which should govern this autonomous structure should include:

- Employee representatives be consulted by management on matters which affect, or would likely affect, them. It is accepted that if all concerned participants perceptions are known, there would be a greater likelihood that the measures and policies which management may be called upon to undertake, or follow would not likely only command greater respect and support but would also be sound.
- This consultation and co-operation may be perceived as a reflection of managements philosophy by consent and share, in a broader sense the responsibility and the well-being of the community. It may also be a reflection for the employees, the growing stature of the organisation, and the belief that although attitudes may be contrary, there is a common interest in the well-being of the employees. This would also affirm that through consultation greater harmony in labour relations is probable.

9.3 Theoretical recommendation

Research is largely intended to elicit a response by gathering information which would enable policy makers to make informed decisions. Furthermore, it would help to consolidate various perceptions and appreciation of a particular worldview. The study was guided by the Liberal Democratic Theory to establish the reasons for the exclusion of collective bargaining within SA's civilian intelligence services, as discussed in Section 3.3 and 3.5. It was argued that collective bargaining is embedded in labour relations in South Africa through the LRA and intended to harmonise the work environment by implementing dispute resolution measures. Invariably, it was also argued that this labour dispensation is also protected by the Constitution of South Africa (1996) and the ILO Conventions.

Based on the above theory, the exclusion of collective bargaining was identified; absence of collective agreement; and inability to institutionalise dispute resolution as the root cause of despondency within the SSA. This is even though the Intelligence Services Act 65 of 2002 makes provision for a consultation mechanism to eliminate any misunderstanding. Furthermore, it provided the SSA management with a vehicle to formulate policies and develop compromise solutions or reach an agreement with the employee representatives. However, these provisions did not appease the departments employees. The study contributed towards understanding the principles of the Liberal Democratic Theory which focuses on protecting civil rights and the role of collective bargaining within SA's civilian intelligence services. The study succeeded to:

- confirm collective bargaining as a fundamental right of employees;

- appreciate the reasons for the exclusion of collective bargaining within SA's civilian intelligence services;
- demonstrate the effective role of collective bargaining within SA's civilian intelligence services;
- confirm the existence of collective bargaining within the SANDF, SAPS, CSIS and other services of a similar nature;
- highlight the benefits of dispute resolution mechanisms within the security establishment and intelligence services; and
- reveal the limitations of legislative and policy guidelines which regulates the consultation mechanism within the SSA.

The above thematic concerns demonstrated that collective bargaining is an essential component of institutional arrangements to contain labour disputes in a work environment. Furthermore, both management and the employees can benefit therefrom. Figure 8.1 illustrated that displeasure of the impact of the exclusion from collective bargaining and a dispute resolution mechanism for both management and the SSA employees. Moreover, Figure 8.2 proposed measures which could be introduced and enhance (amendment of the Intelligence Services Act 65 of 2002; introduce collective bargaining; and create an autonomous consultation structure) to establish an effective consultation process. The study responded satisfactorily to the research objectives identified in Section 1.4.2 of Chapter 1. Therefore, the proposed model illustrated in Figure 8.3 is a response to the problem statement articulated in Section 1.4 of Chapter 1.

The theoretical contribution of this study which was based on the Liberal Democratic Theory attests that the absence of collective bargaining within SA's civilian intelligence services is inconsistent with the Constitution of South Africa (1996) and the principles of the ILO. Therefore, the implementation of the collective bargaining model should be guided by a paradigm shift of the SSA leaderships mindset and the country. The next section identifies areas for further research.

9.4 Recommendations for further research

Various matters were identified which could support collective bargaining within the SSA through further investigation and research, e.g.:

- a study to explore the possibility of forming a trade union within the SSA;
- comparative analysis of intelligence services with similar institutional arrangements; and
- probe into the possibility of SSA employees affiliating with other familiar trade unions (association) in the public service.

9.5 Conclusion

Chapter 9, which was the conclusion of the study, aligned practice with theory. The primary research question of the thesis was: *“What would constitute a suitable collective bargaining model for the South African civilian intelligence services?”*. The findings revealed that with an ex-post evaluation and the implementation of Sections 21 and 23 of the Constitution of South Africa (1996), the exclusion of LRA’s from collective bargaining within the SA’s civilian intelligence services undermines the employee’s civil liberties. Furthermore, it was revealed that the Intelligence Services Act 65 of 2002 lacked provisions to resolve disputes within the SSA which further limited the rights of the employees. Hence, there is a need to introduce collective bargaining with binding collective agreements, dispute resolution measures and an autonomous consultation structure.

The study concluded that the consultation mechanism, in its current form, is biased towards management and lacks efficiency. Similarly, it is compounded by the lack of an appropriate structure to address matters of interest and the employee’s conditions of service. However, the study does not suggest that a mechanism for consultation rather than collective bargaining is conceptually incorrect. Instead, an enhanced consultation mechanism minimises the need for legislative or administrative action, as well as possible tension between the consulting parties. Therefore, it would contribute towards greater harmony within the workplace.

To realise the above objective, consultation would require voluntary participation; good faith and mutual respect; appreciation of freedom and independence of each consulting party; and a strong organisation to be effective. Invariably, these circumstances are supported by various ILO Conventions that South Africa ratified with the intention to protect the fundamental rights of the employees. Hence, the SAPS, the SANDF and the CSIS served to demonstrate that the formation of trade unions; institutionalisation of collective bargaining; and dispute resolutions do not have a destabilising effect on security and intelligence organizations. Furthermore, the study expelled the argument that the secret nature of the intelligence environment can be adequate grounds to exclude collective bargaining within the SA’s civilian intelligence services.

The discussion to strengthen the consultation mechanism within the SSA, by establishing an independent consultation structure to present collective agreements to the Minister and table in Parliament, the study concluded that the modified collective bargaining model would yield positive results for both management and the employees. Furthermore, this would also promote consistency with specific reference to a consultation mechanism, including in the advent of new leadership in the SSA, because the processes would be self-sustainable. Finally, it should be acknowledged that most agreements reached through collective

bargaining set specific standards of conduct for all parties within the workplace. Therefore, it would contribute towards a better work environment; enhanced conditions of service; and increased loyalty by eliminating potential employee frustrations whenever possible.

BIBLIOGRAPHY

- Adams, E. 1997. A critique of the national individual of liberal democracy. Washington: Eric Clearinghouse.
- Adams, R.J. 2009. Employee voice and the employment relationship in Canada. Industrial Relations Research Association.
- Adams, W. 2015. Conducting semi-structured interviews. In Kathryn, E.N, Wholey, H. & Hatry, K. (eds). Handbook of Practical Program Evaluation. San Francisco: Jossey-Bass.
- Ahmad, S., Wasim, S. & Irfan S. 2019. Qualitative v/s quantitative research. Journal of Evidence Based Medicine and Healthcare 6(43): 2823-2832. DOI:10.18410/jebmh/2019/587. Date of access: 01 February 2019.
- Aidt, T.S. & Tzannatos, Z. 2011. The cost and benefits of collective bargaining: a survey. Special Protection. Labour Markets, Pensions, Social Assistance. The World Bank.
- Anon. 2023. Interview by O.G Sekoane: composition of consultation structures. May 2023. Unpublished.
- Anton, M. 2017. The future of liberal democracy. Political Science & Public Affairs 5(2). DO: 10.4722/2334-0761.1000627. Date of access: 31 July 2021.
- Appelbaum, E. & Batt, R. 1994. The new American workplace. New York: ILR Press.
- Appelbaum, E., Bailey, R. & Kalleberg, A.L. 2000. Manufacturing advantage: why high-performance systems pay off. New York: Cornell University Press.
- Arifin, S.R. 2018. Ethical considerations in qualitative study. International Journal of Care Scholars 1(2): 30-33. DOI:10.31436/ijcs.v1i2.82. Date of access: 18 August 2018.
- Audi, R. 1997. Moral foundations of liberal democracy, secular reasons, and liberal neutrality toward the good. <http://scholarship.law.nd.edu/ndjlepp/vol19/iss1/7>. Date of access: 21 January 2019.
- Babbie, E.R. 2021. The practice of social research. 15th ed. Boston, MA: Cengage Learning.
- Baccaro, L. & Howell, C. 2011. A common neoliberal trajectory: The transformation of industrial relations in advanced capitalism. Politics & Society. 39(4):521–563. Date of access: 1 July 2025.

- Bacon, N. & Blyton, P. 2000. High road and low road teamworking: perceptions of management rationales and organisational and human resource outcomes. *Human Relations* 53(11): 1425-1458. DOI:10.1177/00187267005311002. Date of access: 21 January 2019.
- Bacon, N. & Hoque, K. 2005. HRM in the SME sector: valuable employees and coercive networks. *International Journal of Human Resource Management* 6(11): 1976-1999. <http://www.tand.co.uk/journals>. Date of access: 15 June 2019.
- Bacon, N., Wright, M. & Demina, A. 2004. Management buyouts and resource management. *British Journal of Industrial Relations* 42(2): 325-347. DOI: 10.1111/j.1467-8543.2004.00317.x. Date of access: 28 March 2021.
- Bamber, G.J., Lansbury, R.D. & Wailes, N. 2004. *International and comparative employment relations: globalisation and the developed market economies*. London: Sage Publications Ltd.
- Barbrook-Johnson et al., 2021. Policy evaluation for a complex world: Practical methods and reflection from UK Centre for Evaluation of Complexity across the Nexus. 27(1): 4-17. <https://www.researchgate.net/348509810>. Date of access: 13 July 2023.
- Barnett-Page, E. & Thomas, J. 2009. Methods for synthesis of qualitative research: a critical review. *BMC Medical Research Methodology* 9(1): 59. <http://www.biomedcentral.com/1471-2288/9/59>. Date of access: 11 August 2019.
- Beatty, D.M. 1984. Industrial democracy: a liberal law of labour relations. Symposium: Rights, Work, and Collective Bargaining. *Valparaiso University Law Review* 19: 37-69. <https://www.researchgate.net/publication/254717321>. Date of access: 28 January 2019.
- Becker, B. & Gerhart, B. 1996. The impact of human resource management on organisational performance: progress and prospects. *Academy of Management Journal*, 39(4): 779-803. DOI: 10.4236/ojbm.2020.85136. Date of access: 16 September 2020.
- Beetham, D. 1994. *Defining and measuring democracy*. Sage Modern Politics Series Volume 36. London: Sage Publications. Date of access: 29 November 2018.
- Beetham, D. 1994. Key principles and indices for democratic audit. In Beetham (ed). *Defining and measuring democracy*. London: Sage Publications.
- Beetham, D. 1999. *Democracy and human rights*. Cambridge: Polity.
- Behrens, M., Hamann, K. & Hurd, R. 2004. Conceptualising labour union revitalisation. In Frege, C & Kelly, J. (eds). *Varieties of unionism: strategies for revitalisation in globalising economy*. Oxford: Oxford University Press.
- Bell, D. 2014. What is liberalism? *Political Theory* 42(6): 682-715. <https://www.jstor.org/stable/24571524>. Date of access: 20 November 2019

