



Social Dialogue in Morocco, Tunisia and Jordan

Regulations and realities of social dialogue

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ABSTRACT

This report was commissioned by the Directorate General for Employment, Social Affairs and Inclusion of the European Commission and carried out by the ITC-ILO. It is an input to the tripartite *ad hoc* work group on social dialogue, which was set up in the framework of co-operation on employment under the Union for the Mediterranean. The objective of the report is to provide a factual analysis of the present state of social dialogue in three selected countries: Morocco, Tunisia and Jordan. The report is based on desk research and interviews with high level actors in social dialogue, and external observers and academics.

I. EXECUTIVE SUMMARY

This report studies social dialogue¹ systems and practices in three selected countries: Morocco, Tunisia and Jordan. These three countries are very different in many fields. But what they obviously have in common is that they are the only three countries of the Middle East and North Africa, where the Arab Spring² which expressed strong aspirations for more democracy triggered reform, without big waves of violence.

The objective of the report is to assess the present situation of social dialogue in these countries. This summary report comprises:

- Main findings;
- Comparative summary tables on key dimensions of industrial relations systems;

This approach allows getting a quick basic insight into the main features of the respective national social dialogue systems.

1. MAIN FINDINGS ON THE STATE OF SOCIAL DIALOGUE

In all three countries, there is a robust body of **legislation** regulating social dialogue. These legal frameworks date from the periods prior to the Arab Spring. In two countries (Tunisia and Jordan), the legal frameworks are currently under review it is likely that Tunisia will advance more quickly on the legislative reform than Jordan.

The pillars of these legal frameworks are similar:

- i) The recognition of individual freedom of association with certain limitations, which are the strongest in Jordan;
- ii) New trade unions can be created, but important limitations apply to get an official recognition to act as genuine trade union (Jordan);
- iii) The existence of some formal bodies for tripartite social dialogue, however without autonomous secretariats, and a limited scope of competences;
- iv) The general absence of bodies for continuous sector level social dialogue, apart from disputes resolution systems;
- v) Although there is a framework for the functioning of social dialogue at company level, there are no obligatory measures to organise representation and negotiation at such level except in one country;

¹ To define social dialogue, we refer to the ILO definition of social dialogue "Social dialogue includes all types of negotiation, consultation and exchange of information between, or among, representatives of governments, employers and workers on issues of common interest. How social dialogue actually works varies from country to country and from region to region. It can exist as a tripartite process, with the government as an official party to the dialogue or it may consist of bipartite relations between labour and management, with or without indirect government involvement. It can be informal or institutionalised, and often is a combination of the two. It can take place at the national, regional or at enterprise level. It can be inter-professional, sectoral or a combination of these."

² cfr Oxford Dictionaries, A series of anti-government uprisings in various countries in North Africa and the Middle East, beginning in Tunisia in December 2010.

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- vi) Strict procedural rules which govern the legality of strikes are in place.

In summary, in all three countries, the current legal framework promotes a centralised system of industrial relations, on a tripartite or multi-stakeholder (Jordan) basis, partly state-controlled, or state-directed, and limited to a few policy areas, which rarely go beyond social affairs in the limited sense.

The **practices of social dialogue** are partly a heritage of national history, in particular the respective roles of social partners in the decolonisation period. They also reflect the key features of national economies, where we observe the co-existence of low-productivity activities (often) in the informal sector, and various restrictions to competition which enable a few protected and well-connected firms to dominate the most lucrative sectors³. Practices of social dialogue also reflect the state of progress (or development) of the democratisation process in each country, and the uneven capacity of social partner organisations to contribute to, accompany and shape this process.

Main elements in the present practices of social dialogue are as follows:

- i) Except in Tunisia, unions are rather weak due to low unionisation rates. Business organisations are stronger, but industrial relations and social affairs are not their main field of activity. They operate as trade or business organisations rather than as employers' organisations;
- ii) As a result, outputs of social dialogue are limited. In particular, collective bargaining coverage is low or very low. Although there are a few exceptions, the overall trend is the absence of bipartite collective bargaining and other forms of social dialogue at company level and at sectoral level. Exceptions can be found in the public sector in Morocco, and in a few sectors and big companies in Tunisia;
- iii) Unions and business organisations have some capacity of influence on state authorities, either through lobbying or through their links with political parties. This informal influence is the strongest in Tunisia;
- iv) Tripartite consultation structures exist to some extent in all three countries, but their scope and influence is so far limited;
- v) Over the recent years, the conflicts in industrial relations – including strikes and in particular wildcat strikes⁴ – have increased;
- vi) Social partners hardly contribute to fostering the transition from informal work to formal employment;
- vii) Social partners underuse the potential of social dialogue to promote integrated economic and social policies.

The **outcomes** of social dialogue, and their contribution to development, in countries which all face very serious issues of economic development, employment creation, political stability, social cohesion and social justice, are varying.

³ Schiffbauer, Marc et al. 2015. Jobs or Privileges: Unleashing the Employment Potential of the Middle East and North Africa. Washington D.C.: World Bank.

⁴ Strikes which do not respect the legally imposed procedures

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In two countries (Jordan and Morocco), social dialogue has not played a major role to date. It has a limited impact and role, to a certain extent because the concern for stability and central control may have inspired suspicion towards civil society, on the degree of freedom for social dialogue, and the degree of involvement of social dialogue in solving labour issues.

In Tunisia, on the contrary, social partners have been among the main actors to co-achieve with other civil society organisations the democratic transition. They were internationally praised for their support to a peaceful process, and the 2015 Nobel Peace Prize award may give new impetus.

On the other possible outcomes, such as economic development, employment creation, skills, social cohesion, it is difficult to make an evidence-based analysis, partially also because correlations and causalities between the sound operation of a social dialogue system, and socio-economic outcomes are difficult to establish.

Apart from Tunisia, which stands out for its more active social dialogue system, it is difficult to rank the capacity of the industrial relations systems highly: in our opinion, these systems are unable to deal effectively with the multitude of socio-economic issues in a coordinated and constructive way.

At this stage, social dialogue systems do not achieve a prominent role because of:

- the lack of political will to involve social partners;
- the weaknesses on the trade union side themselves, and
- the stronger focus of organised business on trade and economic development and their more limited engagement in industrial relations and social dialogue

2. SNAPSHOT OF SOCIAL DIALOGUE

The following summary tables present further elements per country and complete the main findings above. Obviously this schematic approach will reduce the nuances and will not be able to capture the wealth and background of national realities, which may be read in each of the national reports.

2.1. *Environments of social dialogue: political, social and economic background*

Important political data

	MOROCCO	TUNISIA	JORDAN
Main political authority/regime	Monarchy	Prime minister and Parliament	Monarchy
Parliamentary majority	coalition government under leadership of moderate Islamist party	coalition government under leadership of centre party	no party structure
Importance of	moderate	high	high

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internal-external security concerns amongst authorities			
Political stability	ensured	ensured after years of turmoil	ensured
Main socio-economic issues	competitiveness; employment; fiscal consolidation	public deficit; employment; competitiveness	gradual reform; refugees; economic growth

Some basic figures

	MOROCCO	TUNISIA	JORDAN
Population (million)	33.9	10.9	6.5
GDP billion USD	105	46.99	33.9
GDP/capita USD	3 199	3 092	5 174
Inflation rate	1-1.5%	4.9%	3%

Main socio-economic topics and issues

	MOROCCO	TUNISIA	JORDAN
Growth			
Economic growth GDP 2014, (World Bank (WB), projections)	4.6% (reviewed to 2.4%),	2.6%	3.5%;
Economic growth rate 2015, 2016 projections (WB)	4.8%; 5%	3.4%; 4.5% *2015 1% reviewed	3.9%; 4%
Competitiveness			
International indicators on business climate ⁵ (DB, WEF)	stable	declining	slightly declining
Two main issues enterprise surveys (DB, WEF)	corruption access to finance	political stability government bureaucracy	access to finance tax rates
Public finances			
Annual deficit (WB)	-5%	-6.4%	-14%
Total debt ratio (vs GDP- figures 2014)(IMF)	77%	47%	86%
Employment – Unemployment			
Labour participation	49%	47.5%	40%

⁵ Doing Business, 2016, World Bank Group (DB); The Global Competitiveness Report 2015-2016, World Economic Forum (WEF)

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rate total (World Bank)	MOROCCO	TUNISIA	JORDAN
Unemployment rate (ILO)	9%	15%	11.9%
Youth unemployment rate (WB)	18.6%	37.6%	33.7%
Underemployment (ILO databases)	14.2%	N/A	N/A
Gender			
Labour participation rate women (WB)	25%	25%	16%
Gender inequality index (rank out of 187 countries – Human Development Report 2014)	92	48	101
Poverty			
Poverty headcount ratio at national poverty line % population(WB)	8.9% (2007)	15.5% (2010)	14.4%(2010)
Informality			
Informal economy - % total labour force	40%	30%	30%
Refugees- non nationals			
Total number (UNHCR 2015)	4,700	3,000	672,000
Non-nationals in national wage employment (Migration Policy centre, 2013- newspaper Albawaba 3.1.2013)			Projected by Dec. 2015: 1,000,000 290,000 with work permit (Min. Labour) Estimated 1 million of illegal workers

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Structural features of the economy, with accent on private sector

	MOROCCO	TUNISIA	JORDAN
Share private sector in wage employment vs public sector (national statistics)	90%	76%	66%-70%
Share industry/ services in economy (total employment)	20%-40%	30%-60%	20%-75%
Share employment in big companies (+100)	17%	40%	31%

2.2. *Freedom of association (FOA)*

	MOROCCO	TUNISIA	JORDAN
Nationally recognised	yes	yes	yes
Ratification ILO C.87	no	yes	no
Important limitations	more or less	no	yes (public sector)
FOA in practice: for workers	generally possible	almost fully guaranteed	possible in private sector
for employers	obligatory: Chamber CGEM free membership:	free membership	Obligatory Chamber free membership: JCI
Degree unionisation general (all country/ all sectors)	10%	30-35%	10-12%
Degree trade unionisation private sector	8-10%	10-15%	10-12%
Degree employers' associations affiliation (% employment in members)	60-70%	70-80%	60-70%

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2.3. *Unions and employers' organisations*

	MOROCCO	TUNISIA	JORDAN
TUs			
Trade union pluralism	yes	yes	no
TU's Political links	yes	yes	no
Strong competition between TUs	moderate	moderate to high	not applicable
Independence trade unions from political powers (incl. financial independence)	more or less	more or less	less
Regular internal elections	no	yes	no
Sector associations as members	yes	yes	yes
Gravity point of trade union strength	central	central	central
Staff numbers and capacity	moderate	high	low
Openness to social dialogue with employers	high	high	high
Global trade union power	moderate	high	low
Employers' Organisations (EOs)			
EO pluralism	no	emerging	no
EO political links	informal	informal	informal
EO independence (incl. financial)	more or less	more or less	less
Governance (regular elections)	yes	yes	less
Gravity point of the EO	central	central	central and regional
EO have broader mandate than industrial relations	yes	yes	yes
Global EO power	important	very important	important
Openness to social dialogue with trade unions	yes	yes	limited

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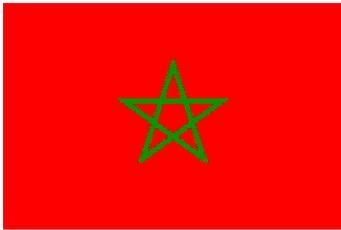
2.4. *Social dialogue at different levels*

