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DIAGNOSTIC REPORT ON SOCIAL DIALOGUE AND COLLECTIVE BARGAINING IN MAROCCO

September 2016
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This project is co-funded by the European Union

A project implemented by

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DIAGNOSTIC REPORT ON SOCIAL DIALOGUE AND COLLECTIVE BARGAINING IN MAROCCO

Report: STATE OF PLAY OF THE SOCIAL DIALOGUE IN MOROCCO

"Diagnosis of the employers' attitudes
towards social dialogue: negotiations and practices within companies"

Project: promoting social dialogue in the south of the Mediterranean
(South Med dialogue project).

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September 2016

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I-Framework of the Report

The purpose of this report is to display the state of play of the social dialogue in Morocco, as seen by the employers. This report falls within the framework of the project "Promoting Social Dialogue in the South of the Mediterranean: South Med Social Dialogue Project".

The objective of this project is to present a diagnosis of the attitudes and positions of the employers in our country with regard to the social dialogue, and the various practices identified at the level of the companies on the basis of a questionnaire filled by forty companies (5 sectors).

Social dialogue is generally influenced by the legal, socioeconomic and cultural context of each country and by the capacity of the various actors to establish social dialogue in a long-term strategic vision.

In Morocco, a certain tradition of social dialogue has existed since the first years of independence and has continued to evolve under the influence of constitutional, legislative, regulatory and conventional texts, as well as the influence of the different actors involved in this dialogue, the state, the social partners, civil society and the Economic, Social and Environmental Council.

Since 1996, when the first social agreement was signed, the continuity of the tripartite social dialogue has favoured the enforcement of several founding texts such as the Labour Code, medical coverage and the social security reform. The Constitution of July 2011 also stipulates in article 13 that "the public authorities shall work for the creation of consultative bodies, in view of associating the different social actors in the drafting, implementation and evaluation of public policies". Article 8 of the same Constitution insists on the role of public authorities in promoting collective bargaining and encouraging collective labour agreements. Among the institutions appointed by the constitution of 2011, the Economic, Social and Environmental Council contributes to the promotion of social dialogue. In view of its composition based on the collaboration of the different socioeconomic categories and civil society actors, and considering the nature of the published reports, this council contributes to social dialogue in its consultative form.

Addressing social dialogue in the current context is also about emphasising direct social dialogue between the CGEM and the most representative trade union organisations. The direct dialogue between the two social partners has begun to take shape as a result of the contacts initiated during the social dialogue of 1996.

Bipartite social dialogue is currently translated into the establishment of the social pacts for decent work and conventional social mediation for the prevention and settlement of collective labour disputes. While it was not intended to replace tripartite social dialogue, bipartite social dialogue encouraged mutual understanding between the CGEM and the most representative trade union organisations, and contributed to the decline in the intensity of the confrontational climate that prevailed in the past.

At the level of companies and under the Labour Code of 2004, a certain practice of consultation and collective bargaining was gradually introduced in large and medium-sized firms. This practice benefited from the implementation of the human resources function in companies and from the involvement of labour inspectors in the social compliance plan set by the Ministry of Employment.

The practice of social dialogue is also at the core of the concept of corporate social responsibility. Collective bargaining is thus perceived as a right and a factor of cohesion and improvement of the internal climate.

II-Considerations on the Notion of Social Dialogue

There is no universally accepted definition of social dialogue. Commonly used, this concept is subject to several interpretations insofar as the various actors put it in an extensive vision to integrate several mechanisms: information, collaboration, consultation, discussion and negotiation.

Despite the risk of misunderstandings that may arise from this concept, there is general agreement that social dialogue is an adequate and effective lever for the promotion and consolidation of professional relations and social peace in the different production entities. Social dialogue is at the centre of social harmony.

It is also an effective tool for enabling and energising economic life, creating a favourable climate for the development of production and empowering enterprises to meet the many economic challenges posed by globalisation and economic competitiveness.

The main objective of social dialogue as such is to encourage consensus-building among the main actors in the work field in view of overcoming conflicts which may arise from the opposition of interests or the difficulty of coexistence.

As defined by the ILO, social dialogue encompasses all types of negotiation, consultation, discussion or simply exchange of information between representatives of governments, employers and employees in various ways on issues relating to economic and social policy of a common interest. It can take the shape of a tripartite process, i.e. organised between employers, employee representatives and the public authorities. It can also be bipartite, i.e. between social partners.

Social dialogue can be informal or institutionalised or combine these two characteristics. It can take place at national, regional or company level. It can be inter-professional, sectorial or both.

Thus, social dialogue aims at:

- The resolution of major economic and social problems
- Social regulation
- The promotion of good governance
- Social stabilisation
- The economic development of the country

Thus, we understand that social dialogue is composed of a set of actors, which may be public or private, representatives of employers, employees and governments. Several institutions, such as the Economic and Social Council, also contribute, by their composition, to the promotion of social dialogue.

In a country like ours, the choice of social dialogue is salutary. It can effectively contribute to the pursuit of solutions of compromise between the different actors and to the constant enhancement of professional relations.

Section 1: Contribution of the CGEM to Social Dialogue

The General Confederation of Enterprises in Morocco (CGEM) is the main employers' organisation in Morocco. It represents the private sector before public authorities and speaks on behalf of the 88,000 members and affiliates. Its main task is to defend the interests of private sector enterprises vis-à-vis public authorities and social partners, and to serve as a force for proposals on economic and social issues.

The CGEM is the sole interlocutor of the public authorities with regard to discussions concerning the private sector as well as social dialogue.

The CGEM is also the preferred partner of the most representative trade unions with which it has set up a conventional mediation mechanism and a social pact for sustainable competitiveness and decent work within the framework of direct social dialogue.

Within the framework of tripartite social dialogue, the CGEM contributes to the meetings of the various institutions set up under the Labour Code, such as the Collective Bargaining Council, the Council of Occupational Health and Occupational Risk Prevention responsible for the monitoring of temporary work and the High Council for the Promotion of Employment.

Since 2015, the CGEM also has a parliamentary group in the chamber of councillors.

Within the CGEM, the Employment and Social Relations Committee coordinates with the various sectorial federations the position of the employers' confederation on priority social dialogue projects. Composed mainly of company directors, human resources directors and professional relations practitioners, this committee has included among its main lines of work the improvement of labour legislation and the consolidation of social dialogue with the social partners. Two task froces are set up to promote social dialogue: social dialogue and social mediation, and legislation and collective agreements.

In order to promote social dialogue at the national and regional levels, a number of training and awareness-raising activities have been organised in order to raise awareness about the social mediation mechanism and the exchange of experiences on collective agreements. The Committee on Employment and Social Relations also contributed to the debate on the drafting of an organic law bill on the right to strikes by presenting a text proposal to the Government and to trade unions. Through its proposal, the CGEM created a dynamic on the organisation of the right to strikes and contributed to its insertion in the legislative circuit in view of its official adoption.

Section 2: Contribution of the Economic, Social and Environmental Council to Social Dialogue

The Economic and Social Council was established for the first time by the Constitution of October 9th, 1992. The provisions of the Constitution governing this institution were taken over by the revised Constitution of October 7th, 1996. In the new Constitution of July 29th, 2011, the Economic and Social Council is transformed by Article 151 into an "Economic, Social and Environmental Council". The Constitution confers to it a consultative character by Article 152 and refers by Article 153 to an organic law which determines its composition, organisation, prerogatives and functioning.

The creation of the Economic, Social and Environmental Council is in line with the promotion of reflection on economic and social life and the definition of choices and solutions to be adopted. This approach is based on the collaboration of the various socio-professional categories and actors of civil society and experts.

Paragraph 1: The Legal and Institutional Configuration of the ESEC

Under article 152 of the Constitution, "the Economic, Social and Environmental Council may be consulted by the Government, the Chamber of Representatives and the Chamber of Advisers on all economic, social and environmental matters". This institution "gives its opinion on the general orientations of national economy and sustainable development". Thus, its function is advisory in nature. Its exercise, under the constitution, is on the general economy and sustainable development.