- Bendix, S. 2000. The Basics of labour relations. Cape Town: Juta & Co, Ltd.
- Bendix, S. 2010. Industrial relations in South Africa. Cape Town: Juta & Co, Ltd.
- Bengtsson, M. 2016. How to plan and perform a qualitative study using content analysis. NursingPlus Open 2: 8-14. <http://creativecommons.org/licenses/by-nc-nd/4.0/>. Date of access: 21 September 2018.
- Bernard, H.R. 2013. Social research methods: qualitative and quantitative approaches. USA: Sage Publications, Inc.
- Birch, A.H. 1993. The concepts and theories of modern democracy. London: Routledge.
- Blyton, P., Firitto, J. & Bacon, N.A. 2008. The SAGE handbook of industrial relations London: Sage Publications Ltd.
- Bogg, A. 2009. The democratic aspects of trade union recognition. United Kingdom: Hart Publishing.
- Borgstede, M. & Scholz, M. 2021. Quantitative and qualitative approaches to generalisation and replication – a representationalist view. Theoretical and Philosophical Psychology. 12. <https://www.researchgate.net/publication/349087731>. Date of access: 05 February 2021.
- Born, H. & Leigh, I. 2007. Making intelligence accountable: Legal standards and best practice for oversight of intelligence agencies. Oslo: Norwegian Parliamentary Intelligence Oversight Committee.
- Bos, J. 2020. Confidentiality. Research Ethics for Students in Social Sciences. 149-173. <https://doi.org/10.1007/978-3-030-48415-6>. Date of access: 15 September 2020.
- Botlhale, E.K. 2021. Labour relations in Botswana: Challenges and prospects. Gaborone: University of Botswana Press.
- Born, H., Leigh, I. & Wills, A. 2011. Intelligence accountability in Democratic States: a comparative framework. Geneva: Geneva Centre for the Democratic Control of Armed Forces (DCAF). <https://www.dcaf.ch/intelligence-accountability-democratic-states>. Date of access: 1 July 2025.
- Boxall, P. & Haynes, P. 1997. Strategy and trade union effectiveness in a neo-liberal environment. British Journal of Industrial Relations 35(4): 567-591. DOI:10.1111/1467-8543.00069. Date of access: 17 December 2019.
- Boxall, P. & Haynes, P. 2007. Conclusions: what workers say in the Anglo-American world. In Freeman, R., Boxall, P. & Haynes, P. (eds). What workers say: employee voice in the Anglo-American workplace. Ithaca: Cornell University Press.

Boxall, P. & Purcell, J. 2003. Strategy and human resource management. Basingstoke and New York: Palgrave MacMillan.

Boxall, P. 2003. HR strategy and competition in the services sector. Human Resources Management Journal 13(3): 5-20. <https://doi.org/10.1111/1467-6486.0014>. Date of access: 16 December 2002.

Boxall, P. 2008. Trade union strategy. The Sage Handbook of Industrial Relations. London: Sage Publications.

Box-Steffensmeir, J.M., Bradey, H.E. & Collier, D. 2018. The Oxford Handbook of Political Methodology. DOI:[10.1093/oxfordhb/9780199286546.001.0001](https://doi.org/10.1093/oxfordhb/9780199286546.001.0001). Date of access: 17 January 2018.

Bradley, K. & Hills, S. 1983. After Japan: the quality circle transplant and productive efficiency. British Journal of Industrial Relations 21(3): 291-311. <https://doi.org/10.1111/j.1467-8543.1983.tb00137.x>. Date of access: 19 November 2020.

Braun, V. & Clarke, V. 2021. To saturate or not to saturate? Questioning data saturation as a useful concept for thematic analysis and sample size rationales. Qual Res. Sport Exerc. Health 13: 201-216. <https://doi.org/10.1080/2159676X.2019.1704846>. Date of access: 03 October 2021.

Bray, D. & Slaughter, S. 2015. Global democratic theory: a critical introduction. Cambridge: Polity Press.

Brettschneider, C. 2005. Balancing procedures and outcomes within democratic theory: core values and judicial review. London: Sage Journals.

Briggs, C. 2000. Interview. Journal of Linguistic Anthropology 9(1-2): 137-140. <https://doi.org/10.1075/hop.m2.int6>. Date of access: 3 October 2022.

Brinkman, S. 2007. Could interviews be epistemic? An alternative to qualitative opinion polling. Quarterly Inquiry 13: 1116 – 1138. <https://doi.org/10.1177/1077800407308222>. Date of access: 15 June 19.

Bronfenbrenner, K. 2009. No holds barred: the intensification of employer opposition to organising. EPI Briefing Paper. Economic Policy Institute. Briefing Paper #235.

Brown, G.W., McLean, I. & McMillan, A. ed. 2018. Politics and International Relations. Oxford Concise Dictionary. Oxford University Press.

Bruneau, T.C. & Boraz, S.C. 2007. Reforming Intelligence: obstacles to democratic control and effectiveness. University of Texas Press. 385 p.

- Budeli, M. 2003. Freedom of association for public sector employees. Doctorate thesis: University of the North.
- Burgess, R.G. 1984. *In the field: an introduction to field research*. London: Allen & Unwin.
- Busetto, L., Wick, W. & Gumbinger, C. 2020. How to use and assess qualitative research methods. *Neurological Research and Practice* 2(14): 1-10. <https://doi.org/10.1186/s42466-020-00059-z>. Date of access: 27 May 2020.
- Cairola, E. 2015. *Back to fundamentals: organizing, collective bargaining and promotion of a decent work framework in global supply chains*. London: Sage.
- Calvert, J. 1990. Collective bargaining in the public sector in Canada: teething troubles or genuine crisis? *British Journal of Canadian Studies* 2(1). <https://www.researchgate.net/publication/235320713>. Date of access: 28 June 2020.
- Campati, A. 2021. *Elite and liberal democracy: a new equilibrium?* Dipartimento di Scienze Politiche. Università Cattolica del Sacro Cuore, Largo Gemelli. Italy. Milano. <https://doi.org/10.1007/s11245-021-09762-1>. Date of access: 11 October 2021.
- Canada. 1982. *Canadian Charter of Rights and Freedoms*. Constitution Act, 1982. Ottawa: Government of Canada.
- Canada. 1984. *Canadian Security Intelligence Act of 1984*.
- Canada. 1985. *Canadian Security Intelligence Service Act, C-23 of 1985*. Ottawa: Government of Canada. <https://laws-lois.justice.gc.ca/eng/acts/C-23/>. Date of access: 24 July 2025.
- Canada. 1985. *Public Service Superannuation Act, RSC 1985, c. P-36*. <https://laws-lois.justice.gc.ca/eng/acts/p-36/>. Date of access: 22 Jul. 2025.
- Canada. 1996. *Public Service Labour Relations Act of 1996*.
- Canada. 2020. *PSAC (Public Service Alliance of Canada). Collective Bargaining in the Intelligence Sector: Lessons from CSIS*. Ottawa: PSAC. pp. 4–12.
- Canadian Labour Congress (CLC). 2023. *About the CLC*. <https://canadianlabour.ca/about-us/>. Date of access: 24 Jul 2025.
- Canadian Union of Public Employees (CUPE). 2023. *Who we are*. <https://cupe.ca/about-us>. Date of access: 24 Jul 2025.
- Caparini, M. 2007. 'Controlling and overseeing intelligence services in democratic states', in Born, H. and Caparini, M. (eds.) *Democratic Control of Intelligence Services: Containing Rogue Elephants*. Aldershot: Ashgate.

- Carey, T., Yon, A & Beadles, C. 2015. Identifying and prioritising research gaps. UNC: The Cecil G. Sheps Centre for Health Services Research.
- Carothers, T. 2002. The end of transition paradigm. *Journal of Democracy* 13(1): 5-21. DOI:[10.1353/jod.2002.0003](https://doi.org/10.1353/jod.2002.0003). Date of access: January 2002.
- Carrel, M.R. & Heavrin, C. 1985. Collective bargaining and labour relations: cases, practice, and law. Columbus: Charles E. Merrill Publishing Company.
- Casale, G. & Tenkorang, J. 2008. Public service labour relations: a comparative overview. Social Dialogue, Labour Law, and Labour Administration Branch. International Labour Office. Geneva. No. 17.
- Chandler, A. 1962. Strategy and structure: chapters in the history of industrial enterprise. Cambridge: MIT Press.
- Chang, T.H. 2000. The impact of outsourcing to China on Hong Kong's labour market. *Review of International Economics* 8: 221-234.
- Chaskalson, A. 2000. The third pillar of government: the role of the judiciary in the protection of the Constitution. *South African Law Journal* 117(4): 195-210. Date of access: 25 July 2025.
- Cheibub, J.A. & Przeworski, A. 1999. Democracy, elections, and accountability for economic outcomes. *Democracy, Accountability, and Representation* 2: 222-250. Cambridge University Press.
- Chigudu, D. 2015. Collective bargaining: an analysis of hurdles and applicability in the public sector. *Journal of Governance and Regulation* 4(1): 168-174. <https://www.researchgate.net/publication/296485747>. Date of access: 21 January 2019.
- Child, J. 1972. Organisational structure, environment, and performance: the role of strategic choice. *Sociology* 6(3): 1-22. <https://doi.org/10.1177/003803857200600101>. Date of access: 27 May 2019.
- Child, J. 1997. Strategic choice in the analysis of action, structure, organisations, and environment: retrospect and prospect. *Organisational Studies* 18(1): 43-76. <https://www.doi.org/10.1177/017084069701800104>. Date of access: 22 January 2019.
- Churchill, R.P. 1994. The ethics of liberal democracy: morality and democracy in theory and practice. United Kingdom: Berg Publishers, Ltd.
- Clyde, W. 1997. Industrial relations under liberal democracy. *ILR Review* 50(2): 361. <https://doi.org/10.1177/0019799399705000224>. Date of access. 21 January 2019.
- Compact Oxford English Dictionary for University and College Students. 2006. The world's most trusted dictionaries. Oxford University Press.