	MOROCCO	TUNISIA	JORDAN
Tripartite social dialogue national level			
Institutions	yes	partially- to be extended	yes
Intensity	low	medium	low
Influence (also informal)	low	high	low
Scope (diversity of issues treated)	limited	limited	limited
Bipartite social dialogue			
Institutions	no	no	no
Intensity	low	low	low
Scope	limited	limited	limited
Social dialogue at sector level			
Institutions	none	none	none
Intensity	low	low	low
Scope	very limited	very limited	very limited
Autonomy-specificity	very limited	very limited	very limited
Collective bargaining	no	few sectors	1 sector
Social dialogue at company level			
Institutions	yes	yes	yes
Information-Consultation in practice	very limited	limited	very limited
Collective bargaining in practice	very limited	limited- big companies	very limited
Global collective bargaining coverage all levels confounded			
	N/A est. at 5-10%	90% (via central agreement)	10%
Strikes – industrial disputes			
	decreasing after high 2011-2012	decreasing after high till 2014	decreasing after high till 2013

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Main causes	compliance and wages	compliance and wages	compliance and wages
Share wildcat strikes	important	important	important

II. MOROCCO: REGULATIONS AND REALITIES OF SOCIAL DIALOGUE



Population: 33,9 million

GDP: 105.1 billion USD

GDP/capita: 3,199 USD

1. INTRODUCTION

1.1. *The political situation*

- Morocco was also affected by a wave of demands for more democracy in 2011
- A new constitution was elaborated, providing for more democratic rule, with a more independent government and fully-elected Parliament, but the monarchy still has considerable power
- The newly-formed government following the elections is led by the moderate Islamist party and has been able to retain political stability, as well as undertake some important reforms.

King Mohammed VI came to power in 1999, and started with a reform programme, in different fields, towards more democratic and liberal values in Morocco, including the tackling of issues such as poverty, unemployment, economic reform, and also the initiating of more decentralised government.

In 2011 Morocco also saw strong movements for more fundamental change. The so-called 20 February movement – which mounted mass demonstrations on that day – called for more political reforms. The King reacted by proposing a comprehensive constitutional reform. It was prepared through extensive consultations, including with Civil Society and social partners, and was approved in a national referendum. The political reforms among other things provide that the political party with the most votes will be able to select the Prime Minister, who has the power to dissolve the parliament. But the King retains many of the executive powers and, as observers note, remains the powerbroker in security, military and religious matters.

The expected elections took place in November 2011. The clear winner was the moderate Islamist justice and development Party (PDJ).

Below are shown the main parties and their representation in Parliament, along with a very brief description of their main characteristics (see European Forum for Democracy – Solidarity).

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Political party	Seats (out of total of 395)
PJD – Justice and Development Party	107
<i>Moderate Islamists</i>	
Istiqlal – Independence Party	60
<i>Older party – closer to the monarchy</i>	
NRI – National rally of Independents	52
<i>Independent – centre party</i>	
PAM- Authenticity and Modernity Party	47
<i>Centre-right</i>	
USFP- Socialist Union	39
<i>Social democratic</i>	
PM -Popular movement	32
<i>Represents Berber community</i>	
PPS Party of Progress and socialism	18
<i>Left wing party</i>	

The new government, under Prime Minister Mr. Benkirane (PDJ) is a coalition government of PDJ with Istiqlal, the PM and PPS. A reshuffle of the government was necessary after the dismissal of Istiqlal from the government. But international organisations (IMF, World Bank) praise the country for its stability and for the launch of far-reaching reforms.

The government programme is in essence focused on rolling out constitutional and socio-economic reforms, covering the health system and health insurance, reform of the pension system, employment policies, and regional development; and also addressing the reduction of the fiscal deficit, *inter alia* through phasing-out of fuel subsidies.

Recently, in September 2015, new local and regional elections took place. The PDJ took 25% of the seats; PAM, the major opposition party, 19.5%; and Istiqlal came a close third with 17%. These results partially confirm the popularity of the present Prime Minister, who succeeded in maintaining stability, and initiating some difficult reforms. However the success of the major opposition party also indicates a certain discontent as to what is seen by part of the electorate as the slow pace of reform (see also the Guardian, "Political stability in Morocco cannot silence the murmurs of

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discontent", March 9, 2015).

The next Parliamentary elections are scheduled for 2016.

1.2. ***Economic and social situation***

Main elements

- Morocco has steady economic growth, average 4%-5%, albeit now slowing down
- Morocco is embarking on some important structural reforms, among others tackling of crucial budgetary deficits
- It remains faced with crucial challenges: competitiveness and integration in the international world economy; the importance of its volatile agricultural sector; unemployment and social problems; a significant informal economy

Recent developments

International organizations such as the International Monetary Fund (IMF) and World Bank (WB) continue to be very positive about the macro-economic performance of the economy. The IMF (Country Strategy and mid-term review, August 2014) notes that average annual growth continued at a rate of 4.1% annually over the period 2009-2013, with fairly strong annual variation due to the strong importance of Morocco's economic performance on agriculture (in its turn dependent on weather conditions).

For 2014 lower economic growth was recorded, partly in comparison with the strong results of the previous year (2013) in agricultural performance which was attributable to extremely positive weather conditions. Positive elements related to growth also include strong export growth in some industrial sectors (automobile, aeronautics). Lower growth (but still 2.3%) is recorded overall in non-agricultural products.

Inflation remained low from 2009 onwards at a level around 1-1.5% and is expected to remain low due to low oil prices.

Public finance has long been an issue for Morocco. Over a few years important steps have been taken to reduce the public finance deficit, such as reduction in subsidies (fuel), reduction in wage costs through blockage of further expansion of staff in the public sector and deferral of investments. In this way the budget deficit was reduced to 5% (from 7% in 2012) and is on target for further reduction to 3% by 2017.

For 2015 both the World Bank (World Development Indicators) and the IMF take a positive view, projecting continuous growth of 4.6% in 2015, and 5% in 2016. These figures exceed the government's expectations, which recently reduced its growth projections for 2015 (to 2.4%).

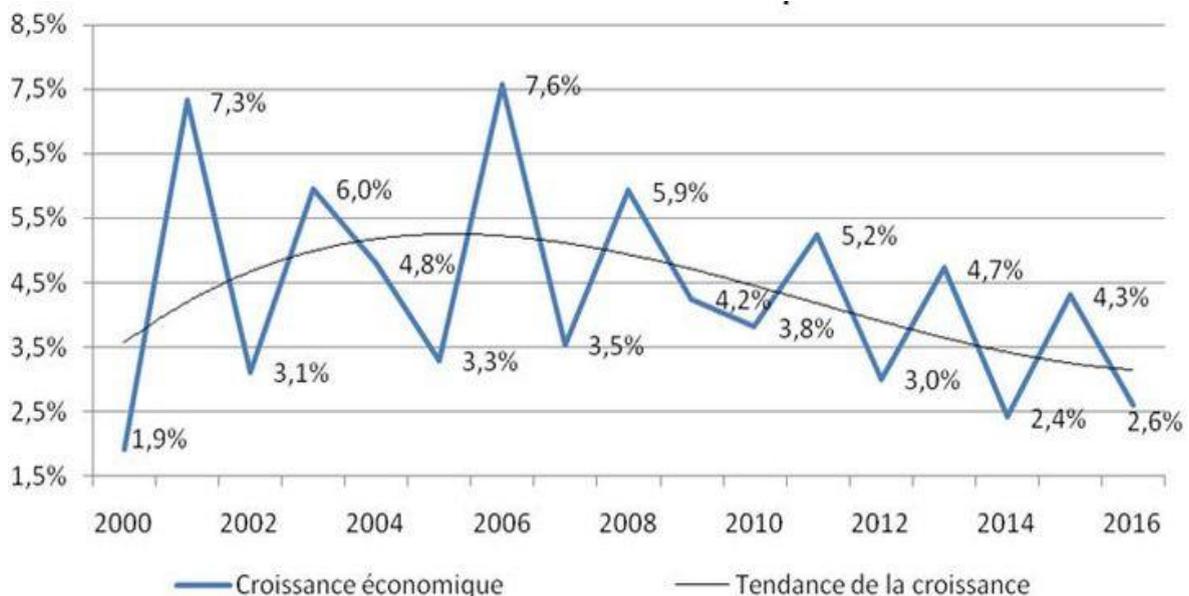
The World Bank notes continued progress toward fiscal consolidation and

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improvement in external factors, which underscore Morocco's commitment to preserving macro-economic stability. It also notes significant improvements on the external front: an improvement in the external account deficit, increasing financial inflows including high FDI inflows, and continued assistance from development partners.

Internal sources are also rather positive. CGEM, the national employers' organization, publishes a remarkable document every three months, a "baromètre de la conjuncture". The latest data remain positive for the future. Based on a survey, the data indicate positive sentiment in the country: most expect no changes in the short term; among those who do predict change, those predicting improvement outnumber those predicting deterioration; the data concern exports, production, order books, stocks, profitability, turnover, and recruitment of additional staff.

Trends in economic growth Morocco since 2005 (Source HCP)



Source, Usine Nouvelle, 2.70.2015, based on Haut Commissariat du plan data, 2015

Risks and challenges

In spite of these positive signals, some important challenges are also noted by both the World Bank and IMF for further development of the economy and the country:

- the need to maintain political stability
- the issue of international competitiveness (see further business climate indicators) and lack of sufficient integration in world markets
- linked with that, the IMF points to the lack of dynamics in the private sector, especially Small and Medium Sized enterprises (SMEs) which tend to remain small, while larger firms tend to remain large, with a consequent absence of medium- sized firms
- continuing gender inequality and continued low participation by women

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- structural deficits in the economy, attributable to non-tradable activities (buildings, public works, low-value-added services) and a volatile, weakly productive agricultural sector
- social cohesion, including the need to further reduce unemployment, regional disparities, poverty and increase shared prosperity.

Business climate indicators

Worldwide Morocco is ranked in the mid-range as far as the business climate is concerned.

In the Doing Business report (DB) their ranking improved substantially from rank 128 in 2010 to rank 75 in 2015. The table below also allows comparison with some other neighbouring countries, and shows trends in particular sub-issues (starting businesses etc.)

Indicator	Morocco 2015- 2016	Morocco 2010- 2011	Algeria	Egypt,	Tunisia
Doing Business World Bank <i>Ease of Doing Business Rank (out of 183) Report 2015-2016</i>	75	128	163	131	74
<i>For Morocco also Report 2010-2011(out of 183)</i>					
Starting a Business	43	76	145	73	103
Dealing with Construction Permits	29	159	122	113	57
Getting Electricity	55		130	144	38
Registering Property	76	151	163	111	86
Getting Credit	109	127	174	79	126
Protecting Minority Investors	105	41	174	122	105
Paying Taxes	62	97	169	151	81
Trading Across Borders	102	136	176	157	91
Enforcing Contracts	59	129	106	155	81
Resolving Insolvency	130	136	73	119	57

In the World competitiveness Report rankings, there was a small improvement in performance.