In addition to the functions provided for in the Constitution, Article 2 of Organic Law No. 128-12 of July 31st, 2014 on the Economic, Social and Environmental Council invests this institution with the following important advisory functions: formulating opinions on the general orientations of the national economy, analysing the economic situation and monitoring national, regional and international economic and social policies and their repercussions, drafting proposals relating to the social and economic field, and conducting studies and research in the field of its missions.

Thus, the scope of the ESEC's involvement is wide. The exercise of these powers either within the framework of self-referral, or when it is referred to by the government and the parliament is for technical expertise and consensual outputs based on the dialogue.

The Organic Law on the ESEC organises an enlarged and diversified representation of its composition. Apart from tripartism involving the social partners and representatives of public authorities, the organic law involves other organisations and civil society actors.

The most representative trade unions are represented in it. Article 11 of the organic law establishes the diversified configuration of the composition of the council. Paragraph (b) specifies that "the category of representatives of the most representative trade unions of public and private sector employees, which are 24 members, 12 of whom are appointed by the Head of Government, 6 appointed by the President of the Chamber Advisers and 6 appointed by the President of the Chamber of Advisers, on the proposal of the trade unions which mandate them on account of their experience, expertise and qualification".

The distribution of the number of members within this category of representatives must, pursuant to article 12 of the organic law, be fixed by decree. Decree n ° 2-10-153 of June 23rd, 2010, adopted for the application of articles 11 and 12 of the organic law 60-09 relating to the economic and social council, establishes the following distribution:

Trade Unions	Number of seats (public sector)	Number of seats (public sector)	Total
UMT	2	6	8
CDT	3	3	6
FDT	3	1	4
UGTM	1	3	4
UNTM	1	1	2
Total	10	14	24

Website of the ESEC

Paragraph 2: The ESEC's action in promoting social dialogue

In Morocco, the institutional configuration of social dialogue is varied. Some bodies are specialised, others, such as the Social, Economic and Environmental Council, are general in their scope.

The ESEC is involved in various economic, social and environmental fields. The dialogue it promotes is an economic and social dialogue that results from the reconciliation between social imperatives and economic requirements. The whole of its work interests the work fields and, therefore, contributes to the development of social dialogue.

What assessment can be made of the ESEC's action in promoting social dialogue?

The EESC has seven committees, of which the Committee on Employment and Professional Relations which is particularly interested in labour and employment matters. It carries out studies and surveys, develops annual reports and conjuncture analyses, and formulates opinions, recommendations and proposals.

In its action, the ESEC has issued opinions on:

- The bill on the authority of parity and the fight against all forms of discrimination
- The bill no. 78-14 relating to the Advisory Council on Family and Children
- The Bill no. 97-13 on the Protection and Promotion of the Rights of Persons with Disabilities
- The bills on civil pensions
- The bill no. 109-12 on the Code of Mutuality
- The bill on the National Charter of the Environment and Sustainable Development

Within the framework of its self-referral, it adopted opinions on the social dimensions of equality between women and men, the effectiveness of the children rights, and lifelong learning: a Moroccan ambition.

In addition, it produced reports on several topics including:

- Prevention and amicable resolution of collective labour disputes
- For a new social charter: standards to be respected and objectives to be contracted;
- Corporate social responsibility.

It must be concluded that the ESEC contributes to social dialogue through the performance of an important advisory function, especially since its composition is tripartite and largely meets the requirements and conditions of the International Labour Office for the success of the dialogue. By providing consultative opinions, proposals or reports to the executive or deliberative public authorities, it facilitates decision-making, mutual understanding and positive collaboration. It therefore contributes indirectly to the promotion of social dialogue.

Section 3: Forms of Social Dialogue

Social dialogue can take a tripartite form and involve the public authorities and the two social partners (employers and trade union organisations), as it can take place directly between trade unions of employees and employers or their professional associations.

Paragraph 1: Tripartite Social Dialogue

Tripartite social dialogue is one form of social dialogue. Its implementation requires cooperation between employers, workers and governments.

Since its creation in 1919, the ILO has placed tripartism at the centre of its work in view of promoting labour standards and legislation at the global level. Tripartism is even at the centre of the ILO's work. Tripartism requires the involvement of the three partners in the process of social dialogue on an egalitarian basis.

Since Morocco's independence, all attention has been paid to adopt a legal framework and institutions in order to lay the foundations for a tripartite social dialogue. Thus, we can note the conclusion of several collective agreements, the establishment of mechanisms for the settlement of collective industrial disputes and the creation of the first social consultation bodies.

Most of these bodies were created during the first years of independence (1956-1960). It is in this register that the Higher Council of Collective Agreements, the Central Commission of Prices and Wages, the Superior Council of Labour and Local Commissions, and the Advisory of Occupational Medicine. The failure and inadequacies of these institutions led the authorities, since 1991, to set up new bodies such as the National Council for Youth and the Future and the National Council for the Follow-up of Social Dialogue.

The National Council of Youth and the Future was created by the Dahir of February 20th, 1991 with a mission of tripartite consultation and consultation in the areas constituting the policy of the future for the country.

The National Council for the Follow-up of the Social Dialogue was set up in March 1994 as a framework for dialogue and monitoring between the social partners.

Although these two institutions were created in a context of social conflict, their contribution to the promotion of social dialogue and the participation of the social partners is insignificant. The National Council for the Follow-up of the Social Dialogue could meet only exceptionally, by royal invitation, on the occasion of social conflicts at national level

The failure of these two institutions and the series of general strikes known to the country between 1995 and 1996 led the government to consider another more pragmatic and flexible framework for the management of social dialogue. It was thus that a new tripartite process was initiated between public authorities, employers' professional organisations and the most representative trade unions.

From August 1st, 1996, an initial social dialogue agreement was signed between the social partners. This agreement is a real turning point in the history of social dialogue in our country. The importance of this agreement lies in the setting up of a set of consultation and negotiation mechanisms, the adoption of the principle of periodicity of meetings and the creation of a national committee to monitor commitments in coordination with the Council Advisory Committee on Social Dialogue.

In practice, the agreement of August 1st, 1996 did not meet the objectives assigned to it. Social dialogue is still dominated by a cyclical concern. It continued to be piecemeal and often to respond to collective disputes or general strikes.

It was in this context that the agreement of April 23rd, 2000 (19 Moharrem) was signed. This agreement made it possible to improve the social environment through the settlement of several social conflicts. To this end, the agreement planned the creation of several specialised committees for the settlement of disputes such as the National Commission of Inquiry and Conciliation and the Provincial Investigation and Conciliation Commissions.

Another agreement was signed on April 30th, 2003 and focused on the exercise of trade union freedoms, the settlement of collective disputes, the promotion of collective agreements, social work and the medical and social coverage of employees. As a result of this agreement, several tripartite bodies were established in charge of industrial relations, social affairs, professional elections and collective disputes.

The last agreement in the tripartite social dialogue dates back to April 26th, 2011 in the context of the Arab Spring and political and social demands. This agreement led to the creation of a new national commission for social dialogue, chaired by the Head of Government and two specialised committees, one dedicated to the private sector and the other to the public sector. Despite all these committees which have been established since the 1996 agreement, social dialogue remains linked to the circumstances and needs of the public authorities. However, in spite of the noted shortcomings, the practice of social dialogue has facilitated the introduction of new social dialogue instruments, the adoption of the Labour Code, the introduction of compensation for job loss and Compulsory health insurance.

The Labour Code has defined the legislative and institutional framework for social dialogue, a legal framework for the settlement of collective labour disputes and a variety of mechanisms for employee representation.

Alongside the social dialogue institutions set up under the Labour Code, there are now other institutions such as the Superior Council of Mutual Societies, the Social Security Board of Directors and the Social and Environmental Economic Council.