Constitutional Court. 1999. South African National Defence Union v Minister of Defence (CCT27/98(1999) ZAC 7; 1999(4); 1999(6) BCLR 615 (26 May 1999).

Constitutional Court. 2007. South African National Defence Union v Minister of Defence and Others (CCT65/06) (2007) ZACC 10; 2007 (5) SA 400 (CC); 2007 (8) BCLR 863 (CC); (2007) 28 ILJ 1909 (CC) (30 May 2007).

Couch, C.J. 1987. Objectivity: a crutch and club for bureaucrats/subjectivity: a haven for lost souls. *Sociological Quarterly*; 28:105-118.

Creswell, J.W. 2002. *Research design: qualitative, quantitative and mixed method approaches*. London: Sage.

Creswell, J.W. 2007. *Qualitative inquiry and research design: choosing among five approaches*. Sage Publications Inc.

Cronin, A., Alexander, V.D. & Fielding, J. 2008. The analytic integration of qualitative data sources. *Social Research Methods* 15(31): 572-584. DOI:10.4135/9781446212162.n34. 28 August 2018

Cunningham, F. 2002. *Theories of democracy: a critical introduction*. London: Routledge.

Currie, I. & De Waal, J. 2013. *The Bill of Rights Handbook*. 6th ed. Cape Town: Juta.

Dachler, P.H. & Wilpert, B. 1978. Conceptual dimensions and boundaries of participation in organisations: a critical evaluation. *Administrative Science Quarterly* 23(1): 1-39.

Dahl, R.A. 1971. *Polyarchy: participation and opposition*. New Haven: Yale University Press.

Dahl, R.A. 1989. *Democracy and its critics*. New Haven: Yale University Press.

Dandeker, C. 1990. *Surveillance, power and modernity: Bureaucracy and discipline from 1700 to the present day*. Cambridge: Polity Press.

Daugareli, I. 2008. Employee participation, ethics and corporate responsibility. *Transfer: European Review of Labour and Research* 14(1): 93-110. DOI: 10.1177/102425890801400109. Date of access: 15 February 2021.

Davies, P. & Freedland, M. 1983. *Labour legislation and public policy*. Oxford University Press: Oxford.

Davy, H.W., Bognanno, M.F. & Estenson, D.L. 1982. *Contemporary collective bargaining*. New Jersey: Prentice Hall, Inc.

De Jager, N. & Sebudubudu, D. 2017. Towards understanding Botswana and South Africa's ambivalence to liberal democracy. *Journal of Contemporary African Studies* 35(1): 15-33. DOI:10.1080/02589001.2016.1246682. Date of access: 18 January 2022.

- de Judicibus, D. 2015. Definition of intelligence. In *Cognitive Science A Multi-disciplinary Journal*. June 2015. 16(2). 107 – 132. <https://www.researchgate.net/publication/341099780>. Date of access: 27 June 2019.
- de Tocquille, A. 1969. *Democracy in America*. New York: G. Dearborn & Co.
- DeJonckheere, M. & Vaughn, L. 2019. Semi-structured interviewing in primary care research: a balance of relationship and rigour. Department of Family Medicine. University of Michigan.
- Derber, M. 1980. Collective bargaining: the American approach to industrial democracy. In Landsbury, R.D. (eds). *Democracy in the workplace*. Melbourne: Longman Cheshire. pp171-182.
- Diamond, L. 1999. *Developing democracy: Toward consolidation*. Baltimore: Johns Hopkins University Press.
- Dicey, A.V. 1959. *Introduction to the study of the law of the Constitution*. 10th ed. London: Macmillan.
- DiCicco-Bloom, B. & Crabtree, B. 2006. The qualitative research interview. *Medical Education*, 40(314-321). London: Blackwell Publishing Ltd.
- Doellgast, V. & Benassi, C. 2014. Collective bargaining. *Handbook of Research on Employee Voice*. 227-246. <https://digitalcommons.ilr.cornell.edu/articles>. Date of access: 17 January 2021.
- Donnelly, A. 2018. *Subverting mainstream narratives in the Reagan era: giving power to the people*. New York: Palgrave Macmillan.
- Donnelly, J. 2013. *Universal human rights in theory and practice*. Ithaca: Cornell University Press.
- Dorigatti, L. & Pedersini, R. 2021. Industrial relations and inequality: the many conditions of a crucial relationship. Dipartimento di Scienze sociali e politiche. Università degli Studi di Milano. Italy: Sage 27(1): 11-27. <https://doi.org/10.1177/10242589211007400>. Date of access: 17 January 2021.
- Dryzek, J.S. & Dunleavy, P. 2009. *Theories of democratic state*. London: Bloomsbury Press.
- Duncan, G. 1983. *Democratic theory and practice*. Cambridge: Cambridge University Press.
- Dunleavy, P. & O'Leary, B. 1987. *Theories of the state: the politics of liberal democracy*. Basingstoke: Macmillan Education.
- Du Plessis, L. 1999. *An introduction to law*. Cape Town: Juta & Co, Ltd.

- Du Plessis, L. 2008. Affirmation and celebration of the religious other in South Africa's constitutional jurisprudence on religious and related rights: memorial constitutionalism in action? *African Human Rights Law Journal* 8(2): 376-408.
- Du Plessis, P. 2013. Legislation and policy progress towards the right to inclusive education. *De Jure Law Journal* 1(46): 76.
- Du Toit, D., Godfrey, S., Cooper, C., Giles, G., Cohen, T., Conradie, B. & Steenkamp, A. 2015. *Labour relations law: A comprehensive guide*. 6th ed. Durban: LexisNexis.
- Eaton, A. 1994. The survival of employee participation programs in unionised settings. *Industrial and labour Relations Review* 47(3): 37-89. <https://EconPapers.repec.org/RePec:sae:ilrrev>. Date of access: 19 April 2021.
- Eccleshall, R., Geoghegan, V. & Richard, J. 1984. *Political ideologies: an introduction*. London: Routledge.
- Economic Policy Institute Fact Sheet. Collective bargaining's erosion has undercut wage growth and fuelled inequality.
- Edwards, P. 1986. *Conflict at work: a materialist analysis of workplace relations*. Oxford: Basil Blackwell.
- Ehlers, L. 2007. *Labour relations systems, procedures and practices*. Pretoria. EAMS Publishing.
- Ellem, B., Baird, M. & Lansbury, R.D. 2005. Work choices: myth making at work. *Journal of Australian Political Economy* 56: 13-31.
- Ericson, R. V., Baranek, P.M. & Chan, J.B.L. 1991. *Representing order: crime, law and justice in the news media*. Milton Keynes: Open University Press.
- Farrell, M. 2008. Collective bargaining in Canada. Universite du Quebec. *Journal of Collective Bargaining in the Academy* 0(47).
- Fernandes-Torne, C. & Young, G. 2023. Mirroring truths: how liberal democracies are challenging their foundational narratives. *Social Sciences* 12:438. <https://doi.org/10.3390/socsci12080438>. Date of access: 10 August 2023.
- Fife, W. 2005. *Doing fieldwork: ethnographic methods for research in developing countries and beyond*. New York: Palgrave MacMillan.
- Fine, G.A. 2014. *The hinge: civil society, group culture, and the interaction order*. Sage: London.

- Fine, J. 2006. *Worker centres: organising communities at the edge of the dream*. London: ILR Press.
- Finnemore, M. 2003. *The Purpose of intervention: changing beliefs about the use of force*. Ithaca: Cornell University Press.
- Flanagan, R. 2008. The changing structure of collective bargaining. In Blyton et al. (eds). *The Sage Handbook of Industrial Relations*. London: Sage Publications. 406-419.
- Fontana, A. & Frey, J.H. 2005. The interview: from neutral stance to political involvement. In Densin, N.K & Lincoln, Y.S. (eds), *The Sage Handbook of Qualitative Research*, 3rd ed. Thousand Oaks, CA: Sage, 695 - 728.
- Fraussen, B., Albareda, A. & Braun, C. 2020. Conceptualising consultation approaches: identifying combinations of consultation tools and analysing their implications for stakeholder diversity. *Institute of Public Administration. Leiden University. Policy Sciences* 53: 473-493. <https://doi.org/10.1007/s11077-020-09382-3>. Date of access: 25 April 2020.
- Freeman, R. 2007. Do workers still want unions? More than ever. EPI Briefing Paper. Economic Policy Institute. Briefing Paper #182.
- Freeman, R.B. & Medoff, J.L. 1979. Two faces of unionism. *National Bureau of Economic Research. Working Paper* #364.
- Frege, C.M. 2002. A critical assessment of the theoretical and empirical research on work councils. *British Journal of Industrial Relations* 40(2): 221-248. <https://doi.org/10.1111/1467-8543.00230>. Date of access: 15 February 2023.
- Friedman, M. 1951. Some comments in the economic significance of labour unions for economic policy. In Wright, D.M. (ed). *The impact of the union*. New York: Harcourt Brace. pp 204-235.
- Friedman, S. 2018. *Power in action: democracy, citizenship and social justice*. Johannesburg: Wits University Press.
- Fukayama, F. 1992. *The end of history and the last man*. New York: Basic Books.
- Furedi, F. 2005. *Politics of fear: beyond left and right*. London: Continuum Publishing Group.
- Gall, G. & Hebdon, R. 2008. 2008. Conflict at work. *The Sage Handbook of Industrial Relations*. London: Sage Publications Ltd. 588-605.
- Gemma, R. 2018. Introduction to positivism, interpretivism and critical theory. *Nurse Researcher* 25(4): 41-49. <https://www.researchgate.net/publication/323811451>. Date of access: 17 August 2018.