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Global Competitiveness Index	Morocco	Algeria	Egypt	Tu ni si a
2015-2016 edition (out of 140)	72	87	116	92

Morocco	Global Index[1] 2015-2016 edition (out of 140)	Competitive Index [2] 2010-2011 edition (out of 133)
Global Competitive Index	72	75
Basic requirements (40%)	55	64
Institutions	47	66
Infrastructure	55	71
Macroeconomic Environment	58	31
Health and primary education	77	94
Efficiency enhancers (50%)	82	88
Higher education and training	106	102
Goods market efficiency	64	77
Labour market efficiency	123	130
Financial market development	70	74
Technological readiness	78	75
Market size	53	57
Innovation and sophistication factors (10%)	92	79
Business sophistication	82	78
Innovation	98	81

More qualitative issues, as perceived by business leaders, are captured in the enterprise surveys by both Doing Business and the World Economic Forum.

The Doing Business (2013 survey) notes the following major issues in decreasing order:

- corruption (for a staggering 44% of all participants)
- inadequately educated workforce
- informal sector practices
- access to finance
- tax rates.

The World Economic Forum (2011) list of obstacles highlights the five following issues as major impediments, in decreasing order of importance:

- access to finance
- corruption

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- inadequate infrastructure
- Government bureaucracy
- Tax regulations

It should be noted that neither list mentions labour issues or regulation as major obstacles (apart from an inadequate workforce). Restrictive labour regulations appear in WEF as a less important issue.

Unemployment

Unemployment, with about 1.1 million unemployed, is standing at present at around 9-10% of the economic active population, with fairly small variations over time, although declining from 13% in 2010 (ILO databases). This figure is comparatively low. What is alarming is that, as in Tunisia, the unemployment structure is unfavourable to young, urban and higher-skilled people. For younger people the unemployment rate stands at approx.19% for the age range 15-24, and 14% for the age range 24-34.

Moreover the unemployment rate increases according to skills level: against the average of approximately 9%, one sees that the rate rises to 20% for higher skilled (superior middle school level) workers and 25% for university graduates. Moroccan graduates have a preference of for non-STEM (science, technology, engineering and math education) or less labour-market-oriented education.

Obviously problems of skills mismatch and inadequate educational output are present in the Moroccan economy.

1.3. *Some structural features of the Moroccan economic and social environment*

The structural features of the Moroccan economy may not be very conducive to strong social partnerships (especially trade unions) or for social dialogue:

- a relatively small public sector
- a private sector with low wage employment and many independent worker- entrepreneurs
- employment concentrated in many small companies
- limited industry
- a moderately or highly significant informal economy

The economic and employment structure in the country, with focus on the private sector

The total labour force in Morocco stands at approximately 11 million people. The overall activity rate for the working-age population is 49%, with a high participation rate of 74% by men, and a low (but around average MENA) rate of 25% by women.

The share of employment for each activity sector reveals a continuing high level of

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employment in the agricultural sector at 40%, with 20% for industry and 40% for services.

The labour force subdivision by employment status shows a high level of independent activity (in the informal economy): 44% of the labour force consists of employers or independent workers; 56% work for an employer.

As regards sectoral employment there is a small public sector, including a small number of public companies, accounting for 10% of wage employment, and a very extensive private sector accounting for 90% of all employment. Much of that is attributable not to wage employment but to independent workers, domestic workers and employers. Wage employment in the private sector stands at 2,239,000, about 21% of the total active population, with an employment structure as follows: 38% in industry and construction, 34% in trade, and 27% in services.

As far as industry is concerned, the most important sectors are textiles (32%), agro-food (23%), and chemicals (20%).

Size-wise, employment distribution in the private sector shows a very strong preponderance of very small companies; firms with up to 10 workers account for 64% of all those employed; 16% for SMEs with between 11 and 100 workers; and only 17% for companies employing more than 100 workers.

Structurally it is clear that the sectoral composition of the country in terms of wage employment is not very favourable to a high level of unionisation, which tends to be more fertile in wage employment in larger industrial companies which account for only a small proportion of the Moroccan economy.

Informal economy

The informal economy is judged to be very important. As far as economic size is concerned, it is estimated to represent about 14% of GDP (but note that WB's estimate is 34% of GDP).

In terms of the number of economic actors, the figures are pure estimates. An ILO report⁶ estimates total informal paid employment at 26% of total employment, and total informal employment, defined broadly as employment without social security coverage, at 83%, obviously including in that figure both informal paid and informal self employment. Another ILO study⁷ estimates the number of non agricultural informal employment at 20%. If taking agriculture in account, the global estimate is that 60% of all employment would be informal. In absolute figures and according to the notion informal economy, which is used the estimates vary between approximately 2 million informal paid employment up to 8 million total informal employment.

The sectoral composition was surveyed in 2007 by the Commissariat du Plan, which concluded that 50% of all people active in the commerce sector, 20% in services and 17% in industry are informal workers. The important agricultural sector was not taken into account in this measurement.

⁶ ILO, Labour Market Policies and institutions: a synthesis report. The cases Algeria, Jordan, Morocco, Syria and Turkey.. 2010

⁷ ILO, Contribution to labour market policies and institutions to employment, Morocco, 2012

2. SOCIAL DIALOGUE AND COLLECTIVE BARGAINING IN LAW AND IN PRACTICE

2.1. *Freedom of Association*

*Morocco did not ratify C87 on Freedom of Association. Some issues persist mainly related to trade union freedom in some parts of the public sector

*In fact freedom of association is largely possible in Morocco,

*The degree of unionisation is low to very low, partially due to the economic structure of the country, with a high level of employment in sectors less likely to be unionised

*On the employers side the level of "unionisation" is high

The legal framework: nationally and internationally

Morocco has not ratified all the ILO fundamental Conventions: ratification of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (C87) is still under discussion with the social partners. This is due to the Government's opposition to letting the judges, along with the armed forces, establish their own trade union. Ratification of C87 could be in conflict with the Moroccan Constitution which prevents these categories of workers being unionized. Both Moroccan trade unions and employers' organizations favour ratification.

Morocco ratified the other fundamental conventions (e.g. Forced Labour Convention, Right to Organise and Collective Bargaining Convention, Equal Remuneration Convention, Abolition of Forced Labour Conventions, Discrimination, and Minimum Age Conventions). It also ratified Convention C144 on tripartite consultation on International Labour Standards (on May 16 2014) and Convention C135 on workers' representation at company level. In total, it has ratified 62 of 189 Conventions (49 are in force).

This section will focus on Conventions directly linked to social dialogue in the private sector, notably the basic prerequisites (Freedom of Association, Collective Bargaining) and organisation (Tripartite consultation C144, and workers representation Convention n° 135), and briefly review the cases which have arisen around those issues.

At the level of the ILO compliance mechanisms, that is the Committee of Experts and the FOA Committee, the situation is the following.:

"The Committee notes the observations made by the International Trade Union Confederation (ITUC) received on 1 September 2014 concerning anti-union dismissals and the refusal to engage in collective bargaining in the call centre sector, as well as those from the Democratic Labour Organization (ODT) in 2012 on the application of the Convention. It also takes note of the information provided by the Government in reply to these observations. The Committee requests the Government to provide its comments on this matter.

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Furthermore it has comments on the following issues:

Article 4 of the Convention. Representativeness required for engaging in negotiations. The Committee previously requested the Government to inform it of the progress made in adopting the bill relating to trade unions. The Committee notes that, according to the Government, the bill is on its legislative agenda for 2012–16 and is at present being submitted to the adoption procedures. With reference to the Committee’s previous comments, the Committee adds that the bill in question has lowered the level of representativeness required to engage in collective bargaining from 35 per cent to 25 per cent. Furthermore, the bill introduces measures to establish a standing inter-union committee for trade unions which have not obtained the percentage required for engaging in collective bargaining. *The Committee welcomes this information and hopes that the Government will soon be in a position to report on the adoption of the bill relating to trade unions.*

Article 6. Collective bargaining for certain categories of public servants and employees. The Committee recalls that its previous comments referred to the need for the Government to amend the legislation so that it grants the right to organize and to engage in collective bargaining to the representative organizations of all public servants and employees, provided that they are not public servants engaged in the administration of the State or members of the police or armed forces, which are the only categories that may be excluded from the scope of the Convention. The Committee was particularly referring to staff in the prison administration, lighthouse workers and water and forestry workers, who cannot form unions, as well as employees and public servants who exercise a function involving the right to carry a weapon. *The Committee trusts that the Government will take all the necessary measures in this respect, more specifically within the framework of the legislative agenda for 2012–16, and requests it to provide information on any progress achieved.*

The Committee notes that, during the national symposium to review the ten years of the Labour Code organized in September 2014 by the Ministry of Employment and Social Affairs, a workshop focused on collective labour relations and drafted conclusions. *The Committee invites that Government, if applicable, to indicate the follow-up to these conclusions.*⁸

With regard to the Committee on Freedom of Association, there has been one active complaint on which a follow-up is requested. It concerns case No 3024 dated March 2013. The complainant reports the authorities’ exclusion of the Democratic Union of the Judiciary (SDJ) from all collective bargaining despite its being the most representative organization in the sector, along with harassment of the organization’s members and violent dispersal of peaceful demonstrations by the security forces.

Freedom of Association in practice

8

http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO:13100:P13100_COMMENT_ID:3189539:NO

Trade unionisation

The level of unionisation in Morocco is low. Since the trade unions do not publish membership data, the data provided are estimates.

According to the ILO (*Relations professionnelles au Maroc, 2010*), the total level of unionisation is less than 10% of the active population. In the urban centres it is 20%, concentrated mainly in the public sector and public companies.

Interviews have confirmed the low degree of unionisation. It is also reported that members often do not pay contributions, or that they hold several memberships. There is no official registration record of members. The election results at the "elections professionnelles" (see below) are considered a better measure of respective trade union strength.

As far as the subdivision of public *versus* private sector unionisation is concerned, the public sector is the more important. Trade unionisation is mostly public-sector-oriented. The global average of 10% unionisation for the country as a whole may therefore be above the level of private sector unionisation.

Employers' affiliation

On the employers' side there are two actors (see below): the CGEM, a voluntary organisation, and the Chambers of Commerce. For the latter, affiliation is obligatory.

For CGEM, a genuine free employers' association, membership is achieved indirectly via membership of affiliated (sector and regional) associations and via direct membership (estimated at between around 3,000, (according to a 2010 ILO study) and 4.000, (according to CGEM's own figures). It is concentrated in industry and larger companies, although clearly, *via* associations, some SMEs are also members. They would in total represent about 95% of GDP, and the member companies may represent 50-60% of private sector employment (i.e. all sectors, including the agriculture sector which is not represented in the organisation).

2.2. *Autonomous, strong actors in social dialogue (trade unions and employers' organisations)*

Main features

- There is a clear legal framework for regulating trade unions in Morocco. It works with a system of the most representative trade unions; it also provides for regular "worker place elections", in which non-unionised independents take the most seats
- The trade union movement is fragmented, with four representative trade unions. The trade union movement has important links with the major political parties
- Three national trade unions now act mostly on a common front

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The legal framework

The Labour Code, dated 2004 , defines working relationships in the private sector.

The Code is a coordinated text which regulates working conditions and employment contracts as well collective and individual labour relations.

Definition and legal status of professional associations (Livre VII, Title 1, art. 396-429)

It is indicated that professional associations have as objectives the defence, study and promotion of economic, social, moral, and professional interests of individual or collective categories of people, as well as improvements in the level of instruction of their members.

The definition covers both the workers' unions and the employers' associations.