Social dialogue thus appears to be divided between several formal and informal institutions in the absence of a real coordination or overall strategy for the evaluation of the whole building.

Paragraph 2: Bipartite Social Dialogue

Bipartite social dialogue takes place when two entities (one or more employers or one or more employers' organisations and one or more workers' organisations) exchange information, consult each other or negotiate together without the intervention of the government. This may include, for example, wages, working conditions or occupational health and safety, but also on broader policy issues.

Although social dialogue in Morocco is generally tripartite, a new form of direct social dialogue emerged as a result of meetings between the presidents of the CGEM and the secretaries-general of the most representative trade unions.

These bi-partite contacts and meetings were facilitated by the positive evolution of the two parties, the CGEM and the most representative trade union centres, by a social climate marked by confrontation and contestation with that of collaboration and by concerted action favoured by the different tripartite social dialogue agreements. It is in this context, which is favourable to the direct dialogue between the two parties, that agreements on social mediation and social pacts for sustainable competitiveness and decent work were signed in 2013.

1) The Social Pact for Sustainable Competitiveness and Decent Work

As of today, CGEM signed a social pact for sustainable competitiveness and decent work with three trade unions: the UMT, the UGTM and the UNTM. The aim of these agreements is to create connections between the respect for fundamental rights at work, the promotion of decent work and the need for business competitiveness in a climate of mutual trust.

In order to monitor the implementation of the pact, the social partners agreed to set up a follow-up executive committee and technical commissions.

Within the framework of these various pacts, both parties consider institutionalised and constant social dialogue as an effective factor for the development and sustainable performance of enterprises.

Four pillars have been identified under these agreements:

- Preventing and managing conflict:

The Contracting Parties commit to give priority to consultation in view of reaching a consensus on the right to strikes and on the establishment of regional instruments for the settlement of disputes. In the same context, the parties will work to revitalise the mechanisms of conflict management within Moroccan companies through the proposal of bills to parliament.

- Social Dialogue and the Promotion of the Conventional Field:

Within the framework of conventional law, the social partners work, on the one hand, to promote direct social dialogue, negotiate and conclude collective agreements and to initiate a joint reflection on the social protection system to ensure its sustainability and establish additional rules for social security. On the other hand, the social partners undertake to adopt a social monitoring attitude for the adaptation of social legislation to economic and social requirements.

- Social conformity of relations and work conditions:

To reach the objective of social conformity, the signatory parties opt for raising the economic operators' awareness of compliance with labour legislation and with health, safety and health standards at work.

- Promotion of employment and competitiveness:

The theme of employment and competitiveness is at the heart of the concerns of the signatories of the social pact for sustainable competitiveness and decent work.

In this way, the parties undertake to create the conditions necessary to promote the competitiveness of the company while respecting the workers' rights and to boost mechanisms to promote employment and employability for young people and people with disabilities. The parties also undertake to initiate new forms of employment within the framework of responsible flexibility and to make vocational training a real asset of economic growth and an instrument of social advancement.

A few years after the signing of these various pacts, and in the absence of an overall assessment by the signatory parties, bipartisanship remains dominated by the introduction of the conventional method of social mediation.

2) Conventional Social Mediation

Conventional social mediation is a voluntary bilateral framework for the prevention and resolution of conflicts set up by the CGEM and the most representative trade union organisations. The primary objective of this new alternative method of conflict resolution is to promote professional relations based on direct dialogue between the social partners, with the aim of finding, with the help of a mediator, solutions agreed upon by both parties. Social

mediation is not meant to replace the conflict resolution methods provided for by the Labour Code, but to complement and coexist with institutional modes.

The implementation of social mediation took place in a period (2011) dominated by the resurgence of collective conflicts and an agitated regional and international socio-political context.

For the CGEM, following the establishment of the social responsibility label, it was a matter of capturing the climate of trust that was beginning to materialise with the social partners in the framework of tripartite social dialogue.

In 2012, the mediation mechanism was concretised by the signing of five agreements with the five most representative trade union organisations at that time, namely UMT, CDT, UGTM, FDT and UNTM. To give a regional application to this process, the main regional unions of the CGEM also signed similar conventions with the regional federations of the signatory trade unions.

a) The Institutional Framework of Social Mediation

The mediation rules apply to all member companies of the CGEM, to members of the professional federations of the CGEM and to the social partners affiliated to the trade union organisation signatory to the conventional framework of the social mediation system.

For the implementation and governance of the process, two bodies have been established:

- A steering committee composed of the president of the CGEM and the signatory trade union organisation. This committee meets once every six months in view of drawing up an inventory of achievements and monitoring the arrangements and the various commitments.
- A joint committee composed of 4 members: 2 representatives of the employers' organisation and 2 representatives of the trade union organisation.

This commission has for mission to:

- Propose and validate the list of mediators
- Propose and validate the process of pre-conflict and post-conflict social mediation
- Draw up an assessment of the social conflicts
- Propose any initiative in favour of the consensual improvement of conflicts

b) The Steps of Social Mediation

The application for mediation shall be filed by one of the parties or jointly at the General Secretariat of the Joint Committee. In the absence of the joint application, the request must be accompanied by the written agreement of the other party, except the possibility for the Mixed Commission of Social Mediation to solicit this agreement.

The request shall contain information on the parties and briefly describe the facts giving rise to the request.

Upon receipt of the request for mediation, the secretariat of the joint committee shall notify the other party within a period of 10 days to indicate whether it accepts or refuses to participate in the mediation attempt. The agreement of the parties on the implementation of the mediation requires the signature by the two parties in conflict of an agreement designating the Mixed Commission of Social Mediation as an organising body of the mediation. However, the refusal or the absence of a reply within the 10-day period leads to the lapse of the request for

mediation. If the request is accepted, the Joint Commission of Social Mediation shall propose to the parties, within 10 days an approved mediator.

The mediator is placed at the disposal of the parties in order to help them find solutions to their conflicts and not to impose solutions on them, all in a private and confidential setting.

The appointment of the mediator shall be made either by agreement between the parties on the basis of a list proposed by the Mixed Commission of Social Mediation or, in the absence of such a joint appointment, by the Chairman of the Mixed Commission Social Mediation. In this case, the mediator must be accepted by all parties.

Under section 4 of the Social Mediation Agreement, the designated mediator must demonstrate the following qualifications:

- Professionalism
- Expertise
- Wisdom
- Confidentiality
- Trustworthiness
- Neutrality, independence and impartiality
- Availability

Within the framework of its mission, the mediator is mainly the facilitator of dialogue which is often at a dead end. To do so, he or she has the broadest powers but they do not allow him or her to impose an agreement on one of the parties in dispute.

c) The Applicable Procedure

Upon appointment, the mediator shall receive the parties at their convenience at a venue appointed by him/her and decide upon the modalities of their hearing, either together or separately if the parties so decide. He/she is entitled to ask for any useful information.

The mediation procedure duration is limited by Article 8 of the social mediation agreement to four weeks from the date of acceptance by the mediator's parties. This period may be subject to a single extension of a duration at most equal to the above deadline.

Under Article 9 of the abovementioned Convention, the parties may have the assistance of a counsel. The mediator may, with the consent of the parties, hear third parties who consent thereto or, when the complexity of the case so requires, may use the services of an expert or specialist in the concerned field.

The mediation procedure is strictly confidential. This obligation is binding on the parties and the ombudsman who are required not to disclose to third parties facts or other matters relating to the content of this procedure, except when disclosure is necessary for the execution of the agreement protocol.

The fees related to the exercise of the mediator's mission shall be borne by the parties, who are required to pay half of the mediation costs each, set out in the scale established by the joint committee for social mediation.

d) Closing of the Procedure

The mediation procedure ends at the request of a party in dispute or following the signing of a memorandum of understanding between the parties. It may also be terminated by a finding by the mediator that the mediation has not been completed without, however, being obliged to present the reasons for this.