- Gergigon, B., Odero, A. & Guido, H. 2000. Collective bargaining: ILO standards and the principles of the supervisory bodies. International Labour Office. Geneva.
- Gerson, K. & Damaske, S. 2020. The science and art of interviewing. Oxford University Press.
- Gill, C. & Krieger, H. 1999. Direct and representative participation in Europe: recent survey of evidence. *International Journal of Human Resource Management* 42(2): 349-378. <https://doi.org/10.1177/0958928709358792>. Date of access: 20 July 2022.
- Gill, P. 1994. Policing politics: security intelligence and the Liberal Democratic State. London: Frank Cass.
- Ginsburg, T. 2021. The future of liberal democracy in the international legal order. Public Law and Legal Theory Working Paper Series, No. 778.
- Glimmerveen, L., Ybema, S. Nies, H. 2022. Who participates in public participation? The exclusionary effects of inclusionary efforts. *Administration & Society* 54(4): 543-574. <https://doi.org/10.1177/00953997211034137>. Date of access: 11 August 2021.
- Godfrey, S. 2018. Contested terrain: the extension of multi-employer collective agreements in South Africa. In Hayter, S. & Visser, J. (eds). *Collective agreements: extending labour protection*. International Labour Organisation: 137-157. Geneva: ILO Cataloguing Publication Data.
- Godfrey, S., Maree, J. & Du Toit, D. 2010. Collective bargaining in South Africa: past, present, and future. Cape Town: Juta & Co, Ltd.
- Godfrey, S., Theron, J. & Visser, M. 2007. The state of collective bargaining in South Africa: an empirical and conceptual study of collective bargaining. ISBN Number: 978-1-920055-52-8. Date of access: 30 July 2023.
- Good, K. 2002. The liberal model and African elites against democracy. Camden: Palgrave Macmillan.
- Good, K. 2008. Diamonds, dispossession and democracy in Botswana. Johannesburg: Jacana Media.
- Green, J.E. 2016. The shadow of unfairness: a plebeian theory of liberal democracy.
- Grogan, J. 2009. Workplace law. Cape Town: Juta & Co, Ltd.
- Grogan, J. 2010. Collective Labour Law. Cape Town: Juta.
- Guest, G., Bunce, A. & Johnson, L. 2006. How many interviews are enough? An experiment with data saturation and variability. *Field Methods* 18: 59-82. <https://doi.org/10.1177/1525822X05279903>. Date of access. 17 February 2023.

- Guillemin, M. & Gillam, L. 2004. Ethics, reflexivity and ethnically important moments in research. *Qualitative Inquiry* 10: 260-280. <https://www.researchgate.net/publication/235930722>. Date of access: 05 May 2023.
- Gumbrell-McCormick, R. 2000. Facing new challenges: the international confederation of free trade unions (1972-1990s). In Crew et al. (eds). *The International Confederation of Free Trade Unions*: Peter Lang.
- Gumbrell-McCormick, R. 2004. International actors and international regulation. In Blyton, et al. (eds). *The Sage Handbook of Industrial Relations*. London: Sage Publications Ltd.
- Halonen, T. & Liukkunen, U. 2020. What happened to international labour standards and human rights at work? *International Labour Organisation and Global Social Governance* 51-78. <https://doi.org/10.1007/978-3-030-55400-2>. Date of access: 03 August 2023.
- Harley, B. 1999. The myth of empowerment: work organisation, hierarchy and autonomy in contemporary Australian workplaces. *Work, Employment and Society* 13(1): 41-66. <https://www.researchgate.net/publication/249827777>. Date of access: 03 January 2022.
- Harley, B., Hyman, J. & Thompson, P. 2005. The paradoxes of participation. In Harley B., Hyman, J & Thompson, P. (eds). *Participation and democracy at work. Essays in honours of Harview Ramsay*. London: Palgrave. pp20-37.
- Hayter, S. & Visser, J. 2018. Collective agreements: extending labour protection. International Labour Organisation. ILO Cataloguing in Publication Data.
- Hayter, S. 2011. *The role of collective bargaining in the global economy: negotiating for social justice*. UK: Edward Elgar Publishing Ltd.
- Hayter, S., Fashoyn, T. & Kochan, T.A. 2011. Review essay: collective bargaining for the 21st Century. United Kingdom: Edward Elgar Publishing Ltd.
- Haywood, A. 2013. *Politics. Political Science*. UK: Macmillan Education.
- Hecksher, C. 1988. *The new unionism*. New York.
- Heery, E. & Adler, L. 2004. Organising the unorganised. In Frege, C. & Kelly, J. (eds). *Varieties of unionism: strategies for revitalisation in globalising economy*. Oxford: Oxford University Press.
- Heery, E. & Fosch, P. 1990. *Introduction: whose union? Power and bureaucracy in the labour movement*. Oxford: Oxford University Press.
- Heery, E. & Frege, C. 2006. New actors in industrial relations. *British Journal of Industrial Relations* 44(4): 601-604. DOI:10.1111/j.1467-8543.2006.00515.x. Date of access: 22 January 2022.

- Heinecken, 2009. Ban military unions, they are a threat to national security! So where to from here? Strategic Review for Southern Africa 31(2). https://upjournals.up.ac.za/index.php/strategic_review/index. Date of access: 29 November 2018.
- Heinecken, L. 1997. No unions, we're the SANDF! But what's the alternative? Centre for Military Studies. University of Stellenbosch: African Security Review 6(6). <http://www.iss.co.za/pubs/ASR/6No6/Heinecken.html>. Date of access: 27 March 2019.
- Held, D. 1993. Prospects for democracy: North, south, east, west. France: Polity Press.
- Held, D. 2006. Models of Democracy. 3rd ed. Stanford: Stanford University Press.
- Hemming, J. 2009. Surviving field research: working in violent and difficult situations. Cambridge: Routledge.
- Hepple, B. 2005. Labour laws and global trade. London: Hart.
- Hepple, B. 2011. Laws against strikes: between change and tradition. London: Hart.
- Heywood, A., 2021. Politics. 5th ed. London: Macmillan Education
- Hicks, J.R. 1966. The theory of wages. New York: St. Martin's Press.
- Hietanen-Kunwald, P. & Haapio, H. 2021. Effective dispute prevention through proactive contract design. Journal of Strategic Contracting and Negotiation 5(1-2): 3-23. <https://doi.org/10.1177/205555636211016878>. Date of access: 28 May 2021.
- Higley, J. & Burton, M. 2006. Elite foundations of liberal democracy. New York: Rowman & Littlefield Publishers.
- Hindes, Y., Schoenberg, M.R. & Saklofske, D.H. 2011. Intelligence. In Kreutzer, J.S., Deluca, J. & Caplan, B. (eds). Encyclopaedia of Clinical Neuropsychology (1329-1335). New Jersey: USA.
- Hoang, D. 2019. Labour standards in the global supply chain: workers' agency and reciprocal exchange perspective. Societies 9(38): 1-25. <https://doi.org/10.3390/soc9020038>. Date of access: 18 May 2019.
- Holden, B. 1993. Understanding liberal democracy. Harvester Wheatsheaf: University of Georgia Libraries.
- Holmes, S. 1995. Passions and constraints on the theory liberal democracy. London: The University of Chicago Press.
- Horton, R.D. 1973. Municipal labour relations in New York City. New York: Praeger.

Huntington, S.P. 1984. Will more countries become democratic. *Political Science Quarterly* 99(2): 193-218. <https://doi.org/10.1177/000276429203500407>. Date of access: 30 March 2019.

Husband, G. 2020. Ethical data collection and recognising the impact of semi-structured interviews on research respondents. *Education Sciences* 10(26): 1-12. <https://doi.org/10.3390/educsci10080206>. Date of access: 11 August 2020.

Huselid, M. 1995. The impact of human resource management practices on turnover, productivity and corporate performance. *Academy of Management Journal* 38(3): 225-244. <http://dx.doi.org/10.2307/256741>. Date of access: 20 May 2014.

Hyland, J.L. 1995. *Democratic theory: The philosophical foundations*. United Kingdom. Manchester University Press.

Hyman, R. 1977. *Strikes*. Glasgow: Collins.

Ichniowski, C., Kochan, T. & Levine, D. 1996. What works at work: overview and assessment. *Industrial relations* 35(3): 299-333. DOI:[10.1111/j.1468-232X.1996.tb00409.x](https://doi.org/10.1111/j.1468-232X.1996.tb00409.x). Date of access: 29 October 2023.

International Labour Organisation, 1948. *Convention 87 Freedom of Association and Protection of the Right to Organise Convention* (1948).

International Labour Organisation, 1949. *The Right to Organise and Collective Bargaining Convention*. 1949 (No.98).

International Labour Organisation. 2013. *Collective bargaining in the public service: a way forward*. General survey concerning labour relations and collective bargaining in the public service. Report of the committee of experts on the application of Conventions and recommendations (Article 19, 22, and 35 of the Convention). Report III (Part 1B).

International Labour Organisation. 2019. *Freedom of Association and Collective Bargaining in SADC Countries: A Review of Law and Practice*. Geneva: ILO.