Freedom of association is enshrined in Article 397-402. It is indicated that employers' and workers' associations cannot interfere with each other and that unions can be freely established. Principles of C87 are covered in the labour code despite its non-ratification. In practice, freedom of association in several companies is not well-respected (see later).

Articles 403-413 cover the legal personality of the professional associations.

Articles 414-419 address the constitution and management of professional associations. These articles are not in contradiction with international practice. However some trade unions have asked for a specific law on trade unions. Some of their proposals could be seen as interference in the management of trade unions..

Articles 420-424 define the mission of the professional associations, their participation in consultative bodies and their capacity to receive subsidies from the State, mainly for instructional purposes.

Article 425 defines the concept of the "most representative" association. This article concerns only workers' associations, not the employers' association⁹. The criteria are:

At national level

- at least 6% of the number of worker delegates elected in the public and private sectors (professional elections)
- effective independence of the trade union
- contractual capacity of the trade union

At company level

- at least 35% of the total number of employee delegates elected at company or factory levels
- contractual capacity of the trade union

Articles 426-429 define the penal arrangements. The most critical article is in not in

⁹ The CGEM is recognized as the only representative employers' organization

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the labour code but in the penal code (Article 288) covering penalization of workers preventing access to a factory during a strike.

The actors in practice

Trade unions

Under the French and Spanish Protectorates (1912-1956), the first trade union movements were mainly supported and developed within the French trade unions. However, these movements were quite active in the independence process.

The **Union Marocaine du Travail (UMT)** was the first trade union, created in Morocco in 1955 just prior to independence, encompassing Moroccan workers unionized within the French *Confederation générale des Travailleurs* (CGT). It was the only recognized trade union and for two years had a monopoly of the trade union movement and took a leading political role. Its membership is today around 300,000 workers. The UMT claims to be politically independent, but its detractors often cite its close links to the palace, something that can be traced back to the days when the UMT was a significant force in the fight for independence and an advocate of maintaining the monarchy. It is also said that the UMT maintains good relations with CGEM. In the professional elections (elections professionnelles – see below) they recorded the strongest vote, both in the private sector (15%) and in the public sector (25%).

From 1960 to 1975 the trade union movement suffered vicissitudes following the difficult democratization of the country. In 1975 the creation of the *Union Socialiste des Forces Populaires* had led some trade unionists to leave the UMT, as it was seen as too close to the Government, to create in 1976 the **Confédération des Travailleurs Marocains (CDT)** which adopted its constitution in 1978. The CDT is considered to be close to the Socialist Union of Popular Forces (USFP). The number of members is undocumented, but it is said to be the second strongest trade union.

The **Union Générale des Travailleurs Marocains (UGTM)** was created in 1960 in reaction to the monopoly of the UMT. It was recognized by the Government only in 1963 after the pluralism of trade unions was recognized in the 1962 Constitution. It claims to have the same number of workers as UMT (300,000). Observers say that politically they are close to the Istiqlal party, notably as the secretary-general of the trade union has an important political function in that party. This possible political linkage also explains some recent stances of the union.

The **Fédération des Travailleurs Marocains (FDT)** was then created from a split from the CDT. The FDT also split into two federations in 2014, leading to both being regarded as non-representative associations.

In 2014 the latter three unions (UMT, CDT and FDT) established a common coordination platform. In many policy discussions they act jointly *vis-à-vis* the government. They also organised jointly a major demonstration against government policy, which according to their sources rallied 50,000 participants. The UGTM could soon join the common front.

The last recognized trade union is the **Union Nationale des Travailleurs Marocains (UNTM)**, created in 1976 by workers close to the Islamic movement. Founded in

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1973 it was not until the late 1990s that the UNTM slowly began to grow and raise its profile under Secretary-General Abdeslam Maati. Emphasizing UNTM's Islamist nature and culture of inclusion and dialogue, Maati claims that the UNTM values mediation and conciliation over more disruptive labour tactics such as strikes and factory sit-ins. UNTM is strongest in the public education sector; however it also claims members in the building trades, public health, textiles and agriculture, spread across 23 cities and major towns.

Again, there is no information on numbers of members, nor on capacity, budgets, governance and so forth. In general, and probably due to the link with the leading moderate Islamist party PDJ, they are rather supportive of current government policies.

The respective strength of the trade unions can also be reliably tested by the regular professional elections held in the country.

The result of the 2015 professional elections was as follows:

Results of the professional elections – June 2015					
Trade unions	Private sector	Public administration and establishments	Local communities	TOTAL	%
SAS ¹⁰	14828 (57%)	799 (16.9%)	1729 (42%)	17356	49.91
UMT	3974 (15%)	1198 (25.4%)	978 (23.7%)	6150	17.68
CDT	1947 (7.5%)	827 (17.5%)	470 (11%)	3244	9.33
UGTM	1894 (7.2%)	443 (9.4%)	242	2579	7.42
UNTM	1884 (7.2%)	385	262	2531	7.28
FDT	509	624	186	1319	3.79
ODT	344	79	221	644	1.85
Other trade unions	579	351	23	953	2.74
TOTAL	25959 (100%)	4706 (100%)	4111 (100%)	34776	100

Based on the representativeness criteria (minimum of 6% at national level), the UMT, CDT, UGTM and UNTM should be recognized as the most representative trade unions. These three unions are members of the International Trade Union Confederation.

Other data on trade union capacity, budgets, and other aspects are very difficult to obtain. During informal talks it was said that internal governance may be an issue: many trade unions have for a long time had the same leadership.

Moreover independence, especially from politics, may be an issue. Many unions are closely linked to politics, and are also not financially independent. The staff of the public sector unions is put at the disposal of the trade union by the government. Each representative union (UMT, CDT, UGTM, UNTM, FDT) also receives government funding according to the election results they obtained in the elections professionnelles. Trade union representation also exists in the second parliamentary Chamber (a form

¹⁰ SAS: without affiliation

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of Senate) with a number of seats corresponding to their respective power (currently UMT 6 seats; UNTM and CDT 4 seats; and UGTM 3 seats).

Employers' organizations

The employers' movement was mainly created by French entrepreneurs after the Second World War and the business structure is still similar to that of the French business structure.

CGEM

The General Confederation of Enterprises from Morocco was created in 1947 under the French Protectorate. It is a genuine free employers association; membership is achieved indirectly via membership of affiliated (sector and regional associations) and via direct membership (estimated at around 3.000 (according to a 2010 ILO study) and 4.000 (CGEM's own figures). It involves various business sectors, except the agriculture one. SMEs represent the majority of its members. CGEM represents in total 95% of GDP and 50-60% of private sector employment (including agriculture).

The CGEM has local representation in ten regions. The work of the CGEM is developed through 24 technical or political commissions.

The CGEM is the only employers' organization recognized by the trade unions and the Government despite the recent creation of another employers' association, AMAL, close to the Islamic movement.

CGEM is a powerful organisation in Morocco. It acts not only as an employers' organisation, but is also involved in broader issues such as economic policy, trade, environment, industrial policies and so forth. It also is a proactive organisation, regularly launching proposals on a wide range of themes.

FCCIS

The *Fédération des Chambres de Commerce, d'Industrie et de Services* (FCCIS) is an association bringing together the regional Chambers of Commerce, Industry and Services.

These Chambers have a public status and compulsory membership. Nevertheless – and in contrast with the French model – the FCCIS participates in some bodies concerned with social dialogue. The FCCIS does not call itself an employers' association ("*patronat*") and it is seen by trade unions as a public entity. Through its membership the FCCIS covers 200,000 companies

Another business association was created in 2012 by Islamic entrepreneurs – AMAL – but its visibility and representatives are very weak.

Both CGEM and FCCIS are members of the International Organization of Employers (IOE).

2.3. ***Institutions and structures for social dialogue***

2.3.1. **At the national interprofessionnel level¹¹**

Legal framework

The following table gives a systematic overview of the most important social dialogue institutions established by law in Morocco:

Governance				
Name of the entity	Articles	Chairman / presidency	Composition	Mission articles LC
Nature of the mandate				
Occupational Medicine and Professional/Occupational Risk Prevention	332-334	Minister of Employment	30 Members. Government 10 Employers 10 Syndicates /Trade unions 10	Art. 334 LC Proposals Opinions
Proposal and Opinions			UNTM: observer member	
Tripartite National Commission responsible to ensure proper application of legal provisions related to temporary employment	496	Minister of Employment	18 Members. Government 6 Employers 4 CGEM 2 Chamber of Commerce UMT: 2 CDT: 2 FDT: 1 UGTM: 1	Art. 496 LC Proper application of Chap. II LC Monitoring
Proper application of Chap. II. LC Monitoring			UNTM: observer member	

¹¹ Livre VII, Ch. IX, art. 335-337

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Higher Council for the Promotion of Employment	522-524	Minister of Employment	21 Members. Government 7 Employers 7 Syndicates / Trade unions 7 UNTM: observer member	Art. 523 LC Government Policy Coordination Opinions
Advisory Coordination				
Regional and Provincial Councils for the Promotion of Employment	525	Governor	Administration Employers Syndicates / Trade unions	A joint order of Employment and Internal affairs Ministers Advice / Opinion Proposal Evaluation
Advisory				
Investigative and Conciliation Provincial Commission	557-563	Governor	Administration Employers Syndicates / Trade unions	Collective Labour Disputes Settlement Province / District
Intervention				
Investigative and Conciliation National Commission	564-566	Minister of Employment	Administration Employers Syndicates / Trade unions	Collective Labour Disputes Settlement in Province and across provinces
Intervention				

Some further comments on each of these institutions may highlight and or add detail to the schematic overview (the bold institutions are the most important):

- Economic, Social and Environmental Council (CESE);

This is not a tripartite body as NGOs and individual members – appointed by the public authorities or by His Majesty – also participate in the work of the CESE. The CESE is only a consultative body. It regularly issues reports on social issues (e.g. pensions in 2014, labour conflicts in 2012).

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The CESE is composed of 116 members of which 15 represent employers and 15 represent workers.

- Council on collective bargaining;

Under of the leadership of the Employment Minister it is composed of 21 members (the concerned ministries, CGEM, Chambers of Commerce, Chambers of Agriculture, representative trade unions). It aims to promote and encourage collective bargaining at all levels.

- Superior council on the promotion of employment;

Under the leadership of the Ministry of Employment, it is composed of 21 members (seven governments, seven employers, seven representative trade unions). It coordinates the employment policies in Morocco. It also provides advice.

- Regional Council on the promotion of employment;

Under the leadership of the Governor, this is a tripartite body promoting employment policies and assessing them.

- Provincial and National Committees of investigation and conciliation;

These are national or provincial tripartite bodies, the function of which is to prevent and solve collective disputes (see above).

There are committees not mentioned in the legislation:

- National Tripartite Committee on International Labour Standards

Prior to 2012 there were two national commissions on social dialogue, one for the public sector and one for the private sector. They have been replaced by the above-mentioned committees. The national commissions used to meet twice a year in April and October to discuss wages (April) and financial and budgetary policies (October).