It appears through this presentation that conventional social mediation can be seen as a suitable bilateral framework for the prevention and settlement of collective labour disputes. Its establishment was decided following the failure or complexity of the institutional mechanisms established by the Labour Code. Nevertheless, there are still some weaknesses in the choice and setting of the mediator's fees. The conflicts avoided or resolved within the framework of conventional social mediation were much more so because of the informal and decisive intervention of members belonging to the two signatory parties.

Section 4: The Institutions of Social Dialogue

Article 95 of the Labour Code provides for three levels for collective bargaining.

- The national level
- At the level of the concerned sector
- At the level of the company

Collective bargaining is held at the company level and at the sectorial level once a year. Collective agreements may provide for a different periodicity for negotiations.

At the national level, negotiations between the government, employers' organisations and the most representative trade unions are held every year and as many times as necessary to discuss the various economic and social issues concerning the field of work.

Paragraph 1: The National Level

The Labour Code, which enforced on June 8th, 2004, provided for the setting up of several national tripartite consultative institutions under the chairmanship of the Minister of Employment.

- The Higher Council for the Promotion of Employment

The Higher Council for the Promotion of Employment is an advisory body set up with the governmental authority responsible for employment in view of co-ordinating the Government's employment policy and giving its opinion on questions on employment at national level.
Article 522 of the Labour Code establishes among its powers, "to contribute to the development of dialogue and consultation among partners in the production process".

The Higher Council for the Promotion of Employment is composed of representatives of the administration, employers' professional organisations and the most representative trade unions. An invitation may be given by the President to any person recognised for his competence and expertise in the field of employment.

On the proposal of its chairman, the board meets on the basis of an agenda, whenever necessary, and at least twice a year. For the first meeting, the council shall meet only in the presence of two thirds of its members, and failing this quorum, a second meeting may be validly held within a period of 15 days without a quorum.

It shall take its decisions by a majority of the votes of the present members. In the event of a tie vote of the members present, that of the chairman shall prevail.

In short, the main task of this council is to draw up an annual report on the employment situation and prospects. This report is addressed to the Government by the Minister of Labour, responsible for monitoring the implementation of its opinions and proposals.

- The Collective Negotiation Council

The Collective Negotiation Council shall be established under the authority of the Government in charge of employment, with the mission of:

- Presenting proposals to promote collective bargaining
- Presenting proposals to encourage the conclusion and generalisation of collective labour agreements, particularly in companies employing more than 200 employees, whether at national or sectorial level
- Giving its opinion on the interpretation of the clauses of the collective agreement when it is solicited
- Studying the annual inventory of the collective bargaining report

In addition to its chairman, the Collective Negotiation Council is composed of representatives of the administration, seven representatives of the employers' professional organisations and seven representatives of the most representative employees' trade union organisations. The members of the council are appointed by decree of the Minister of Labour for a period of 3 years.

The board meets when convened by its chairman whenever necessary and at least twice a year.

Despite the numerous meetings held by this Council since its first meeting on May 9th, 2007, the fact is that this body's contribution to collective bargaining remains limited.

- The Council of Occupational Medicine and the Prevention of Occupational Risks

Established by Article 332 of the Labour Code, the Council of Occupational Medicine and Occupational Risk Prevention is a tripartite body responsible for presenting proposals and opinions to promote the inspection of occupational medicine and medical services at work. It also tackles all matters relating to occupational health and safety and the prevention of occupational accidents and diseases.

This council is composed of 30 members: 9 representatives of the concerned ministerial departments, 10 representatives of employers' professional organisations and 10 representatives of the most representative trade union organisations of employees. Representatives of employers and employees are appointed by order of the Minister for Employment for a period of three years. Referring to the website of the Ministry of Employment, this council has held 3 meetings since its creation: the first in 2007, the second in 2010 and the last in 2012.

At its last meeting held on October 23rd, 2012, the Council of Occupational Health recommended the establishment of a compendium of occupational health and safety indicators, the promotion of a culture of prevention of occupational risks within companies and social partners through the organisation of information and awareness sessions on occupational health and risk prevention. The council also recommends the implementation and activation of safety and health committees in all subject institutions as a place for social dialogue within the company on occupational health and safety issues.

- The national commission responsible for monitoring supervising the application of the provisions on temporary work

The tripartite commission in charge of the monitoring the application of the legal provisions on temporary work is created by Article 496 of the Labour Code.
Being a tripartite committee, Decree No. 2.04.464 of December 29th, 2004, determined its composition and the modalities of its functioning as a space for dialogue and exchange on issues of temporary work.

The commission is composed of 6 representatives of the administration, of which the Minister of Employment is president, 6 representatives of professional organisations and 6 representatives of the most representative trade union organisations of employees. Members of the last organisations are appointed by decree of the Minister of Employment for a period of 2 years.

As for the mission assigned to this specialised committee, the above-mentioned Article 496 is limited to a broad and content-free wording: "monitoring the proper application of the provisions of this Code" on temporary employment enterprises.

Although the Committee has held three meetings dedicated to the promotion of temporary employment, the fact remains that the problem of the social conformity of companies in the temporary employment sector is still relevant. Hence, only about 60 companies in the sector deposited the instalment amount at the Deposit and Management Office (Caisse de dépôt et gestion) in accordance with section 482 of the Labour Code. The representativeness of companies in the temporary employment sector is also posed insofar as only a small minority of them are represented in the National Federation of Temporary Employment Companies (FNETT).

Paragraph 2: The Sectorial Level

When we talk about sectorial social dialogue, we think of a dialogue that goes beyond the institution or company to include a specific sector such as metallurgy, the banking sector or the textile sector.

Although the Labour Code provides for collective bargaining between the employer or the employers' professional organisations and the most representative trade union organisations of employees with an annual frequency, the fact remains that there is no institution dedicated to sectorial social dialogue.

Apart from a few sectors with a tradition of social dialogue and a renewed practice of collective agreements, such as the banking sector and the oil sector, mention should also be made of attempts by the textile clothing sector to promote decent work in this sector.

Starting from 2004, social dialogue in the textile clothing sector took place initially in the framework of programs to strengthen the competences of the social partners in relation to the management of industrial relations and subsequently developed within the framework of implementation programs. This initiative, developed in the textile sector, resulted in the setting up of a joint committee created within the framework of the ILO Decent Work project.

Despite the various attempts initiated by the Ministry of Employment in the Souss Massa region and the goodwill expressed by the social partners in the agricultural sector, the social dialogue leading to a sectorial and regional collective agreement could not succeed.

Faced with the absence of structures dedicated to this effect, such as joint committees, for example, and the difficulties inherent in union representativeness, sectorial dialogue remains embryonic.

To this must be added the heterogeneity in the size of the enterprises forming each sector and the lack of a common and shared vision of the comparative advantages of social dialogue. It is in this context that the difficulties of the hotel and tourism sector and of agriculture must be included in order to bring about the social dialogue which has been ongoing for the past few years in view of concluding a sectorial collective agreement.

Paragraph 3: The Company Level

Several employee representative institutions are provided for in the Labour Code. All these employee representative institutions have a mandate for consultation and dialogue within the company. However, it is the most representative trade union that has the task of collective bargaining and the mandate to conclude collective agreements.

The Labour Code thus provides for 4 components for the representation of employees within the company. An elected component: employee delegates, a designated component: the union representative and two mixed components with elected employees and designated employees.

The Employees' Delegates

The staff delegates constitute the oldest legal representative institution in Morocco since they were instituted in 1962. Article 430 of the Labour Code states that, "in all establishments employing at least 10 permanent employees, employees' delegates must be elected in accordance with the Code". The election is held at the level of the company, but it can also be an establishment involving a working community and an interlocutor with certain decision-making powers.