International Labour Organization (ILO), 2022. *Country Profile: Botswana – Decent Work Indicators*. <https://www.ilo.org>. Date of access: 1 July 2025.

International Organisation of Employers, 2014. *Do ILO Conventions 87 and 89 recognise a right to strike?*

Jacobs, R.L. 2011. *Developing a research problem and purpose statement*. In *The handbook of scholarly writing and publishing*. New Jersey: Jossey-Bass Inc.

- Jager, F. 2023. Security vs. civil liberties: how citizens cope with threat, restriction, and ideology? Mannheim Centre for European Research. Graduate School of Social Sciences. *Frontiers in Political Science*.
- Jenkins, C. & Sherman, C. 1977. *Collective bargaining. what you always wanted to know about trade unions and never dared to ask*. London: Routledge & Kegan Paul.
- Jenkins, D. & Neal, A. 2023. Work relationships and autonomy. *The Journal of Value Inquiry*. <https://doi.org/10.1007/s10790-023-09939-4>.
- Jennings, K.M., Smith, J.A. & Traynham, E.C. 1978. *Labour relations in a public service industry: unions, management, and the public interest in mass transit*. New York: Praeger Publishers.
- Johnson, G. & Scholes, K. 2002 (eds). *Exploring corporate strategy: text and cases*. Harlow: Person Education.
- Johnson, G.F. & Howsam, R. 2018. Can consultation ever be collaborative. *Routledge Taylor & Francis Group: Policy Design and Practice* 1(4): 253-268. <https://doi.org/10.1080/25741292.2018.1531583>. Date of access: 17 December 2018.
- Kahn, A. 1971. *The economics of regulation: principles and institutions*. New York: Wiley.
- Kaina, V. 2022. Can liberal democracy survive our fervor? Signs and origins of dysfunctional democracy. *Z Vgl Polit Wiss* 16: 199-220. <https://doi.org/10.1007/s12286-022-00525-9>. Date of access: 28 November 2022.
- Kajee, A. 2007. *Democracy and political party systems: opinion editorials*. Institute for War and Peace Reporting. Cape Town: Acumen Publishing.
- Kajee, A. 2007. Democracy and the development and design of party systems. In Kajee, A. & Mbele, L. (eds). *Designing democracy: comparing party politics in emerging regions*. South African Institute of International Affairs. Johannesburg: Acumen Publishing Solutions. pp7-18.
- Karolia-Hussain, F. & Fourie, E. 2021. The relevance and impact of South African labour law in the mining sector: a fourth industrial revolution perspective. *Obiter* 4(3): 445-452. Date of access: 1 July 2025.
- Karolia-Hussain, Z. & Fourie, E. 2021. The right to strike: balancing worker rights and constitutional order. *South African Law Journal* 138(3):445–452. Date of access: 1 July 2025.
- Katz, H.C. & Kochan, T.A. 1992. *An introduction to collective bargaining and industrial relations*. USA: McGraw-Hill, Inc.
- Kaufman, B.E. & Taras, D.G. (eds). 2000. *Non-union employee representation: history, contemporary practice and policy*. New York: Armonk.

- Kaufman, B.E. 1989. Labour's inequality of bargaining power: changes over time and implications for public policy. *Journal of Labour Research* 10: 285-298.
- Kaufman, B.E. 2004. Prospects for union growth in the United States in the early 21st Century. In Verma, A & Kochan, T.A. (eds). *Unions in the 21st century*. New York: Palgrave MacMillan.
- Kaufmann, B.E & John, R. 2003. Commons and Wisconsin school in industrial relations strategy and policy. *Industrial and Labour Relations Review* 57(1): 3-30. <https://ssrn.com/abstract=464440>. Date of access: 20 November 2021.
- Kaufmann, B.E. 2007. *Globalisation and labour rights: the conflict between core labour rights and economic law*. Oxford: Oxford University Press.
- Kearney, R.C. 1984. *Labour relations in the public sector*. Oxford: Oxford University Press.
- Keller, B. 2020. Employment relations without collective bargaining and strikes: the usual case of civil servants in Germany. *Industrial Relations Journal* 5(1-2): 110-133. <http://nbn-resolving.de/urn:nbn:de:bsz:352-2-82i4m8p3abtv6>. Date of access: 28 November 2020.
- Kivunja, C. & Kuyini, A.B. 2017. Understanding and applying research paradigms in educational contexts. *International Journal of Higher Education* 6(5). <http://ijhe.sciedupress.com>.
- Knights, D & Willmott, H. 1999. *Management lives: power and identity in work organisations*. London: Sage.
- Knott, E., Rao, A.H. & Summers, K. 2022. Interviews in the social sciences. Department of Methodology. London School of Economics: *Methods Primers* 2(73). <https://doi.org/10.1038/s43586-022-00150-6>. Date of access: 15 September 2022.
- Kochan, T.A. & Osterman, P. 1994. *The mutual gains enterprise*. Boston: Harvard Business School Press.
- Kochan, T.A., McKersie, R.B. & Capelli, P. 1983. Strategic choice and industries. *Relations Theory and Practice*: 1-34. <https://www.researchgate.net/publication/37593421>. Date of access: 18 August 2021.
- Kornhauser, A. 1994. Human motivations underlying industrial conflict. In Duban et al. (eds). *Industrial conflict*. New York: McGraw-Hill. 62-85.
- Kraaykamp, G., Cemalcilar, Z. & Tosun, J. 2019. Transmission of work attitudes and values: comparisons, consequences, and implications. <https://doi.org/10.1177/0002716219831947>. Date of access: 13 March 2019.
- Kumar, R. 2014. *Research methodology: a step-by-step guide for beginners* (4th ed). London: Sage Publications.

- Kuruvilla, S. & Verma, A. 2006. International labour standards, soft regulation, and national government roles. *The Journal of Industrial Relations* 44(1): 41-58. <https://www.researchgate.net/publication/37157327>. Date of access: February 20006.
- Landman, T. 2018. Democracy and human rights: concepts, measures, and relationships. *Politics and Governance* 6(1): 48-59. DOI: [10.17645/pag.v6i1.1186](https://doi.org/10.17645/pag.v6i1.1186)
- Lansbury, R.D & Wailes, N. 2008. Employee involvement and participation. In Blyton, P., Bacon, N. & Florito, J. (ed). 2008. London: Sage Publications Ltd. *The Sage Handbook of Industrial Relations*. 435-446.
- Lansbury, R.D. & Wailes, N. 2004. Employment relations in Australia. In Bamber et al., (eds). *International and Comparative Employment Relations*. London: Sage Publications. pp119-145.
- Laruelle, M. 2022. Illiberalism: a conceptual introduction. Institute for European, Russian, and Eurasian Studies. Washington: Washington University.
- Lautenbach, G. 2013. *The concept of the rule of law and the European Court of Human Rights*. Oxford University Press.
- Le Roux, R. & Cohen, T. 2016. Understanding the limitations of the right to strike in essential and public services in the SADC region. *Potchefstroom Electronic Law Journal* 19(1): 1-25. <http://dx.org/10.17159/1727-3781/2016v19ia1161>. Date of access: 28 November 2019.
- Leavy, P. 2011. *Essentials of trans-disciplinary research: using problem-centred methodologies*. USA: Left Coast Press, Inc.
- Levesque, C. & Murray, G. 2002. Local versus global: activating local union power in the global economy. *Labour Studies Journal* 27(3): 39-65.
- Lewin, D. 2008. Resolving conflict. In Blyton, P., Bacon, N. & Florito, J. (eds). *The Sage Handbook of Industrial Relations*. London: Sage Publications Ltd. 447-464.
- Linchback, M.I. 1951. *Democratic theory and casual methodology in comparative politics*. Cambridge University Press.
- Lincoln, Y. (ed). 1998. *Collecting and interpreting qualitative materials*. Thousand Oaks: Sage.
- Logan, J. 2006. The union avoidance industry the United States. *British Journal of Industrial Relations* 44(4): 651-676. Oxford: Blackwell Publishing Ltd.
- Logan, J. 2009. *Union recognition and collective bargaining: how does the United States compare with other democracies*. Oxford: Blackwell Publishing Ltd.

- Long, H. 2014. An empirical review of research methodologies and methods in creative sciences. *Creative Research Journal* 26: 427-438. <https://doi.org/10.1080/10400419.2014.961781>. Date of access: 20 November 2021.
- Luborsky, M.R. & Rubenstein, R.L. 1995. Sampling in qualitative research: rationale, issues, and methods. *Res Aging* 17(1): 89-113. DOI: 10.1177/01640227595171005. Date of access: 20 December 2022.
- Marshall, A. 1923. *Principles of economics*. London: MacMillan.
- Mason, J. 1996. *Qualitative researching*. London: Sage.
- Mason, J. 2000. *Deciding where to live: relational reasoning and narratives of the self*. Working paper No.19. Centre for Research on Family, Kinship and Childhood. Leeds: University of Leeds.
- Mathews, B. & Ross, L. 2010. *Research methods: a practical guide for social sciences*. London: Pearson Education Limited.
- May, T. 2001. *Social research: issues, methods and process*. London: Open University Press.
- May, T. 2003. *Qualitative research in action*. Britain: Sage Publications Ltd.
- McAuley, C. 2003. Ethics. In Miller, R.L. & Brewer, D. (eds). *The A - Z of Social Research*. London: Sage Publications.
- McCann, T. & Clark, E. 2005. Using unstructured interviews with participants who have schizophrenia. *Nurse Researcher* 13(1): 7-18. DOI:10.7748/nr2005.07.13.1.7.c5996. Date of access: 17 October 2022.
- McGowan, J. 2012. *Making the case for liberal democracy*. Minnesota: University of Minnesota Press.
- McMeekin, N., Wu, O. & Germini, E. 2020. How methodological frameworks are being developed: evidence from a scoping review. *BMC Medical Research Methodology* 20(173). <https://doi.org/10.1186/s12874-020-01061-4>. Date of access: 30 June 2020.
- Megill, K.A. 1970. *The new democratic theory*. USA: The Free Press.
- Meiser, J.W. 2018. Introducing liberalism in international relations theory. *International Relations Theory*.
- Mendus, S. 1989. *Toleration and the limits of liberalism*. Basingstoke: Macmillan.
- Meredith, J. 1998. Building operations management theory through case and field research. *Journal of Operations Management* 16(4): 441-454.
- Meyer, M. 1946. *Liberal democracy: prosperity through freedom*. New York: Springer.