In addition, the social partners also participate in the following institutions:

- Caisse Nationale de Sécurité Sociale (CNSS);
- Agence Nationale de l'Assurance Maladie (ANAM);
- Caisse Interprofessionnelle Marocaine de Retraite (CIMR);
- Commission de la Réforme des Retraites;
- Comité de Pilotage pour la Conformité Sociale;
- Office de la Formation Professionnelle et de la Promotion du travail (OFPPT);
- Comité Central des Contrats Spéciaux de Formation (CCCSF);

According to the Constitution, social partners are members of the second chamber (parliament of 120 people) as follows:

- 20 trade unionists (elected by employee delegates)
- 8 CGEM (elected by CGEM delegates)

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- 20 from the Chambers of Commerce, Industry and Services (8), from Chambers of Agriculture, from Chambers of Handicrafts and from the Fishing sector

Social dialogue in practice

Tripartite national social dialogue

Social dialogue really appeared in Morocco in 1996 with the signature of a tripartite Declaration launching genuine social dialogue in the country.

Tripartite agreements were reached in 2000 (governance, arbitrage, evaluation), in 2003 (labour code, social protection), in 2004 (access to labour code) and in 2014 (labour code, unemployment insurance (*perte d'emploi*), and in 2015 (medical coverage by CNSS to include dental care).

Since then there has been no further tripartite discussion on a new agreement. Not all components of the 2011 agreement have been implemented, according to UNTM (80% have been implemented).

Several attempts have been made by the government to conclude new agreements, but trade unions are mainly reluctant. Since 2012 the Government has had to face tensions with the trade unions – except with UNTM – leading some of them to boycott some meetings. The Government is criticized for the absence of regular consultation or negotiation with the social partners.

The tripartite committees meet less frequently than envisaged in the labour code or in the implementation decrees; For instance the committee on collective bargaining should meet twice a year, yet met only six times between 2007 and 2014¹².

The CGEM considers that the tripartite committees do not work. They exist on paper but not in practice. There is no agenda and no calendar. The team also noticed a lack of presence of some members in these institutions due to lack of motivation (bodies with no authority), lack of planning and lack of expertise. The development of bipartite mechanisms (see below) could motivate the social partners in tripartite bodies by increasing their expertise. It is also important that members can commit their organizations.

The CESE has only a consultative role. The quality of its work was stressed by most social partners and the reports related to social issues were broadly supported by them. Nevertheless, these reports have neither force nor authority. Social partners regretted that several of them have not been taken into account by the Government.

There are also important social issues relating to social dialogue which are not yet being properly discussed through these bodies:

- reform of pensions (public schemes)
- implementation of the right to strike
- social security coverage and the establishment of unemployment insurance
- revision of Article 288 of the penal code on the criminalization of trade unionists blocking factories

¹² Claude Rioux, « Le fonctionnement des institutions tripartites du travail », ILO, 2014

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- fiscal policies
- wage policies

With regard to trade unions they consider that the tripartite bodies should not only be a place for debate, but should also make concrete proposals. It is important for them to develop a new culture within the Government and the CGEM in that regard. The recommendations from these entities should include the possibility of reforming the law.

In general it is obvious that these bodies are underused. The Government should encourage the frequency of their meetings and commit itself to implementation of their recommendations.

Bipartite national social dialogue

As far as bipartite national social dialogue is concerned, the present situation is somewhat confused, according to some of the observers interviewed.

The trade unions regularly present wage increase demands to the government at central level, not to the employers. The basis is often a demand for increases in the minimum wage, which then, *via* spill-over, would also be applicable to other wage levels. The government then is expected to hold discussions with the employers and make a final proposal. Neither party signs the agreement, but both implicitly accept it.

As regards more general issues of social dialogue, the CGEM is now starting to promote a more bipartite approach.

Given the analysis made by the CGEM on tripartite social dialogue, the CGEM decided to launch initiatives at bipartite level. It adopted two approaches: first it proposed a national pact on employment, decent work and competitiveness, which was signed individually by the UMT, UGTM and UNTM; second, it made a proposal to the representative trade unions to launch bipartite social mediation. All representative trade unions signed this proposal at both national and regional levels, on the occasion of the CGEM social caravan supported by the ILO. Around 20 cases of collective disputes have been solved through this new mechanism with the UMT. However, it is still mainly managed directly by social partners rather than by mediators. The challenge here is the training and funding of social mediators (independence of source of funding). The ILO is supporting this bipartite initiative.

2.3.2. Social dialogue structures and practice at sector level

Legal framework

There is no proper structure for promoting social dialogue at sectoral level. However, the national committees and the provincial committee on conflict resolution can encourage discussion and adoption of collective agreements.

Social dialogue at sector level in practice

Despite the number of institutions and the will of the CGEM to develop bipartism, there are few collective agreements.

At sectoral level there are three conventions, concerning:

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- banks¹³
- oil companies
- Maroc Telecom (extended to all phone companies)

If 50% of the total number of employees are covered by a collective agreement, other companies can adhere to the collective agreement. If 66% is covered there is an extension of the agreement to all companies in the sector (e. g. Maroc Telecom, oil companies).

The **total bargaining coverage via sectoral agreements** is hence **very low**.

The trade unions would like to encourage the sectoral federations of the CGEM to enter into negotiation to sign sectoral collective agreements.

In some sectors there are cooperation agreements between the CGEM and trade unions (e.g. tourism CGEM/UNTM).

It should also be noted that there is also a very centralised approach to wage formation, still the main subject of social dialogue with little capacity for sectoral variation.

This is especially the case with wage discussions (both on the minimum wage, and on wage increases above the minimum wage level). They are in essence conducted at central level, in the framework of tripartite (but not bipartite) "negotiations". It is the Prime Minister who takes the lead in these discussions. The processes are very often similar; the trade unions introduce a high wage demand (of the order of 20%), expecting a much lower outcome; the employers do not directly participate, leaving the negotiation process in the hands of the Prime Minister. He will often take the final decision, announcing it as a political decision, very often by first increasing the minimum wage on 1 May (as in 2014), and then suggesting that the existing wage pyramid should not be upset, thereby generalising the wage increase across the whole of the private sector.

What has to be underlined here is that, apart from the process, there is also a lack of capacity or willingness at sector level to conduct more specific negotiations geared to the specific characteristics of the relevant sector opportunities or challenges. The lack of a specific structure for sectoral bargaining must surely not help.

2.3.3. Social dialogue at company level

Legal framework

At company level a dual structure is in place.

On the one hand there is a form of works council (elected by all salaried staff) representing the staff to the employers.

The competence of the works council is to discuss issues of discipline, social work, and local issues. The committee is also supposed to receive economic and financial information on the company.

On the other hand there may be a trade union delegation with the competence to

¹³ Does not apply to all banks (no extension)

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represent the trade union(s) at company level, and which may be involved in the conclusion of agreements at company level.

Social dialogue in practice

At company level there are around 50 collective agreements in force. They mainly concern large companies and multinationals. Up until now (2015) 13 have been registered.

However there are forms of memoranda of understanding at company level (around 320 per year), effectively informal agreements between trade unions and companies.

But in any event collective bargaining coverage *via* company agreement is low.

The role and functions of works councils and the OSH committee need to be reviewed as most trade unions are dissatisfied with their work.

The results of staff elections given above represent the outcomes. It is difficult to determine how many companies have such elections in reality. Based on the number of delegates elected, and assuming that there is one delegate on average per 100 staff members, the maximum number of companies in the private sector which effectively have such a committee would be limited to about 250. Or in terms of the number of workers covered by staff committees the team's estimate is about 250,000 workers (which represents about one-third of total private sector employment).

One concrete example may further illustrate the practice of social dialogue, in a company with an emerging social dialogue. It concerns the Acticall Maroc Company, a French multinational active in the call centre sector. It employs 1,100 persons. The level of trade unionisation is very low (estimated at 5%). But there is an elected committee of salaried staff. While previously the delegates were mainly non-unionised (the so-called SAS – sans affiliation syndicale), the local trade union was able to introduce a unique list solely of trade union members as candidates. In total the representation has nine seats and nine substitutes). The role of this staff committee is to meet once a month to discuss company-level issues, treatment of complaints, and so forth. The committee also receives financial and economic information on company performance.

Next to this staff committee, there is a trade union delegation (one union only, the other union members having transferred to this union) which discusses collective issues.

They succeeded in concluding a "protocol d'accord" (a form of collective agreement, registered officially). The new agreement provides for a wage increase ranging, according to the performance of the individual, of 10%. The agreement also provides for small premiums, and also discussions on training for staff. It is interesting to see how a trade union with such a low percentage of members came to conclude such an agreement: it did not undertake strike action, but launched awareness campaigns and approaches to some customers which could have had effects on the company image; they also used the French HQ to put pressure on the local management.

2.4. ***The rules of the game: status collective agreements, disputes***

Legal framework

Collective agreements – legal status and regulation (Livre I, Titles II and III, art 92-134)

Collective agreements are defined as dialogue between, on the one side, representatives from the most representative trade unions, or trade unions from the most representative employee groups,, and on the other, employers or representatives from employers' organizations, in order to:

- determine and improve working and employment conditions;
- organize relations between employees and employers; *and*
- organize relations between employers or their organisations and one or more of the most representative trade unions.

This should take place at national, sectoral and company level at least once a year (at sectoral and company levels).

Article 96 indicates that tripartite negotiations should take place at least once per year. Article 101 establishes a Committee on collective bargaining (tripartite) which aims to:

- present proposals to promote collective bargaining
- present proposals to encourage conclusion and generalisation of collective agreements, notably in companies with more than 100 employees
- provide views on the interpretation of clauses of a collective agreement (if requested)
- make an annual assessment of collective bargaining.

Collective dispute resolution mechanisms (Livre VI, art 549-585)

A conflict is defined as where one of the parties is either a workers' organization or a workers' group and when it concerns the defence of collective interests of these workers. The right to strike is recognised in the Constitution. But there is still ongoing discussion on a rule in the penal code which could be invoked to limit strikes (but in practice very seldom used). At the same time, however, an important and delicate discussion is now going on, mainly related to strikes in the public sector, where the government is considering prohibition of the present practice of continuing to pay wages in the event of strikes.

The Moroccan model of conflict resolution is based on the following three pillars:

1- Conciliation

The first step is conciliation provided by either the labour inspectors when it concerns one company or the labour delegate from the Prefecture when it concerns more than one company.

In the absence of agreement the case goes to the provincial committee on investigation and conciliation at local level (tripartite).

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In the continuing absence of agreement, the case goes to the national committee on investigation and conciliation (tripartite). This committee is also directly involved when a case concerns more than one province.

In absence of an agreement the case goes to arbitration.

2- Arbitrage

In Morocco the call for arbitration entails a common decision by the parties. The choice of arbitrator is based on a list prepared by the Ministry of Employment and Social Affairs and revised every three years. There is no appeal mechanism except to the Social Chamber of the Supreme Court. Individual conflicts are not covered by the labour code.

3- Other mechanisms

The Chambers of Commerce, Industry and Services have their own arbitrators but they are not often used.

In 2013 the General Confederation of Moroccan Enterprises (CGEM), together with the main trade unions, launched a social mediation mechanism (see bipartite initiatives below). They consider that the current mechanisms are too rigid and ineffective.

Disputes in practice

In 2011, with the Arab Springs and the new claims from trade unions, an increase in the number of labour conflicts was recorded in comparison with the past, but 2012 saw rather fewer strikes: 335 in 272 companies, as compared to 418 in 331 companies in 2011.

A slightly decrease was noticed in subsequent years up to 2015 but conflicts are lengthier than previously. This is mainly due to:

- non-respect for the labour code
- low number of labour inspectors
- non-respect for freedom of association
- non-affiliation to trade unions

The CESE also notes that the majority of conflicts are linked to non-respect for rights.