The last elections of employee delegates took place on June 3rd, 2015 throughout the country. A close reading of the results of the professional elections prepared by the Ministry of Employment tells us that out of the 17,019 companies employing at least 10 employees, 12,084 companies heldS the elections of employees' delegates, i.e. 71% of the total number of surveyed companies. It can also be noted that 60% of the companies that held the professional elections are small and medium-sized enterprises with fewer than 50 employees. Elected delegates who did not announce prior trade union membership alone accounted for 57.12% of the total workforce, while the four most representative ones obtained respectively: UMT: 15.3%, UGTM 7.5%, UNTM: 7.29%, CDT: 7.26%.

Employees Delegates are mainly intermediaries between the staff and the head of the company for the presentation of individual complaints which are not satisfied and concerning the application of the labour code, the collective labour agreement and the internal regulations. In accordance with the wording of Article ... of the Labour Code, the employees' delegate is empowered to intervene only if the employee submitted his or her complaint and did not succeed. Practically speaking, the heads of companies agree to study the claims of employees' delegates even in the absence of prior recourse by the concerned employee.

On the whole, employee representatives have an essentially consultative role. Within the company, their consultation is compulsory in several matters relating to economic dismissal, disciplinary proceedings, reduction of working time, weekly distribution and overtime when the annual quota of 80 hours per year and per employee is exceeded. The consultation of employees' delegates shall also take place when drafting or introducing any amendment to the rules of procedure.

However, the agreement of the employees' delegates is necessary if working time is reduced beyond 60 days per year. In the absence of agreement, the reduction of the normal working hours can only take place with the authorisation of the governor of the prefecture.

The employees' delegates, in addition to their traditional tasks mentioned above, are received collectively by the head of the company or his representative at least once a month. They are also received in case of emergency on their request. This monthly meeting is a forum for consultation and exchange on issues relating to labour conditions and to the application of labour legislation.

The functioning of the institution of employee delegates and its contribution to social dialogue within the company depends to a large extent on the nature of the rules laid down in the Labour Code and their application by the head of the company. While the Labour Code has broadened the space for employees' delegates by allowing them to be represented on the Works Council and the Safety and Health Committee, their contribution to these two committees varies from one company to another. Their participation largely depends on the importance given by the company to consultation and social dialogue and to the degree of involvement of employees' delegates. The training of delegates on their obligations and rights during the exercise of their mandate is meant to create a climate of mutual trust, an essential basis for consultation and social dialogue.

- The Trade Union Representative

The creation of a trade union within the company is not subject to any threshold conditions. Nevertheless, the trade union institution present within the company does not necessarily have the status of the most representative trade union organisation. Article 425 of the Labour Code conditions this quality to obtain at least 35% of the total number of employees' delegates elected at the level of the company or the establishment. The most representative trade union with the highest number of votes in professional elections and with at least 100 employees may appoint one or more trade union representatives from among the members of the trade union office.

The duties of the union representative provided for in Article 471 of the Labour Code are:

- Presenting the claims file to the employer or his representative
- Defending collective demands and initiate negotiations to this end
- Participating in the conclusion of collective agreements

Union representatives shall enjoy the same facilities and the same protection provided for in the Labour Code for employees' delegates.

What about the contribution of trade union representatives to consultation and dialogue within the company?

Although the designation of trade union representatives is a right granted to the most representative trade union, it must be observed that there is no provision in the labour legislation requiring that designation. The unions seem to privilege the union office as the sole interlocutor of the head of the company. With the protection it has, like the employees' delegates, the union representative runs the risk of becoming an uncontrolled element in the union's representation within the company.

On the basis of the findings of the June 2015 professional elections, only 17% of the companies that held the polls had more than 100 employees. The presence and contribution of trade union representatives in the undertaking does not seem to correspond to the nature of the powers conferred on them by the Labour Code as regards collective bargaining.

- The Enterprise Committee

Article 464 of the Labour Code provides for the setting up of an advisory body in institutions usually employing at least 50 employees.
It is a bipartisan institution composed of the employer or its representative on the one hand, and, on the other, two employees' representatives elected by the employees' delegates and one or two union representatives from the company.

The Labour Code affirms the advisory nature of the enterprise council. The consultation of the social partners is central to industrial relations because it allows the head of the company to share the understanding of the reciprocal stakes of the institution.

The Committee is instructed under Article 466 of the Labour Code and in the framework of its advisory mission to examine and give its opinion on the following points:

- Structural and technical changes to be made within the company
- The social balance sheet of the company when approved
- The company's production strategy and ways to increase profitability
- The development of social projects for the benefit of employees and their implementation
- Learning, training, integration, and fight against illiteracy and continuing education of employees

The Labour Code also assigns other specific responsibilities to the enterprise council. As stipulated by Article 66 of the Labour Code, the Committee acts instead of the employees' delegates and, as the case may be, the trade union representatives with regard to dismissals for technological, structural or economic reasons and when the company is to shut down.

The committee meets once every three months and whenever necessary. The committee may invite any person belonging to the company having competence and expertise in its specialty. Members of the Committee shall be bound by professional secrecy when carrying out their duties on the Committee. The Labour Code does not specify the term of office of the members of the committee nor the provision of working hours for the elected members of the enterprise council.

Given this silence, it is generally agreed that the mandate of the committee should coincide with that of the employees' delegate and that the 15 hours of credit hours are also used for the mandates of employee delegates, union representatives or members of the enterprise council. There is also no mention in the Labour Code of the civil personality, the allocation of a budget dedicated to its functioning, the allocation of a suitable space for the exercise of these functions or even the elaboration of its rules of procedure to facilitate its operation.

Although the enterprise council aroused great expectations from staff representatives and trade unions to serve as a forum for dialogue and consultation, this committee remains dependent on the goodwill and commitment of the managers of the company.

- The Safety and Health Committee

Article 336 of the Labour Code provides for the establishment of safety and health committees in industrial, commercial and craft enterprises and on agricultural holdings and their dependencies with at least 50 employees.

This two-party institution shall be composed of the employer or his representative as chairman, the head of the safety department or, failing that, an engineer or technical manager, the occupational physician, two employee representatives elected by the employees' delegates and one or two trade union representatives from the company.

The committee may invite to its activities any person belonging to the undertaking and possessing competence and experience in occupational hygiene and safety.

The Safety and Health Committee meets when convened by its chairman once every three months and whenever necessary. The time spent at meetings is remunerated as actual working time.

The duties of the Safety and Health Committee are laid down in Article 338 of the Labour Code. It is thus in charge of:

- Detecting the occupational risks to which the employees of the company are exposed
- Ensuring the application of laws and regulations concerning safety and hygiene
- Ensuring the proper maintenance and use of measures to protect employees against occupational hazards
- Ensuring the protection of the environment within and around the company
- Encouraging all initiatives, in particular on the methods and processes of work, the choice of equipment, equipment and tools necessary and adapted to work
- Presenting proposals for the rehabilitation of disabled employees in the company
- Giving its opinion on the functioning of the occupational health service;
- Developing the sense of prevention of occupational risks and safety within the company

As part of its missions, the Safety and Health Committee must draw up an annual report at the end of each year on the evolution of occupational risks in the company. This report shall be sent to the labour inspectorate and to the physician in charge of labour inspection no later than 90 days after the year in respect of which it was drawn up.

Beyond the institutional aspect, the Safety and Health Committee provides an appropriate framework for social dialogue on health and safety issues. Companies with more than 50 employees generally ensure the establishment of this committee, but the formalisation and follow-up of meetings of this committee require the involvement and commitment of the staff representatives. During the election or appointment of members of the Safety and Health committee, staff representatives are invited to privilege preventive training on health and safety according to the nature of the occupied position in the company. The Safety and Health Committee is not a place of social protest but a framework for dialogue and exchange for the improvement of working conditions. The success of the works of this committee also requires the involvement of the occupational physician who has a preventive role in monitoring the general health and safety conditions in the company.