- Miles, D.A. 2017. A taxonomy of research gaps: identifying the seven research gaps. *Journal of Research Methods and Strategies*: 1-15.
- Mill, J.S. 1991b (1859). *On liberty* in John Stuart Mill *On liberty and other essays* (7-17). Oxford: Oxford University Press.
- Minichiello, V. 1990. *In-depth interviewing: researching people*. Hong Kong: Longman Cheshire Pty Ltd.
- Mintzberg, H. 1978. Patterns in strategy formation. *Management Science* 24(9): 934-948. <https://www.researchgate.net/publication/2274444830>. Date of access: 25 May 2021.
- Mintzberg, H. 1990. The design school: reconsidering the basic premises of strategic management. *Strategic Management Journal* 11(3): 171-195. <http://dx.doi.org/10.1002/smj.4250110302>. Date of access: 25 May 2021.
- Mintzberg, H. 2003. *The strategy: concepts, context, cases*. London: Pearson Education.
- Mishel, L. 2012. Unions, inequality, and faltering middle-class wages. EPI Issue Brief Economic Policy Institute. Issue Brief #342.
- Moravcsik, A. 1992. Liberalism and international relations theory. Centre for European Studies. Harvard University. p38.
- Mouton, J. & Marais, H.C. 1990. *Basic concepts in the methodology of the social sciences*. Pretoria: Human Sciences Research Council.
- Moyo, T. 2021. Labour Rights and Security Sector Personnel in Botswana. *Journal of African Public Service*, 5(2), 45-59. <https://www.scirp.org>. Date of access: 12 July 2025.
- Mukand, S.W. & Rodrik, D. 2017. *The political economy of liberal democracy*. USA. Cambridge.
- Muller-Block, C. & Kranz, J. 2015. A framework for rigorously identifying research gaps in qualitative literature reviews. Completed Research Paper. Thirty Sixth International Conference on Information Systems. Fort Worth.
- Muraille, E. 2022. The tragedy of liberal democratic governance in the face of global threats. *Frontiers in Public Health* 10(902724).
- Murphy, E. & Dinguall, R. 2007. Informed consent, anticipatory regulation and methnographic practice. *Social Science Medicines* 65: 2223-2234. DOI: [10.1016/j.socscimed.2007.08.008](https://doi.org/10.1016/j.socscimed.2007.08.008). Date of access: 09 March 2021
- Myers, J.P. 2020. *Research on teaching global issues: pedagogy for global citizenship education*. United States: Information Age Publishing.

Nathan, L. 2010. Intelligence governance and democratization: A comparative analysis of the reform of South Africa's intelligence services. *Intelligence and National Security*. 25(2): 210–229.

Nathan, L. 2010. Intelligence leadership and accountability in South Africa. ISS Paper 211. Pretoria: Institute for Security Studies.

National Union of Public and General Employees (NUPGE). 2023. About NUPGE. <https://nupge.ca/about/>. Date of access: 24 Jul 2025.

Neuman, W.L. 2006. *Social research methods: qualitative and quantitative approaches*. USA. Library of Congress Cataloguing-in-Publication.

Neuman, W.L. 2014. *Social research methods: Qualitative and quantitative approaches*. 7th ed. Harlow: Pearson.

Nevedal, A.L., Reardon, C.M. & Widerquist, M.A. 2021. Rapid versus traditional qualitative analysis using the consolidated framework for implementation research (CFIR). *Implementation Science* 16(67): 1-12. <https://doi.org/10.1186/s13012-021-01111-5>. Date of access: 02 July 2021.

Ngcukaitobi, T. 2005. The right to collective bargaining in the public sector: a constitutional rope of sand? <http://www.lexisnexis.co.za/ServicesProducts/presentations/17th/TembekaNgcukaitobi.doc>. Date of access: 15 April 2022.

NSIRA (National Security and Intelligence Review Agency). 2023. What we do. <https://nsira-ossnr.gc.ca/en/about-nsira/what-we-do/>. Date of access: 22 Jul. 2025.

Nyyssönen, H. & Metsälä, J. 2021. Liberal democracy and its current illiberal critique: the emperor's new clothes? *Europe-Asia Studies* 73(2): 273-290. <https://doi.org/10.1080/09668136.2020.1815654>. Date of access: 24 September 2022.

O'Donovan, O. 2009. The language of rights and conceptual history. *Journal of Religious Ethics* 37(2): 193-2007. DOI:10.1111/j.1467-9795.2009.00382.x. Date of access: 24 September 2022.

Okolie, U.C. 2021. Does liberal democracy promote economic development? Interrogating electoral cost and development trade-off in Nigeria's fourth republic. *Cogent Social Sciences* 7(1). <https://doi.org/10.1080/23311886.2021.1918370>. Date of access: 23 April 2021.

Okolie, U.C. 2021. Work placement and students' readiness for school-to-work transition: Do perceived employability and faculty supervisor support matter? *Journal of Vocational*

Behaviour. 139(3): 103805. DOI:10.1111/j.1467-9795.2009.00382. Date of access: 15 March 2021

Oldfield, A. 2000. Liberal democratic theory: some reflections on its history and its present. *European Democratisation since 1800*. London: Palgrave Macmillan. 6-25.

Oldfield, A. 2006. Interactive music therapy – a positive approach. London. Jessica Kingsley. p223.

Osterman, P., Katz, H.C. Locke, R.M. 2001. *Working in America: a blueprint for the new labour market*. Cambridge MA: The MIT Press.

Owoseni, O.O. 2014. Collective bargaining as a veritable tool for resolving conflicts in organisations. *European Journal of Business and Management* 6(14): 12-17. <http://www.iiste.org>. Date of access: 20 July 2022.

Palinkas, L.A., Horwitz, S.M. & Green, C.A. 2015. Purposeful sampling for qualitative sampling for qualitative data collection and analysis in mixed method implementation research. *Adm Policy Ment Health* 42(5): 553-544. DOI:10.1007/s10488-013-0528-y. Date of access: 20 September 2021.

Patel, H.D., Iyoha, E. & Pierorazio, P.M. 2016. A systematic review of research gaps in the evaluation and management of localised renal masses. *HHS Public Access* 98: 14-20. DOI:10.1016/j.urology.2016.08.013. Date of access: 15 May 2021.

Patel, M. & Patel, N. 2019. Exploring research methodology: review article. *International Journal of Research and Review* 6(3): 48-55. <https://www.ijrrjournal.com>.

Pateman, C. 1970. *Participation and democratic theory*. Cambridge: Cambridge University Press.

Patino, C.M. & Ferreira, J.C. 2018. Inclusion and exclusion criteria in research studies: definitions and why they matter. *J Bras Pneumo* 44(2): 84. DOI:10.1590/S1806-375620180000000088. Date of access: 23 August 2022.

Patton, M.G. 2002. *Qualitative research and evaluation methods*. Thousand Oaks: Sage.

Pennock, J.R. 1950. *Liberal democracy: its merits and prospects*. New York: Rinehart and Company.

Pham, L. 2018. A review of key paradigms: positivism, interpretivism and critical inquiry. DOI:10.13140/RG.2.2.13995.54569. Date of access: 19 October 2022.

Pil, F.K. & MacDuffie, J.P. 1996. The adoption of high involvement workplace. *Industrial Relations* 35(3): 423-455. DOI:10.1111/j.1468-232X.1996.tb00414. Date of access: 20 July 2021.

- Pillay, D. 2001. Part 1: the essential services in South Africa. South African Essential Services Committee. Southern Africa Business Review 5(1): 57-60.
- Pilon, D. 2017. The contested origins of Canadian democracy. Studies in Political Economy: A Social Review 98(2): 105-123. <https://doi.org/10.1080/07078552.1342990>. Date of access: 05 July 2021.
- Piore, M.J. & Stafford, S. 2006. Changing regimes of workplace governance: shifting axes of social mobilisation and the challenge to industrial relations theory. Industrial Relations 45(3): 299-325. DOI:10.1111/j.1468-232X.2006.00439.x. Date of access: 25 March 2021.
- Plato, 1945. The republic, edited by Francis MacDonald (13-14; 1,334-335). Oxford.
- Poole, A. 2009. Democracy, rights and rhetoric in Southeast Asia. Springer International Publishing.
- Poole, M. 1986. Towards a new industrial democracy: workers' participation in industry. London: Routledge.
- Poole, M. 1989. The origins of economic democracy. London: Routledge.
- Poole, M., Lansbury, R.D. & Wailes, N. 2001. A comparative analysis of developments in industrial democracy. Industrial Relations 40(3): 490-525. DOI:10.1111/0019-8676.00221. Date of access: 17 April 2021.
- Poutsma, E., Hendrickx, J. & Huijgen, F. 2003. Employee participation in Europe: In search of the participative workplace. Economic and Industrial Democracy 24(1): 45-76. <https://doi.org/10.1177/0143831X03024001599>. Date of access: 15 February 2021.
- Pretorius, P. 2010. Dispute resolution. Cape Town: Juta & Co, Ltd.
- Punch, K.F. 1998. Introduction to social research: quantitative and qualitative approaches. Thousand Oaks: Sage.
- Queiroz, R. 2018. Individual liberty and the importance of the concept of the people. Article: 1-11. <https://www.nature.com/palcomms>. Date of access: 20 March 2022.
- Ramsay, H. 1977. Cycles of control: worker participation in sociological and historical perspective. Sociology, 11(3): 481-506. <https://doi.org/10.1177/00803857701100304>. Date of access: 05 September 2022.
- Ramsay, H. 1982. Evolution of cycle? In Crouch, C. (ed). First International Yearbook of Organisational Democracy. London: Wiley.