2.5. Outcomes of social dialogue

Relations between parties

At present social dialogue, especially at national level where it is most important, is going through a difficult stage.

The environment does not help. The major reforms the government is trying to achieve, and specific issues such as fiscal consolidation and savings in public expenditure which affect public sector employment, pension reform, and the economic strategy to accentuate competitiveness, limit the negotiating margins of the government and employers.

Moreover the strong political connotations of trade union attitudes may not facilitate tripartite dialogue.

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There are also structural deficiencies in the social dialogue institutions. There are well summarized in a paper by the ILO (Rioux, 2014). He highlights several issues such as the lack of independent secretariats (and presidencies) in the social dialogue institutions, the lack of decisive competences, lack of coordination between the different bodies, lack of proper preparation and follow-up, and a lack of concrete approaches. The inevitable consequence of these structural deficiencies is an absence of interest, commitment, detailed work and concrete outcomes. It also does not allow social dialogue to contribute to a wider approach to issues.

The ideas of CGEM, favouring a more bipartite approach, may be an interesting dimension in such an approach to revision of traditional tripartite social dialogue practices.

Substantive outcomes

Having discussed extensively the social dialogue processes (or rather the absence of them), it is clear that the outcomes are limited. In fact it seems, at least at present, that the main outcomes of social policy, covering wages, working conditions and industrial relations, are decided on by the government.

There are processes of pre-consultation in a divided trade union front; the employers stay partly hidden, but the real outcomes are basically determined either by the government or unilaterally at company level *via* the HR policy of companies.

Specific issues

Social dialogue and informal economy

Social dialogue does not concern workers and employers in the informal economy in a direct way. CGEM only covers the formal economy and the trade unions.

Indirectly of course, given the extent of the informal economy, the subject of formalisation is for various reasons a policy concern at the background of many discussions (business climate, unfair competition, support for entrepreneurship, ease of registration, flexibility in labour contracts *versus* security etc. etc.)

Innovative practices

In a number of companies social dialogue is emerging. This seems mostly the case in multinational companies.

3. CONCLUSION: THE STATE OF AFFAIRS IN SOCIAL DIALOGUE LEGALLY AND PRACTICALLY AND GAPS, INNOVATIVE PRACTICES, POINTS OF ATTENTION FOR FURTHER DEVELOPMENT

3.1. *Conclusions on social dialogue practices*

Morocco already has a set of tripartite bodies concerned with social dialogue - and, particularly since 1996 - a certain culture of social dialogue; and it is also in the process of exploring bipartism.

However the degree of implementation of social dialogue does not correspond with the expectations of the social partners. Social dialogue is mainly seen as consultative by the Government, while employers expect an opportunity to make concrete proposals, and trade unions an opportunity for negotiations.

At local level the team noticed that some companies¹⁴ do not respect workers' and trade unions' rights. It is then important to:

- promote best practices in companies
- support companies engaged in social dialogue and those establishing works councils
- train CEOs and HRDs in social conformity and social dialogue¹⁵
- encourage the social mediation mechanism developed by the CGEM and the trade unions.

As mentioned earlier there are many other obstacles in relation to the present environment, political will, lack of realism, institutional under-performance, and organisation of social dialogue.

3.2. *Possible projects*

When considering certain deficiencies in the industrial relations and social dialogue systems, some issues are clear and can be the subject of capacity-building and support projects, notably in respect of the following:

1. Extending the scope of collective bargaining and social dialogue
2. Extending the formal network of social dialogue and providing the means to make it more efficient in terms of information, scope, themes
3. Capacity-building of social partners – all levels – to facilitate participation in
 - a. social dialogue (collective bargaining techniques)
 - b. tripartite institutions
 - c. selection of social mediators and their training
 - d. provision of an appropriate level of information for the social partners in tripartite discussions with the government (currently unbalanced)
4. Clearer rules in collective labour law

¹⁴ It was stressed by the TUs that these companies are often not members of the CGEM

¹⁵ The CGEM has a project on establishment of a Social Academy to train its members on social issues (project supported by the ILO).

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5. Respect for provisions regarding meetings of tripartite bodies
6. Protection of trade unionists
7. Lack of professional structures in agriculture
8. Role of independent experts

Some possible recommendations, to be supported by projects if these recommendations are considered useful by the partners.

1. Establishment of a national High Council on Social Dialogue

Some partners have expressed the wish to better institutionalize social dialogue at national level. A national tripartite council on social dialogue could be created with higher visibility, supervising the existing tripartite bodies.

The lack of coordination between the current tripartite bodies could be solved by this new body or through establishment of a coordination body.

2. The CGEM proposes to hold once a year an Annual Conference on Social Dialogue to launch, in a coordinated manner, the various discussions between the parties.
3. According to ILO jurisprudence (Committee on Freedom of Association), it could be difficult to consider the FCCIS as a social partner given its compulsory membership and public status. Its place in tripartite bodies concerned with social dialogue could be questioned.
4. To encourage social dialogue a regional council on social dialogue could be established. Claude Rioux¹⁶ proposed the establishment of a regional *Espace/Forum* on industrial relations with a view to decentralizing social dialogue and promoting harmonious industrial relations within the context of decentralization as mentioned in the Moroccan Constitution.
5. Mixed parity commission (or joint sectoral bargaining – social dialogue commission) at sectoral level to encourage collective social dialogue and collective bargaining (e.g. tourism) at that level.

¹⁶ Claude Rioux « *Le Dialogue social au Maroc les relations professionnelles dans l'agriculture* », BIT, 2014

III. TUNISIA: REGULATIONS AND REALITIES OF SOCIAL DIALOGUE



Population: 10,9 million

GDP: 46.99 billion

GDP per capita: 4,316 USD

1. INTRODUCTION

Social dialogue is embedded in the economic, political and historical context of a country.

In this introduction we will highlight briefly the most recent data which are relevant for understanding the environment in which social dialogue is developing in Tunisia.

1.1. *The political situation*

Key dates and events

With some turbulence, Tunisia successfully made the transition from autocracy to democracy, thanks in part to strong social partners. Their prestige is underlined by the Nobel Prize 2015.

Key dates:

- Pre-2011 23 years of autocratic government under president Ben Ali
- January 2011 Ben Ali goes into exile
- October 2011 Constituent Assembly elections for preparation of new Constitution
- 2011-2013 Several transitional coalition governments headed by Islamic Party
- 2012-2013 Major unrest and political murders
- January 2013 Social Tripartite Contract
- December 2013 New constitution brokered by National Dialogue Quartet, composed of the trade union (UGTT), the employers' organisation (UTICA) and 2 civil society organisations, adopted January 2014
- 2014 New transitional government to prepare presidential and parliamentary elections
- End -2014 Election of Parliament which leads to decline of Islamist Party
- January 2015 Presidential elections: parliamentary results confirmed
- February 2015 New coalition government, including secular and Islamist parties and overwhelming parliamentary majority
- Mid-2015 Terrorist attacks in Tunis and Sousse
- October 2015 National Dialogue Quartet receives Nobel Prize for Peace

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After exercising power for over 23 years, President Ben Ali went into exile on 14 January 2011 following a month of protests. The Tunisian Revolution triggered the so-called Arab Spring for the whole of Northern Africa and the Middle East.

Pressure exerted by demonstrators and civil society during the Revolution led to the setting up of three successive transitional governments (from January to December 2011) to manage the country's economy and prepare free and transparent Constituent Assembly elections.

The October 2011 Constituent Assembly elections, though delayed, were conducted in accordance with the electoral process in place. They led to a coalition government headed by the Islamic Party, Ennahdha. The initial aim was to draft a new Constitution in one year in the course of 2012.

However, the unrest that occurred during 2012 and November 2013 influenced the political process and slowed it down. The assassination of two opposition leaders, in February and July 2013, sharply revived tensions in Tunisia and led to a lengthy period of political paralysis.

At the initiative of four civic organisations¹⁷, a process of 'national dialogue' between the majority and the opposition was begun in 2013 in order to complete the transitional period and end the political crisis and institutional deadlock. It must be noted that UGTT and UTICA had already concluded a national social contract in January 2013 (see below) .

The new Tunisia Constitution was finally adopted on 25 January 2014. It was praised as one of the Arab World's most progressive charters, ensuring, among others things, political pluralism and enshrining fundamental rights.

After the adoption of the Constitution, Ennahdha, the Islamist majority party, resigned and a non-political technocratic cabinet prepared for the parliamentary and presidential elections, scheduled for the end of 2014.

These elections brought important changes in the political landscape. In two rounds, Mr Essebsi from the Centre Party, Nidaa Tounes, was elected President of the Republic, leaving the leader of the Congress for the Republic, Mr Marzouki (close to Ennahda), in a second place with 44% of the vote.

Not long before, (on 26 October 2014), a new parliament had also been elected. The major parties that emerged were Nidaa Tounes (86 seats) and the Ennahda Movement (69 seats). Globally, the former coalition parties that had held power in 2012-2014 lost heavily. These losses can be explained by the electorate's disappointment at the political disorder (linked with the assassination of two secular politicians) and the poor results of the stagnating economy.

On 5 February 2015, a new government was finally formed: it is a broad unity coalition which includes, under the leadership of Prime Minister Mr Essid (Nidaa

¹⁷The General Union of Tunisian Workers (UGTT) and the Tunisian Union of Industry, Trade and Craft (UTICA) are the country's main social partners, along with the Tunisian Human Rights League and the Bar Association.

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Tounes), the Ennahda movement and two other parties (Free Patriotic Union and Afek Tounes). It enjoys an overwhelming majority in the Parliament (166 out of 217 seats).

The government programme focusses on security issues, stability, phasing out regional disparities, tax reform, reduction of public expenditure and tackling unemployment. In the programme, there is also mention of a social truce, with a suggestion to return to the system of three-yearly renewals of sector negotiations, and it also foresees an important role for the National Committee for Social Dialogue.

The security problems the country is facing were highlighted by the tragic Bardo and Soussa attacks in March and late June 2015. It is feared that they may impact heavily on the important tourism sector.

1.2. *The economic and social situation*

Recent economic and social developments:

- Declining economic growth since 2011 due to political and socio-economic problems
- Declining business climate due to social and political unrest
- Growing budgetary deficit and national debt, to a great extent foreign debt (50% of GDP)
- High rates of unemployment (15%), higher amongst more highly skilled youth (50%)
- Wide regional disparities
- The informal economy, partially contraband, is growing

These factors do not create an easy environment for social dialogue.

Overview of economic and labour market developments

Tunisia has for long been considered as an economic success story in the region. The growth model that Tunisia had pursued since independence is often described as having relied on three main pillars¹⁸: i) a strong State that guaranteed stability although at a high cost in terms of civil and political liberties and corruption; ii) an implicit social contract that includes an active education and social policy, the promotion of women's role in society, and the development of infrastructure; and iii) economic management based on broad openness to external trade and foreign investment in certain sectors, but with strategic economic decisions taken by the State.

Tunisia's development model produced reasonably good macroeconomic results. A solid growth performance and controlled inflation allowed the country to increase GDP per capita and to reduce the incidence of poverty. Tunisia's relatively impressive and inclusive growth record was also achieved thanks to favourable performance in the key areas of health, education, and infrastructure.