Section 5 : la convention collective, résultat du dialogue social en entreprise

As defined by Article 104 of the Labour Code, "the collective labour agreement is a collective contract governing labour relations between representatives of one or more of the most representative trade union organisations of employees or their representatives on the one hand, and, on the other one or more employers' organisations, on pain of nullity, the collective labour agreement must be drawn up in writing".

The collective agreement is a means of reconciling the demands of work with the aspects of productivity and competitiveness of the company, which makes it useful for employees and their unions as well as for employers and their professional organisations. By virtue of its normative function, the collective agreement can meet the new demands of the work sphere and contribute to the modernisation of professional relations. It intervenes mainly to supplement and adapt the legislative provisions to the particular situations of the various activity sectors.

It should be noted that before the Labour Code was adopted, the Dahir of April 17th, 1957 considered the collective agreement as a national institution which had raised great hopes if the recommendations of the first meetings of the Superior Council of Collectives are taken

into account. Nevertheless, the 1957 text failed to maintain the pace of adoption of collective agreements in the early years of independence. Around a hundred collective agreements at the outset, the period prior to the adoption of the Labour Code gave rise only to the adoption of a dozen collective agreements.

The enforcement of the Labour Code upgraded the legal regime of the collective agreement by devoting several articles to it in order to determine the methods of conclusion, the scope, the duration and the methods of extension and termination of the collective agreement. It must be noted, however, that despite the good readiness of the social partners and the often repeated plea of the Ministry of Employment and the social partners, the number of collective agreements concluded remains limited.

One example is the initiatives of the Ministry of Employment's partnership with the ILO for the promotion of collective agreements in the agricultural sector in the 3 regions of Gharb, Sais and Souss.

The trade unions and the CGEM also insist on the need to promote conventional law through the adoption of sectorial or company collective agreements. The White Paper presented by CGEM in 2007 even considers that "the collective agreement has several virtues: it allows a harmonised management of labour relations in a given branch by imposing common rules and a fairness that ensure the conditions for fair competition in the sector". In order to initiate and popularise the collective agreement with the members, the employment and social relations committee has drawn up a guide to the collective agreement.

Despite this declared consensus on the importance of the collective agreement, companies often prefer to resort to atypical social agreements in the form of agreement protocols. Three hundred agreement protocols were recorded during the first nine months of 1913, while the number of collective agreements did not exceed forty. A large part of the agreement protocols was signed as a result of the initiation of collective labour disputes and focused mainly on the trade union demands submitted by trade unions on applying labour legislation.

During his intervention at the 4th session of the Collective Bargaining Council held in 2011, the Minister of Employment identified several factors explaining the lack of attractiveness of the collective agreement. These factors include insufficient coordination between trade unions and employers' organisations at local, regional and sectorial levels, as well as a lack of awareness of the role that conventional law can play in the management of industrial relations and in the establishment of social peace.

To these factors should be added the most representative trade union criterion provided for in the Labour Code as a precondition for a union to conclude a collective agreement. The results of the June 2015 elections indicate that 57.13 of the delegates of elected employees are without a registered trade union membership.

It should be noted that in recent years, the Ministry of Employment and the social partners have shown certain dynamism and a sustained desire to promote collective agreements. The fact remains that for many SME owners, the collective agreement remains an unknown institution which still arouses a relative curiosity. In many economic sectors, such as the tourism sector, hotels, cement works, or even agriculture, the collective agreement remains and for many years an ongoing project or simply an unfinished project.

Section 6: Management of Collective Work Crises

Article 549 of the Labour Code defines collective labour disputes as "any dispute arising in the course of work and in which one of the parties is a trade union organisation of employees or a group of employees". The same article also considers that this definition applies to all disputes of which one of the parties is one or more employers or a professional organisation of employers.

Collective disputes shall be settled in accordance with the conciliation and arbitration procedure provided for this purpose. Collective agreements may contain other procedures whereby collective disputes can be settled.

Paragraph 1: Conciliation

Conciliation is a process of amicable settlement of labour disputes. Its aim is to reconcile the divergent views of the parties in conflict. It is conducted by a third party called the conciliator (facilitator) to assist the parties in seeking a compromise or an amicable solution. The success of a conciliation mission often depends on the reputation of the third party, its experience and the behaviour of the parties involved.

Article 551 of the Labour Code provides that "any dispute arising out of work which may give rise to a collective dispute shall be the subject of a reconciliation attempt before the work delegate at the prefecture or the province, the officer in charge of the labour inspectorate, the provincial commission of inquiry and conciliation or before the national commission of inquiry and conciliation".
Conciliation, as presented, may have advantages that can be explained by the voluntary and private nature of the process. Nevertheless, conciliation is perceived to be biased, and suffers from a lack of communication and promotion with companies and trade union organisations.

Paragraph 2: Arbitration

Arbitration is an optional mode of dispute resolution by which the parties entrust a third party (arbitrator) with the task of resolving a dispute. It is a private form of justice whose origin is conventional. Under the labour code, recourse to arbitration is possible after agreement of the concerned parties if they do not reach an agreement before the provincial commission of inquiry and conciliation and before the national commission of inquiry and conciliation.

Arbitration shall be entrusted to an arbitrator chosen by common agreement by the parties from among those appearing on a list drawn up by decree of the Minister of Employment. The process should be launched upon the invitation of the most representative employers' and workers' organisations. In the event of disagreement between the parties, the Minister of Labour shall appoint one arbitrator from among those on a list within forty-eight hours.

The arbitrator rules in law on disputes relating to the interpretation and enforcement of laws, regulations, collective agreements or enforced agreements. He or she shall rule on other conflicts not provided for by law, regulation or contract. The arbitrator shall rule on the dispute within a period not exceeding four days from the meeting with of the concerned parties.

Around ten years after the enforcement of the Labour Code, arbitration remains a procedure unknown to the actors in the work field. Nothing in this law allows them to resort directly and primarily to arbitration. To this must be added a lack of communication and sensitisation of the social partners on arbitration.

It is to complete the legal mechanisms of conflict resolution and try to simplify the procedures that the CGEM initiated, in partnership with the most representative trade union organisations, the conventional social mediation mechanism.

Paragraph 3: Conventional Mediation in the Code of Civil Procedure

In the absence of a reference to mediation in the Labour Code as an alternative means of dispute resolution, reference should be made to the Code of Civil Procedure which established the framework and modalities of conventional mediation. The Code of Civil Procedure thus allows the parties in dispute to agree on the appointment of a mediator to facilitate the conclusion of a transaction that ends the conflict.

Mediation is a means of dispute resolution that allows the parties to reach an agreement through the use of a neutral person called the mediator. Absent from the Labour Code, mediation is included in the Code of Civil Procedure as an alternative dispute resolution method.

The Code of Civil Procedure distinguishes between mediation which can be organised by the parties themselves (mediation ad hoc) and mediation organised by a mediation centre to which the parties decide to submit their dispute. In the latter case, the selection of the mediator and the conduct of the proceedings are the responsibility of the mediation centre.

Paragraph 4: Social Conventional Mediation (CGEM and Social Partners)

This paragraph is already dealt with in the paragraph of section 3.