Ramsay, H. 1983. An international participation cycle: variations on a recurring theme. In Clegg, S., Boreham, P & Doco, G. (eds). *The state class and the recession*. Canberra: Croom Helm.

Raschke, C.A. 2015. *Force of God: political theology and the crisis of liberal democracy*. New York: Columbia University Press.

Rashid et al. 2019. Case study method: a step-by-step guide for business researchers. *International Journal of Qualitative Methods* 18(1): 1-13. <https://doi.org/10.1177/1609406918662424>. Date of access: 24 July 2022.

Rawls, J. 1985. Justice as fairness: political not metaphysical. *Philosophy and Public Affairs* 14(3): 223-251.

Rawls, J. 1991. *A theory of justice*. Harvard: Harvard University Press.

Reed, M.S., Ferre, M. & Martin-Ortega, J. 2021. Evaluating impact from research: a methodological framework. *Research Policy* 50(104): 47. <https://doi.org/10.1016/j.respol.2020.104147>. Date of access: 10 May 2021.

Reiter, B. 1968. *The crisis of liberal democracy and the path ahead*. New York: Rowman & Littlefield International.

Resnik, D.B. 2020. What is ethics in research & why is it important? National Institute of Environmental Health Sciences. <https://www.niehs.nih.gov/research/resources/bioethics/whatis/index.cfm>. Date of access: 1 July 2025.

Reus-Smit, C. 2004. *The politics of international law*. Cambridge: Cambridge University Press.

Revelli, M. 2019. *The new populism: democracy stares into the abyss*. London: Verso UK.

Reyes, V. 2020. Ethnographic toolkit: strategic positionality and researchers' visible and invisible in field research. *Ethnography* 21: 220-240. <https://doi.org/10.1177/1466118805121>. Date of access: 25 October 2021.

Rhoden, T.F. 2015. The liberal in liberal democracy. In Babayan and Risse (eds). *Democracy, Promotion, and the Challenges of Illiberal Regional Powers*. 22 (3): 560-578. DOI:10.1080/13510347.2013.851672. Date of access: 12 June 2021

Rist, R. 1998. *Influencing the policy process with qualitative research*. Center for Policy Studies. The George Washington University: Graduate School of Education and Human Development.

Rivers, M. 2014. Declining union membership and the reduction of union representation in the workplace. Doctoral Study Submitted in Partial Fulfilment of the Requirements for the Degree of Doctor of Business Administration. Walden University.

Roberts, B.C. 1979. Collective bargaining and employee participation in Western Europe, North America and Japan: report of the trilateral task force on industrial relations to the trilateral commission. Library of Congress. Cataloguing in Publication Data.

Rodrik, D. 2016. Is liberal democracy feasible in developing countries? John F. Kennedy School of Government, Harvard University: Cambridge.

Rothstein, B.O. & Teorell, J.A. 2008. What is quality of government? A theory of impartial government institutions. *Governance* 21(2): 165-190. DOI:10.1111/j.1468-0491.2008.00391.x. Date of access: 27 August 2021.

Sargeant, J. 2012. Qualitative research part II: review article: participants, analysis, and quality assurance. *Journal of Graduate Medical Education*: 1-3. DOI:10.4300/JGME-D-11-00307.1. Date of access: 20 August 2022.

Schimpf, C., Barbrook-Johnson, P. & Castellani, B. 2021. Case-based modelling and scenario simulation for ex-post evaluation. Department of Engineering Education, University at Buffalo: The State University of New York. *Evaluation* 27(1): 116-137. <https://doi.org/10.1177/1356389020978490>. Date of access: 20 August 2022.

Scholte, J.A. 2020. After liberal democracy: new methodology for new praxis. *Fudan Journal of the Humanities and Social Sciences* 13: 67-92. <https://doi.org/10.1007/s40647-019-00265-3>. Date of access: 28 June 2021.

Sheiring, G. 2020. The retreat of liberal democracy: authoritarian capitalism and the accumulative state in Hungary. London: Palgrave Macmillan.

Silverman, D. 2008. *Doing qualitative research: a comprehensive guide*.: Sage: London.

Silverman, D. 2017. A very short, fairly interesting and reasonably cheap book about qualitative research. London: Sage.

Silverman, R. 2013. How was it for you? The interview society and irresistible rise of the (poorly analysed) interviews. *Qualitative Research* 17: 144-158. <https://www.researchgate.net/publication/316115520>. Date of access: 15 April 2021.

Smit, P.A. & Van Eck, S. 2010. International perspectives on South Africa's unfair dismissal law. *The Comparative International Law Journal of Southern Africa*. <https://www.researchgate.net/publication/259926926>. Date of access: 10 January 2020.

Snyder, H. 2019. Literature review as a research methodology: an overview and guidelines. *Journal of Business Research* 104: 333-339. <https://doi.org/10.1016/j.jbusres.2019.07.039>. Date of access: 15 November 2019.

Somewick, B. & Lewin, C. 2006. *Research methods in the social sciences*. London: Sage Publications Ltd.

South Africa. 1994. Public Service Act Proclamation 103 of 1994.

South Africa. 1995. Labour Relations Act 66 of 1995.

South Africa, 1995. White Paper on Intelligence. Ministry for Intelligence Services: Pretoria

South Africa. 1996. Constitution of the Republic of South Africa Act 108 of 1996.

South Africa. 1997. Public Service Commission Act 46 of 1997.

South Africa. 2000. Promotion of Access to Administrative Justice Act 2 of 2000.

South Africa. 2002. Intelligence Services Act 65 of 2002.

South Africa. 2020. Public Service Commission. Assessment of grievance and dispute resolution mechanisms in the public service. Pretoria: PSC.

South Africa. 2024. General Intelligence Laws Amendment Act (GILAA) 37 of 2024.

Southern African Legal Information Institute. 2025. Legal database. Southern Africa Legal Information Institute (SAFLII). Online. <https://www.saflii.org>. Date of access: 03 July 2025

Spitzer, A.B. 1973. The historical problem of generations. *American Historical Review* 78(5): 1353–1385.

Spitzer, A.J. 2018. Reconciling shared rule: liberal theory, electoral-district law and “national group” representation in Canada. University of Canada. *Canadian Journal of Political Science*. <https://doi.org/10.1017/S0008423918000033>. Date of access: 10 March 2022.

Spitzer, R. 2018. Deep learning meets deep democracy: deliberate governance and responsible innovation in artificial intelligence in business. <https://www.doi.org/10.1002/wcs.1193>. Date of access: 21 January 2023.

Sternberg, R.J. 2012. Intelligence. In *Wires Cognitive Science*. 3(5). <https://www.doi.org/10.1002/wcs.1193>. Date of access: 19 March 2017.

Sternberg, R.J. 2012. State of the art: intelligence. In *Dialogue in Clinical Neuroscience*. March 14(1):19-27. DOI:10.31887/DCNS.2012.14.1/rsternberg. Date of access: 21 June 2019.

Strauss, A & Corbin, J. 1990. *Basics of qualitative research: grounded theory procedures and techniques*. London: Sage Publications, Inc.

- Strauss, G. 1984. Industrial relations: time of change. *Industrial Relations* 23(1): 1-15.
- Strauss, G. 1984. Workers' participation in management: an international perspective. In Shaw, B. & Cummings, L (eds.). *Research in organisational behaviour*. Greenwich, Conn: JAI Press.
- Strauss, G. 1986. Workers' participation in management in the United States. In Davis, E.M. & Lansbury, R.D. (eds). *Democracy and control in the workplace*. Sydney: Longman Cheshire. pp313-331.
- Strauss, G. 1996. Participation in the United States: progress and barriers. In Davis, E & Lansbury, R.D. (eds). *Managing together: consultation and participation in the workplace*. Melbourne: Addison-Wesley Longman. pp173-192.
- Strauss, A.L. 2021. *Qualitative analysis for social scientists*. 2nd ed. Cambridge: Cambridge University Press.
- Strom, A. & Fagermoen, M. 2012. Systematic data integration – a method for combined analyses of field notes and interview texts. *International Institute for Qualitative Methodology (IIQM)* 11(5): 534-546. <https://www.researchgate.net/publication/288467221>. Date of access: 15 December 2022.
- Sutton, J. & Austin, Z. 2015. Qualitative research: data collection, analysis, and management. *JCHP* 68(3): 226-231. DOI:[10.4212/cjhp.v68i3.1456](https://doi.org/10.4212/cjhp.v68i3.1456).
- Swanepoel, B.J., Erasmus, B.J., Schenk, H.W. & Tshilongamulenzhe, M.C. 2017. *South African Human Resource Management: Theory and Practice*. 6th ed. Cape Town: Juta.
- Taylor, S. & Bogdan, R. 1998. *Introduction to qualitative research methods: a guidebook and resource*. New York: Wiley.
- Taylor, S. 2013. *What is discourse analysis?* London: Bloomsbury Publishing.
- Teherani et al., 2015. Choosing a qualitative research approach. *Journal of Graduate Medical Education* 7(4). 669-670. DOI:10.4300/JGME-D-15-00414.1. Date of access: 08 May 2023.
- Temaszewski, L., Gonzalez, E., Zarestky, J. 2020. Planning qualitative research: design and decision-making for new researchers. *International Journal of Qualitative Methods* 19(4): 1-7. DOI:10.1177/1609406920967174. Date of access: 15 March 2023.
- Teuberg, S. 2019. 2019 bargaining indicators. Labour Research Service. Cape Town.
- Teulings, C. & Hartog, J. 1998. *Corporatism or competition? An international comparison of labour market structures and their impact on wage formation*. Cambridge: Cambridge University Press.

Thacker II, L.R. 2020. What is the big deal about populations in research? National Library of Medicine. London: Sage.