However, major problems built up over time, including a rising unemployment rate

¹⁸ Paciello M.C (2011), "Tunisia: changes and challenges of political transition"; Hibou, B (2011), "Macroéconomie et domination politique en Tunisie: miracle économique benaliste aux enjeux socio-économiques du moment révolutionnaire".

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among the most highly qualified workers, widening regional disparities, a growing current account deficit, corruption, poor lending standards in the banking sector, and increasing use of price controls. The 2011 revolution laid bare some of these shortcomings, leading to calls for reform.

Recent economic social developments

Since the Revolution, the Tunisian economy has been affected by social unrest, political developments and the fragile global economic context.

In 2012, growth figures still were good (3.7%) but from 2013 they declined to 2.6% and 2.4% in 2014. Momentum has also waned in 2015. Growth is projected to slow down to 1% for 2015 as the repercussions of the tragic Bardo and Sousse attacks and persistent social tensions have dampened the benefits of the post-transition confidence boost, lower global oil prices and Eurozone recovery. External imbalances are expected to remain high, with the current account deficit around 8.5% of GDP. Inflationary pressures are expected to remain contained, helped by lower energy and food prices and a prudent monetary policy.¹⁹

Long term projections are positive: depending on the scenarios adopted,²⁰ the growth rate to 2040 varies from around 2% to 3.7-4% (the most optimistic scenario) .

Table 1: Macroeconomic Indicators²¹

	2012	2013(e)	2014(p)	2015(p)
Real GDP growth	3.7	2.6	3.3	4.6
Real GDP per capita growth	2.6	1.5	2.2	3.5
CPI inflation	5.6	6.0	5.5	4.9
Budget balance % GDP	-4.8	-6.2	-6.4	-4.3
Current account balance % GDP	-8.2	-8.2	-7.4	-6.4

Source: Data from domestic authorities; estimates (e) and projections (p) based on authors' calculations.

Unemployment levels are moderate and similar to other North African countries. From an average of around 12% in the pre-revolution period, unemployment rose to 18% in the unstable immediate post-revolution years (2012-2014) and has since been reduced. It is now stable at 15%. The striking characteristic of unemployment (UE) in Tunisia remains its skills composition, since it mainly affects highly skilled workers. It is also particularly high for women and for young people, who must often resort to informal employment. Youth unemployment stands at 37,6%.

Youth employment problems also encourage a high rate of emigration, with a disproportionate impact on skilled workers. Unemployment of skilled workers has a marked negative impact on the middle classes²², and because social protection relies heavily on an employment-based insurance system, a prolonged period of unemployment raises the threat of poverty.

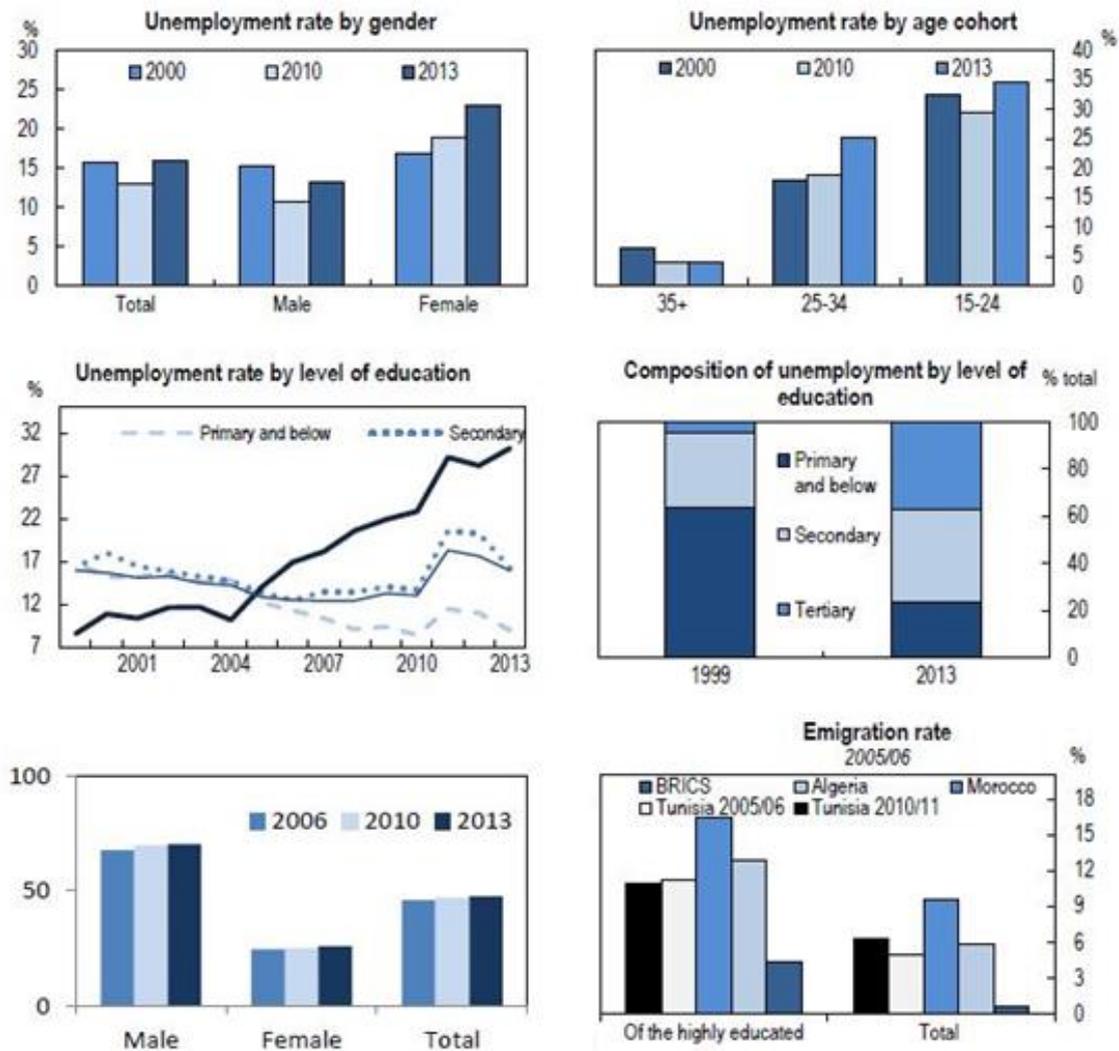
¹⁹ IMF mission press release 15/389, 26 August 2015

²⁰ One scenario is based on an extrapolation of existing trends; the other envisages active structural reforms

²¹ Tunisia - African Economic Outlook, 2014

²² Paciello, 2011

Figure 1.5. Unemployment and emigration



Source: INS, National Survey on Population and Employment, connected with emigration OECD (2012), OECD Publishing.

Business environment and competitiveness

For the World Bank, Tunisia, which was traditionally well-placed in international rankings for the private sector, has appeared less attractive to investors since the 2011 Revolution. In 2013, foreign investment (FDI and portfolio investment) declined by 19% compared with 2010, the year of reference²³.

The major international references to measure and benchmark the business climate in Tunisia show a constant deterioration of the Tunisia business environment and its competitive position.

In the World Bank "Doing Business 2015-2016" report, Tunisia slipped from 69th place (2010-2011) to 74th place. Even though Tunisia's position worsened under various headings in the "Doing Business" report, it is still ranked in the middle range, better

²³ Tunisia - African Economic Outlook, 2014

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than neighbouring countries.

	Tunisia	Tunisia	Egypt	Morocco	Algeria
Doing Business²⁴ World Bank					
Report 2015-2016					
For Tunisia also Report 2010-2011					
Ease of Doing Business Rank	74	69	131	75	163
Starting a Business	103	47	73	43	145
Dealing with Construction Permits	57	107	113	29	122
Getting Electricity	38		144	55	130
Registering Property	86	59	111	76	163
Getting Credit	126	87	79	109	174
Protecting Minority Investors	105	73	122	105	174
Paying Taxes	81	118	151	62	169
Trading Across Borders	91	40	157	102	176
Enforcing Contracts	81	77	155	59	106
Resolving Insolvency	57	34	119	130	73

A much more serious decline is established by the World Economic Forum in its annual "Global Competitiveness Report", which gives a broader overview of competitiveness indicators than the World Bank.

In the latest edition of the "Global Competitiveness Report" (2015-2016), Tunisia has tumbled from 32nd^h to 92nd place in a period of 5 years. On the more specific indicators, a similar dramatic decline can be observed.

²⁴ Doing Business 2015, World Bank Group

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Tunisia	Global Competitive Index ²⁵ 2015-2016 edition (out of 140)	Global Competitive Index ²⁶ 2010-2011 edition (out of 139)
Global Competitive Index	92	32
Basic requirements (40%)	78	31
Institutions	79	23
Infrastructure	97	46
Macroeconomic Environment	111	38
Health and primary education	58	31
Efficiency enhancers (50%)	98	50
Higher education and training	76	30
Goods market efficiency	118	33
Labor market efficiency	133	79
Financial market development	122	58
Technological readiness	80	55
Market size	69	67
Innovation and sophistication factors (10%)	110	34
Business sophistication	104	42
Innovation	110	31

The available enterprise surveys give a *more qualitative view* of problems from an entrepreneur's perspective.

The World Competiveness data²⁷ indicate as major problems in declining order:

²⁵ Global Competitive Index, World Economic Forum, 2014-2015 edition

²⁶ Global Competitive Index, World Economic Forum, 2011-2012 edition

²⁷ Report 2014-2015

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inefficient government bureaucracy, access to finance, political instability, restrictive labour regulations and inadequate infrastructure.

The latest World Bank Enterprise Survey²⁸ lists similar issues: for all participants, political instability, followed by practices in the informal sector (15%), access to finance, an inadequately educated workforce (both around 12-13%) and corruption.

For small firms (up to 20 employees), informal sector practices are listed as the second major issue.

Finally, a more recent 2014 Ernst and Young survey (2014)²⁹ contains some interesting indicators, some directly related to HR: 28% of the respondents saw a regression in their social situation in 2013 (against 8% in 2012), while half expressed general concern about the social situation and especially the turmoil in social climate due to the increasing demands made by staff. Small and medium sized companies seemed most affected and most concerned.

In conclusion: In the short term, while external factors (oil price, international economy recovery) and some internal factors (renewed political stability) create a positive environment, many challenges remain³⁰ and constitute a difficult background for social dialogue:

- Persistent high unemployment, with particular problems of high youth unemployment rates and skilled unemployed;
- A growing public sector wage bill, partly responsible for a persistent public deficit of around 4% annually;
- The need to address tax reform, and to promote greater transparency, efficiency and equity;
- The creation of a level playing field for investors and adoption of key legislation such as bankruptcy and competition laws, and more fundamental reform in response to declining business environments;
- The need to combine a competitive environment (wages, employment contract flexibility, employment security) necessary for an open economy with advances in working conditions and the provision of safety nets and social protection for workers and the most vulnerable;
- Attacking regional disparities (see also OECD recommendations³¹).

1.3. **Structural features of the economy and employment**

Key features of the economy

- Open economy, largely privatised, but the historical central role of the State has maintained important expectations towards the State and an important public company sector
- Strong industrial sector – an important factor for FDI and bigger companies
- Dualism in the labour market
- A growing but still relatively limited informal economy

Here are some basic figures to clarify the economic structure and employment

²⁸ World Bank, Tunisia, Country profile, 2013

²⁹ Baromètre 2014 des entreprises en Tunisie, Moral, Préoccupations et perspectives des dirigeants des entrepreneurs

³⁰ IMF mission press release 15/389, 26 August 2015

³¹ OECD, 2015

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situation in Tunisia, and some specific aspects of employment.