Section 7: Case Study: Diagnosis and State of Play of the Social Dialogue within Companies

The diagnosis and the state of play of the social dialogue within companies are established, according to the terms of reference of our mission, on the basis of 40 companies divided into five sectors:

1) Distribution and food-processing industry:

- Marjane (large distribution)
- Electroplanet (electrical appliances distribution)
- Acima (medium distribution)
- Pack Souss
- Scbg (NABC) Coca cola
- Centrale Danone
- Lait Plus
- Fromagerie des doukkalas (cheese industry)
- Cobomi
- Lydec (mineral water industry)
- Taqa Maroc
- Cbgs
- Cbgn

2) Transportation

- CasaTram
- Transdev rabat Salé (Rabat Salé tramway)
- STCR
- Tractafric

3) New technologies, IT, telecommunication

- Wana Corporate (Inwi)
- Meditel
- Atos
- Uniforce
- Omnidata
- B2S
- BC2S
- Umanis

4) Services

- Exprom Facilities
- Euler Acmar
- Ansamble Maroc
- Kenzi Hotel
- Le matin (press group)

5) Building industry

- Amitech
- Sews Cabind (Kenitra wiring)
- SEG (Tangier building industry)
- Maghreb Industries
- Maghreb Steel
- CFC câblages (Berrechid)
- Compagnie Tifnout Tighanimine (CTT mines)
- CIB (textile)
- Universal industrial Steel (Berrechid)
- DLM (Delattre le vivier Maroc)

The identified companies are spread over several economic regions of Morocco: Casablanca, Rabat, Tangier, Agadir, Marrakech, Kenitra, Settat, Berrechid, Ouarzazate, El Jadida and many of them have several establishments spread across several regions of the country.

All the above-mentioned companies have a workforce of more than 50 permanent employees. They are therefore obliged to organise the elections of employees' delegates and to have two main organs of consultation and social dialogue: the Enterprise Council and the Safety and Health Committee. In enterprises with more than 100 employees, the representative union with the largest number of votes shall have the right to designate one or more trade union representatives from among the members of the trade union office.

It is relevant to specify that the companies that responded to our questionnaire are not representative of the entire Moroccan economic fabric dominated mainly by the very small, small and medium-sized enterprises. Nevertheless, the examination of the answers provided can provide information on the main trends in the practice of social dialogue and the settlement of industrial disputes.

For the purposes of this diagnosis, we have selected several levels of analysis:

- The legal framework of labour relations: the collective agreement and the protocols of agreement
- The existence of representative staff institutions
- The functioning of the institutions representing employees in the company
- The modalities of conflicts management
- The general assessment of social dialogue in enterprises

Paragraph 1: The Legal Framework of Labour Relations:

The labour relations of all companies are part of the Labour Code. In only one private company of the above mentioned, a part of the staff is provided by a public institution. The staff made available under the delegated management of a public service remains governed by the status of that institution. Of all the concerned companies, only 4 are subject to a collective agreement. Only one sectorial agreement is raised.

Contrary to the collective agreement rarely used for the management of professional relations, the practice of agreement protocols is registered in several companies (¼ of the companies). The agreement protocols are signed by the head of the company with the union representatives or with the general secretary of the union office. The periodicity of the agreement protocols generally varies from one to two years and concern specific topics such as: the vast majority of agreement protocols are registered in enterprises.

Paragraph 2: The existence of Representative Staff Institutions

With the exception of one company operating in the building sector, all companies organised the elections of employees' delegates in June 2015. The number and distribution of employees' delegates per college fall within the framework of the Labour Code.

The establishment of the Enterprise Council is predominant in companies with trade union representation. Two thirds of the identified companies have an enterprise council whose composition varies according to the simultaneous presence of employee delegates and trade union representatives.

The Safety and Health Committee is present in a larger proportion in large companies and mainly in the industrial sector. Its enlarged composition compared to the Enterprise Council predestines it (presence of the occupational physician and the safety officer) to play a vital role in matters relating to life at work, but the social partners do not grant it a privileged treatment compared to other staff representative institutions. Thus, elected delegates or trade union representatives appointed to the Safety and Health Committee did not receive any prior training on the content of their mission or on the modalities of operation of their committee.

The presence of trade unions is predominant in the questioned companies: 32 out of 40 companies have at least one trade union representation and 21 companies have only one trade union office. In enterprises with several trade union representations, only one inter-union commission is identified. The inter-union commission is generally set up to coordinate and ensure cohesion of positions between the represented trade union offices.

As for the representation of trade unions in enterprises, the presence of trade union representatives is limited. Union organisations in enterprises are generally represented by members of trade union offices under the direction of a general secretary.

Paragraph 3: The functioning of Employees Representative Institutions in the company

The functioning of the employee delegates' institution is generally in line with the minimum required by labour legislation. In this context, regular meetings should be held with the elected delegates, the means provided for in the Labour Code should be made available to them, such as the bulletin board and the provision of a meeting room.

Some companies allow employee representatives to use social networks or email addresses for communication with staff. The authorised hours of absence for the delegates of employees to exercise their powers are not formalised and are limited to companies with trade union representation. Consultation with employees' delegates takes place on the occasion of monthly meetings on the basis of complaints or protests when the employees' delegates are affiliated to a trade union organisation. The meetings are generally sanctioned by the drafting of a report signed by both parties and containing a summary of the points of agreement or disagreement found.

The union office and union representatives

The social dialogue within companies usually takes place with the general secretary of the union office accompanied by the other members of the office and rarely with the union representatives. There is some reluctance in the designation of union representatives.

Collective bargaining with trade union offices takes place once a year and focuses mainly on the demand book dominated by wage increases, respect for trade union freedoms and the application of legislation, in particular with regards to working conditions.

Social negotiation also takes place on the occasion of the occurrence of collective labor disputes. Five companies experienced collective disputes resulting in 3 strikes over the past 3 years.

The Enterprise Council

The Enterprise Council is a formal group that has no impact on collective bargaining. As stipulated in the Labour Code, the Enterprise Council is a place for consultation and participation of employees through their representatives. The establishment of the Enterprise Council is at best only part of a social compliance project. Without a legal personality and without a budget, the Enterprise Council is relegated to the background by trade unions and business leaders. The lack of interest of companies in this committee appears at the level of its chairmanship and at the level of the respect of the semi-annual periodicity of the meetings. Although the Labour Code gives it an advisory role in sensitive areas such as structural changes and production strategy, the Enterprise Council remains an institution which has suffered from the inadequacy of the legal framework provided for in the Labour Code.

The Safety and Health Committee

There is no doubt that the Safety and Health Committee is an appropriate framework for social dialogue on occupational health and safety issues.
The level of representation of the company and the social partners within this committee sheds light on the limited interest granted to it. To this must be added a weak formalisation of the meetings of the committee and an insufficient communication of the personnel on its functioning.

Paragraph 4: Collective Professional Conflicts Management

In the companies which have responded to our questionnaire, the management of collective disputes takes place in the manner provided by the labour legislation for conciliation. Conciliation is implemented when direct negotiations have failed between the head of the company and his or her social partners.

In this regard, it should be noted that the negotiation takes place first of all between the head of the company or his/her representative (usually the human resources director) and his/her social partner. The negotiations take place first at the level of the labour inspectorate before continuing in case of failure before the prefectural director of employment and the provincial commission of inquiry and conciliation. Only one collective dispute was brought before the National Commission of Inquiry and Conciliation.

It is paradoxical to note that although conciliation at the level of the labour inspectorate is variously assessed, no company has used alternative modes of mediation and arbitration. The same can be said for the conventional mediation of the CGEM which is still little known by the companies that responded to our questionnaire.

Paragraph 5: The General Assessment of Social Dialogue in Enterprises

The Labour Code, which as enforced in 2004, provides for a legal framework for collective bargaining in enterprises and institutions according to the size of the company.

On the formal level and in consideration of social conformity, the companies ensure the establishment of the various envisaged institutions, such as employee delegates, trade union representatives, the Enterprise Council and the Safety and Health Committee. In practice, the contribution of different institutions remains unequally appreciated by companies.

Beyond the legal meetings of the various committees and institutions, social dialogue requires the commitment of both parties and the consideration by the employee representatives of the constraints of the company. While many of the companies identified show a certain interest in consultation with their social partners, they consider that its success depends on reciprocal trust and overcoming the spirit of confrontation that still prevails in some companies. Successful social dialogue in enterprises also involves training staff representatives on the rights and obligations inherent to their duties. The training of managers on the management of social relations can also be a lever for the anticipation of conflicts and the establishment of a social watch on the functioning of social relations.