The Oxford school dictionary. 1994. Develops language and writing skills. Oxford: Oxford University Press.

Theron, J., Godfrey, S. & Visser, M. 2007. The state of collective bargaining in South Africa: an empirical and conceptual study of collective bargaining. Cape Town: Development and Labour Market Studies, UCT.

Timmermans, S. & Tavory, I. 2012. Theory construction in qualitative research: from grounded theory to abductive analysis. *Social Theory* 30: 167-186. <https://doi.org/10.1177/073527511245914>. Date of access: 10 September 2023.

Torf, S.H. 1953. Collective bargaining: negotiations and agreements. New York: McGraw-Hill Book Company.

Trochim, W. 2006. The research methods knowledge base. Cornell University.

Tshoose, C. 2022. Appraisal of selected themes on the impact of international standards on labour and social security law in South Africa. *Pioneer in Peer Reviewed. Open Access Online Law Publications*: PER/PELJ2021 24(1): 1-43. <http://dx.doi.org/10.17159/1727-3781/2022/v25i0a11969>. Date of access: 10 September 2023.

Tucker, E. 2016. Labour before the law: The regulation of workers' collective action in Canada, 1900–1948. Toronto: University of Toronto Press.

Turner, L. 2004. Why revitalise? Labour urgent mission in a contested global economy. In Frege, C., & Kelly, J. (eds). *Varieties of unionism: strategies for revitalisation in a globalising economy*. Oxford: Oxford University Press.

Ulman, L. 1955. Marshall and Friedman on union strength. *Review of Economics and Statistics* 37(4): 384-401. <https://www.jstor.org/stable/i333131>. Date of access: 30 November 2022.

Vajda, M. 1981. The state and socialism. London: Palgrave Macmillan.

Van Wynsberghe, R. & Khan, S. 2007. Redefining case study. *International Institute of Qualitative Methodology. International Journal of Qualitative Methods*. DOI: 10.1177/160940690700600208. Date of access: 17 March 2023.

Visser, J. 2016. What happened to collective bargaining during the great recession? *IZA Journal of Labour Policy* 5(1): 1-35. DOI: 10.1186/s40173-016-0061-1. 15 June 2022.

Wall, T. & Lischeron, J. 1997. Worker participation: a critique of the literature and some fresh evidence. Maidenhead: MacGraw Hill.

- Walliman, N. 2011. *Research methods the basics*. London: Routledge.
- Wang et al. 2021. Impact of coordination, psychological safety, job security on employees' performance: the moderating role of coercive pressure. *MDPI. Sustainability* 13(3175). <https://doi.org/10.3390/su13063175>. Date of access: 14 March 2021.
- Ward, H. 2008. Liberal democracy and sustainability. *Environmental Politics* 17(3): 386-409. <http://www.informaworld.com>. Date of access: 28 April 2022.
- Warren, M. 1992. Democratic theory and self-transformation. <https://doi.org/10.2307/1964012>. Date of access: 02 September 2019.
- Weber, A.R. 1967. Stability and change in the structure of collective bargaining. In Llyod, U. (ed). *Challenges to collective bargaining*. Englewood Cliffs, N.J.: Prentice Hall. pp13-36.
- Weber, M. 1947. *The theory of social and economic organisation*. In Hende, A. & Parsons, T. (translators). New York: Free Press.
- Webster, J. & Watson, R.T. 2002. Analyzing the past to prepare for the future: Writing a literature review. *MIS Quarterly*. 26(2):xiii–xxiii.
- Wheeler, H.N. 2000. *Viewpoint: collective bargaining human rights*. University of California: Blackwell Publishers.
- Williams, M. & May, T. 1996. *Introduction to philosophy of social research*. London: Routledge.
- Williams, M. 2000. *Science and social science: an introduction*. London: Routledge.
- Wills, A. & Vermeulen, M. 2011. *Parliamentary Oversight of Security and Intelligence Agencies in the European Union*. Brussels: European Parliament.
- Wills, A. 2022. *Democratic oversight and reform of intelligence services: Lessons from global practice*. Geneva: Geneva Centre for Security Sector Governance (DCAF).
- Wolterstorff, N. (ed). 2012. *Understanding liberal democracy: essays in political philosophy*. Oxford: Oxford University Press.
- Wolterstorff, N. 2008. *Justice: rights and wrongs*. Princeton, N.J. and Oxford: Princeton University Press.
- Wolterstorff, N. 2012. *The mighty in the almighty: an essay in political theology*. Cambridge: Cambridge University Press.
- Zakaria, F. 1997. The rise of illiberal democracy. *Foreign Affairs* 76(2). <https://www.longdom.org/open-access/the-future-of-liberal-democracy-36508.html> Date of access: 11 December 2023.

ANNEXURE A: CONFIRMATION OF EMPIRICAL STUDY AND ETHICAL CLEARANCE



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23 May 2023

To whom it may concern

EMPIRICAL RESEARCH CONFIRMATION: MR OG SEKOANE

I confirm that Mr OG Sekoane (ID 7309015686080) is a PhD candidate at the North-West University, South Africa. The registered title of his thesis is "A Collective Bargaining Model for the South African Civilian Intelligence Services" and is currently completing the empirical part of his thesis. The study has been ethically cleared (NWU-00248-19-A7) and his student number is: 10819762. I kindly request to assist him in any way to finalise his thesis.

If you do have any further questions, please do not hesitate to contact me directly.

Yours sincerely,

BL Prinsloo, PhD

Senior Lecturer
Programme Leader: National and International Security
School of Government Studies
Faculty of Humanities
North-West University, South Africa

Original details: (12261319) C:\Users\12261319\Desktop\Study Leading\PhD student\PhD 2020\Wille Dthebe\Academic progress report Mr. Mole E.V. Dthebe (NWU)
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1 February 2023

ANNEXURE B: RESEARCH CONSENT FORM

I, Obakilwe George Sekoane, student number: 10819762, am currently registered for the degree *Philosophiae Doctor in Security Studies and Management* at the North-West University in South Africa. The registered title of my thesis is “Constructing a suitable *collective bargaining model for the South African Civilian Intelligence Services*.” This research initiative is intended to construct a collective bargaining model which addresses national security concerns emanating from a possibility of formation of trade unions within the SA civilian intelligence services and in line with the prescripts of the South African Constitution.

You have been selected as expert in HR within the civilian intelligence services, as a current or former member, or have first-hand experience in the legal and/or political aspects of trade unions in the democratic South Africa. **Thank you for being willing to participate in this study!**

Full names (First, Second and Last): _____

Nickname: _____

Organisation: _____

Organisational Function: _____

Date and Time of interview: _____

Place/ Venue of interview: _____

Gender (mark with an “X”): Male Female Prefer not to say

This interview is recorded: YES

NO

Interview reference number: e.g., 14/05/2023-1

Relevant contact details are:

Cell phone no: 0794676005

Email: obakiloe.s@gmail.com

Supervisor name: Dr Barend L Prinsloo, NWU

ANNEXURE C: AGREEMENT BETWEEN RESEARCHER AND PARTICIPANT

If you are willing to participate in this study, please read and complete the form carefully. A scanned copy of the signed agreement may be requested. Please note that Section 14 of the Constitution provides for the right to privacy. The Protection of Personal Information Act (POPIA), 2013 (Act No. 04 of 2013) gives effect to the constitutional right, and all information collected will be handled accordingly. Are you aware of any company policy prohibiting you from participating in the study, or of any supervisor who must give permission beforehand? If so, please explain:

	YES	NO	INITIAL
I understand that participation in this interview is voluntary, and I may withdraw at any time during the interview without having to give an explanation.			
I understand that all interviews are treated with the utmost confidence. Personal confidentiality is guaranteed using pseudonyms and removing any details which may identify any participant.			
I understand that this study considers opinions and therefore that it is important to record them to have an accurate reflection of what was said. All recorded interviews will be transcribed verbatim and no one besides myself, or on the request of my promoter, will have access to the recorded or transcribed interviews. All transcriptions shall be stored in a safe cabinet in my home. Do you agree that this interview may be recorded under the terms specified?			
I understand that any audio recording or transcription will be used solely for research purposes and will be disposed of after five years of completing the study.			
I understand that the researcher may write down some notes during the interview and that I am welcome to ask questions at any time.			
I hereby give consent to participate in this research study.			
Would you like to have a copy of the recording of the interview?			
Would you like to receive a copy of the thesis once published?			

Would you like to receive an electronic copy of this agreement?			
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Signed (Interviewee):

Date: Place:

Signed (Interviewer/ Researcher):

Date: Place:

ANNEXURE D: RESEARCH QUESTIONS FOR THE EMPIRICAL STUDY

1. In layman's terms, what is your understanding of a "consultation mechanism" and "collective bargaining"?

2. From your own understanding, what are the main reasons for excluding collective bargaining within the civilian intelligence services?

3. What are the benefits of the current status quo (having consultation mechanisms rather than collective bargaining) within the civilian intelligence services?

4. In your opinion, what form of labour relations would be suitable for engagement between employer and employees?

5. In the absence of a formal collective bargaining agreement, is the current employee/employer consultation process done at the correct organizational level?

6. Without a binding collective agreement, what can one side do if the other side refuses to consult, negotiate, or appears not to be consulting, or negotiating in good faith? That is, what rights do employees enjoy under the current employee/employer consultation process?

7. Have you ever felt that the establishment of a trade union or reviewing selected aspects of the organizational consultation mechanisms would be beneficial to the State Security Agency (SSA) - both the employer and employee? In which way would it be beneficial?

8. In your opinion, how would the formation of trade unions within the civilian intelligence sector impact on the operational functioning of the SSA?

9. Are you aware that sections 23(1), (2) and (3) of the South African Constitution (Act 108 of 1996) stipulates that everyone has a right to fair labour practices including the right to form and join trade unions, and to strike, as well as to participate in collective bargaining?

10. Are probable aspects which were not covered in the above questions which you would like to add or discuss?

Thank you for your participation!!!