The management and complexity of relations with the social partners led some identified companies to set up a new branch dedicated to social relations. The mission of this branch, which is generally attached to the human resources department, is to monitor relations with the social partners in order to reduce the causes of discontent and to establish social dialogue over time.

Section 8:

At the end of this report, it is relevant to underline that there is a sustained tradition of social dialogue in our country. This tradition is expressed at several levels and in different forms. Nevertheless, social dialogue is still embryonic at the sectorial level and non-existent at the regional level.

At the enterprise level, the labour code institutionalised the trade union representative in companies employing at least 100 employees and introduced new social dialogue instruments: the Enterprise Council and the Safety and Health Committee. Although these two institutions raised great expectations in the adoption of the Labour Code, it is clear that the impact of the work of their work on social dialogue deserves to be supported.

As for the conventional law, and despite a certain perceptible dynamic in recent years, the number of signed collective agreements remains below expectations. It seems necessary to revitalise the different institutions of social dialogue at the national and enterprise levels. This improvement in their performance must be accompanied with a strengthening of their members' capacities in terms of social relations.

The social partners are also invited to strengthen and support conventional social mediation and to make the choice of the prevention and anticipation of collective labour disputes.

Recommendations:

1) Promote the role of the collective bargaining council in setting up working groups on collective agreements

2) Suggest a single institution for national social dialogue

3) Reinforce the capacities of social partners on social dialogue at different levels

4) Provide economic and social partners with a guide to collective bargaining as well as with simplified models of collective agreements

5) Recast arbitration as provided for in the Labour Code

6) Reconsider Conciliation Boards (Provincial and National)

7) Promulgate the Trade Union Act and the Organic Law on Strikes

8) Organise regional workshops for the promotion of social mediation and collective bargaining

Annex: Questionnaire on Social Dialogue

Survey:
Social Dialogue and Collective Bargaining in Enterprises
(Commitment to respect the confidentiality of the collected data)

Survey prepared by: Ali Boufous

1. Identity of the company:

- Company name :
- Line of business :
- Address :
- E-mail address :
- Person in charge :
- Age :
- Total number of staff:

Staff in permanent contract	
In fixed-term contract	
Temporary workers	

- Staff classification :
  - Distribution of the workforce by :

Enforcement officers:	
Supervisors :	
Senior officers :	
Other categories :	

  - Staff in % :

Men :	
Women :	

2. Legal framework of labour relations (regulation and applicable statue):

- Is the company subject to a collective agreement?

  YES NO

- Date of conclusion
- Duration
- Date of last review (if revised)
- Number of protocols signed in the years 2015/2016
- Does the company have difficulty in applying the collective agreement?

  YES NO

- If yes, which ones

3. The structure of social dialogue within the enterprise:

3.1 Delegates of elected employees:

3.1.1: Did the company hold the elections of the employees' delegates in June 2015? :

YES NO

Number of the employees' delegates per college	
Employees college	
Permanent employees:	Supply employees:
College senior employees	
Permanent employees:	Supply employees:
Other colleges	
Permanent employees:	Supply employees:
The affiliation of employees' delegates	
No affiliation to trade unions:	Affiliated to trade unions:
Percentage of trade union representation: %	

3.1.1: Do the employees' delegates have the means provided for in the Labour Code for the exercise of their powers?

YES NO

- Do delegates have a bulletin board?

  YES NO

- Do delegates perform free posting?

  YES NO

- If no, please indicate the obstacles to that:

- Do the employees' delegates use other means to inform the staff??

  YES NO

- What are they?

- Do the delegates have a meeting venue?

  YES NO

- If yes

Is it a specialised office?	
Is it a shared office?	

- Do the delegates enjoy the eligible time credit?

  YES NO

- Is it a maximum of 15 hours per month per delegate?

  YES NO

- Are periodical meetings held with the delegates?

  YES NO

- What is the frequency of the meetings?

Once a month	
No regular frequency	
Only at the delegates' request	

- Are the official minutes of these meetings produced at the end of each meeting?

  YES NO

- Are the minutes signed by both parties?

  YES NO

- Do the delegates receive a copy of the minutes?

  YES NO

- Are the minutes posted?

  YES NO

3.2 Trade union representation within the company

3--1: Does the company have a trade union representation?

YES NO

- Trade union name
- More than one trade union organisation
- Affiliated to which central trade union organisation
- Other trade union central organisations

- In case of many trade union representations, does the company face any difficulties at the level of social dialogue?

  YES NO

- If yes, what are they?

- What are the main trade union demands?

3--2 The most representative trade union organisations in the company

- Are there one or two representative unions in the company?

  YES NO

- What are their affiliations?

- Did the most representative trade union appoint trade union representatives in accordance with Article 470 of the Labour Code?

  YES NO

- What is the number of trade union representatives?

- Do the trade union representatives have the means provided for in the Labour Code?

  YES NO

- Do the trade union representatives have a bulletin board?

  YES NO

- Do the trade union representatives use other means to inform the staff??

  YES NO

- If yes, what are they?

- Do the trade union representatives have a meeting venue?

  YES NO

- If yes

Is it a specialised office?	
Is it a shared office?	

- Do the trade union representatives enjoy the eligible time credit (a maximum of 15 hours per month per representative)?

  YES NO

- If yes, how do they use them?

- Does social negotiation take place with the trade union representatives?

  YES NO

- If no, who does it take place with?

- Are periodical meetings held with the delegates?

  YES NO

- What is the frequency of the meetings?

- What are the main demands of the trade union represntatives?

3.3) The Enterprise Council

- 3.3.1: Does the company have an enterprise council?

  YES NO

- If yes, please indicate its composition.

- Who presides over the Enterprise Council?

- The number of elected or appointed members:

Employees' delagates	
Trade union representatives	

- Does the Enterprise Council invite other members?

  YES NO

If yes:

- How many?

- What is the function of the invited members?

- Does the Enterprise Council once every six months?

  YES NO

- If no, how frequent are their meetings?

- Is there an agenda for each of these meetings?

  YES NO

- What are the consultation topics of the Enterprise Council?

- Did the council members receive any training?

  YES NO

- If yes, what are the training topics?

- How do you evaluate the role of the Enterprise Council?

Important	
Less important	
Not important	

4) Collective work conflicts

- 4.1) Have the company lived any collective conflicts throughout the last 3 years?

  YES NO

If yes:

- How many?

- 4.2) What are the reasons behind this or these confict(s)?

- 4.3 Did the conflict lead to a strike?

  YES NO

4.4 Was the collective conflict treated at an internal level?

YES NO

If yes:

With the employees' representatives	
With the Enterprise Council	
With the trade union representatives and office	
Other	

4.5 Was the collective conflict treated at an external level?

work inspection	
At the level of the Provincial Investigation and Conciliation Commission	
At the level of the National Commission of Inquiry and Conciliation	

4.5 Did the enterprise resort to alternative modes of crises management

YES NO

If yes, which ones?

Mediation (including conventional mediation)	
Arbitration	

4.6 What is your assessment of the different modes of collective crises management?

	Efficient	Non-efficient
Conciliation before the Work Inspectorate		
Conciliation before the Provincial and National Investigation and Conciliation Commissions		
Mediation (CGEM or other)		
Arbitration		

5) The human resources department and social relations management

5.1: Who is the interlocutor of the staff representatives?

Managing Director	
Human Resources Director	
Human Resources Assistant	
Social Relations Manager	
Other (to be specified)	

- 5.2: Does the company resort to external consultants to manage social relations?

  YES NO

- 5.3: Comments of the head of the enterprise on the process of social dialogue within his/her company.

Done in ..... Date .... /...../ 2016

This project is co-funded by the European Union

A project implemented by

ITUC CSI IGB

ARAB TRADE UNION CONFEDERATION

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Union of Mediterranean Confederations of Enterprises
Union Méditerranéenne des Confédérations d'Entreprises

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