The most striking elements of this structural picture are the following:

- A high rate of participation in the labour force for men (75%) vs. a rather low one for women (25%);
- A vibrant entrepreneurship segment of small employers and self-employed workers;
- A well-developed private sector, representing about 68% of employment, but slightly declining (the public sector accounts for 26% of employment and is increasing);
- A still important industrial sector (33% of total);
- Bigger companies (+200) account for a large share of employment, estimated at about 35-40%;
- A sizeable informal economy, but smaller than in many other North African countries.

Some additional details may help to complete the picture.

Tunisia still has a strong industrial base, with key sectors such as textiles, engineering and agro-foodstuffs. Together they account 34% of GDP. Services (including tourism) account for 51% and agriculture 15% of GDP. (*Source: African Economic Outlook, Tunisia, 2014 and ILO databases*)

The Tunisian private sector is well integrated into global supply chains. It is mainly made up of small, medium-sized and very small enterprises (total number of companies 550,000), but it has also an important number of larger companies (+100 workers), which account for a major share of total employment (40% to 45%). Traditionally, Tunisia has attracted a large amount of FDI. In total, about 3,100 foreign companies are present in the country, employing a total of 325,000 - 350,000 workers, representing about 30% of private sector employment.

The main features of the labour market have already been highlighted (differentiated labour force participation between men/women; unemployment of skilled youngsters). Another is the dualism of the labour market. This exists in various forms: i) between the public and private sectors, with marked differences in employment security and working conditions (possible distortions, especially in public companies); ii) in employment conditions in the private sector, with marked differences between bigger and smaller companies, which tend to issue non-permanent contracts; iii) between regions, with interregional inequalities tending to widen further and aggravate the polarisation between inland and coastal areas. These trends have not only deepened the inequalities between workers in the public and private sectors, but have also influenced the choice of training, distorted the allocation of skilled labour in the economy, and boosted the reservation wages of the most highly trained workers.

Informal economy

We only have very approximate figures, suggesting that the informal economy represents about 30% (2001 data) to 40%^{32, 33} of GDP. Nidhal Cheik estimates that

³² Trabelsi, Karim, 2013, Current State of the Informal Economy

³³ See also: Nidhal ben Cheik, 2013 L'extension de la protection sociale, Centre de recherché et d'Etudes Sociales, 2013

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the vast majority of micro-businesses are involved in the informal economy and that the number of workers involved could amount to around 400,000, representing about 25% of total private-sector employment. If we add about 500,000 “informal employers” to this figure, the total number of people employed in the informal economy rises to 950,000, which would represent 30% of the active Tunisian labour force.

2. SOCIAL DIALOGUE AND COLLECTIVE BARGAINING IN LAW AND IN PRACTICE

2.1. *Freedom of Association*

Key features :

- Freedom of association legally recognised and ILO conventions ratified
- Freedom of association also in fact recognised and applied
- Trade unionisation overall at about 30%-35%
- Trade unionisation in private sector at about 15%
- Very high membership of employers’ federations

Legislation

Under the Constitution, national legislation recognises freedom of association (Art. 35), the right to unionise and to strike (Art. 36), the freedom to organise meetings and demonstrate peacefully (Art. 37), and decent work for a fair wage (Art. 40).

These constitutional rights reflect the wish of Tunisia to translate the basis ILO conventions, all of which it has ratified, into national legislation: C29 - Forced Labour Convention; C87 - Freedom of Association and Protection of the Right to Organise Convention; C98 - Right to Organise and Collective Bargaining Convention; C100 - Equal Remuneration Convention; C105 - Abolition of Forced Labour Convention; C111 - Discrimination (Employment and Occupation); C138 - Minimum Age Convention; C182 - Worst Forms of Child Labour Convention.

It has also ratified Convention C 144 on tripartite consultation, on 11 November 2014, and Convention C135 on workers’ representation at company level.

A review of the country’s jurisprudence by the ILO’s compliance authorities (the Committee of Experts and the FOA Committee) shows that the cases which have been submitted are of two kinds:

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- At the level of the Committee of Experts, a number of issues relating to specific pieces of legislation, but none relating to fundamental issues of Freedom of Association for very wide groups of workers;
- At the level of the FOA committee, complaints for denial of recognition emanating from two central trade unions (CGTT- OTT). For more detail, see footnote.³⁴

It is therefore generally correct to state that Freedom of Association is legally and factually applicable in Tunisia, with some relative small points where the application of international conventions could be improved upon.

³⁴ The latest examination of cases relating to Tunisia by the **Committee of Experts** (Observation (CEACR) adopted 2012, published 102nd ILC session 2013) concern, within the ambit of respect for Freedom of Association, the following issues:

- 1) Specific infringements of trade-union rights in journalist trade-union activities;
- 2) Article 2 of the C87. Right of workers, without distinction whatsoever, to establish and join organizations of their own choosing (in practice: *i) right of magistrates to create a union and ii) right of minors below 16 to join a union without agreement of parents*);
- 3) Article 3 of C 87. Right of workers' organizations to organize their activities and formulate their programs without interference from the public authorities (in practice: *i) problems concerning the representativeness of trade unions in the higher education sector; ii) the right of organizations to elect their representatives in full freedom, i.e. problems in determining the required period of stay of foreign workers before they can become trade-union members*)
- 4) Request for clarification on some important collective labour relations procedures provided for in national legislation, i.e. relating to Article 3 of C 87 concerning the Right of workers' organizations to organize their activities and formulate their programs.

The Committee has made observations, for several years, on certain restrictions on the right to strike, which include:

- *approval of the central workers' confederation before declaring a strike (section 376bis(2) of the Labour Code);*
- *compulsory indication of the duration of the strike in the strike notification (section 376ter of the Labour Code);*
- *determination of the list of essential services by decree (section 381ter of the Labour Code); and the possibility of imposing penalties in the event of an unlawful strike (sections 387–388 of the Labour Code).*

The Committee notes the Government's statement in its report stating that

- *section 376bis(2) of the Labour Code does not raise any problems in practice and the workers' organizations have not made any observations on its application;*
- *no time limits are established in section 376ter of the Labour Code, and the organizers of the strike are entirely free to choose the duration of the strike and to continue it as they wish;*
- *the decree referred to in the last paragraph of section 381ter has not yet been adopted; the imposition of penalties provided for under section 388 of the Labour Code is contingent upon the court's assessment and the level of severity of the offences.*

The Committee of Experts concluded by requesting that the Government take the necessary measures in the near future to amend these sections of the Labour Code to guarantee respect for the principles of freedom of association to which it has been referring for many years.

In the tripartite FOA committee, the cases which are under discussion or have recently been dealt with concern requests for recognition introduced by trade unions other than the most important Tunisian trade union (UGTT) (Cases n° 3095, 2994, 2672 and 2592). The complaints came from CGTT and OTT. The complaining organisations complain of acts of interference in their internal affairs, the withholding of the dues paid by their members and their exclusion from tripartite consultations held with a view to drawing up a national social contract.

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Freedom of Association in practice.

Freedom of association effectively applies in Tunisia, for both workers and employers.

Trade unionisation

The figures on trade unionisation are not fully clear and the ILO databases have no precise figures available.

An internal ILO study³⁵ mentions a degree of trade unionisation in the public sector of 31.5%; in the private sector it is estimated at 27% overall.

A Danish study³⁶ estimates the total number of trade unionists at 980,000, and thus estimates trade union density at 39% of all salaried staff.

Interviews yield similar if somewhat lower figures. Adding all figures on claimed membership together, we arrive at a total of around 800,000 trade union members, spread over four organisations (UGTT 650,000; CGTT 30,000; UTT 100,000; OTT unknown but relatively small). This would put the total degree of unionisation at about 30% to 35% of the total number of persons employed (taking into account that some union members are no longer active).

Making a distinction between the private and public-sector unionisation levels is more difficult. A rough estimate indicates a maximum membership level in the private sector at around 250,000 (of which 200,000 from UGTT), which would suggest a degree of private-sector unionisation of around 15%. The public-sector (including public companies) unionisation level would therefore be around 60% (taking into account that a proportion of trade union membership is accounted for by retired staff).

As far as the rather low unionisation in the private sector is concerned, some interviewees pointed to the predominance of small companies, and to the fact that the general level of unionisation in the private sector does not exclude many pockets of important unionisation in bigger companies, as well as at the fact that trade union membership often equals trade union activism.

Finally, it must also be noted that our interviewees did not mention the prevalence of anti-union discrimination at the level of trade-union affiliation. Trade unions mentioned some examples, in small companies, of anti-union behaviour, not relating to "ordinary" membership but to trade-union representatives.

Employers' affiliation

Here also figures are in short supply. In any case, affiliation to employers' organisations is free and not obligatory³⁷. UTICA, the main employer's organisation, claims a membership of 120,000 companies, via its structures of chambers, federations and regional affiliates (however, a much lower number is probably more realistic, see below). However, it is admitted that many do not pay membership fees,

³⁵ Country Profile Tunisia, 2012, internal document

³⁶ Tunisia, Labour Market Profile, 2014, Danish Trade Union Council for International Development Cooperation

³⁷ As normal in a Chamber of Commerce scheme, as applied in some Arab States

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and that affiliation varies in accordance with the five-yearly election cycle, with increased membership when elections of officers are due. In any case, membership of an employers' organisation, especially amongst large firms, seems to be the general pattern.

In any case, if we add the (unknown but limited) membership of Conect to the UTICA figures, we get a very high degree of employers' "unionisation".

2.2. **Organised, autonomous and strong collective actors**

Key features:

- Trade union pluralism emerging, but one dominant trade union: UGTT
- Employers' organisation pluralism, but one dominant player: UTICA
- Both very influential because of history, large membership, strong informal political links and capacity to broker central deals
- Some problems of internal cohesion

Legal framework for the actors in social dialogue

The Labour Code, reformed for a last time in 1996, is still valid.

The Code is a coordinated text, regulating both collective and individual labour relations.

It defines the legal status of trade unions and professional associations³⁸.

- It stipulates that trade unions and professional associations (the legal term for employers' organisations), grouping persons of the same or similar professions, may be established freely.
- The exclusive purpose of trade unions is to defend the economic and social interests of their members.
- Trade unions enjoy legal personality, and have the right to acquire property and to take legal proceedings, for themselves or their members.
- The right to conclude collective agreements or conventions is explicitly provided for.
- They can develop a wide range of activities, e.g. providing housing for members, organising training, running cooperatives.
- Trade unions may be consulted with regard to disputes and on all issues which are within their scope of activity.

There are rules determining the formal procedures for establishing trade unions, conditions of membership (nationality) and leadership (no penal past), and conditions for cooperation between unions in a hierarchical system. The dispute resolution especially (see below), gives prevalence to a centralised approach to industrial relations, under the control of the central union (UGTT), which should, according to the law, approve a strike announcement to make the strike valid and legal.

It should be noted that the legal system does not provide for minimum thresholds in

³⁸ Livre VII, chapter I art 242-257

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terms of numbers of members or other conditions, neither does it define a notion of representativeness.

The latter point is a major issue at the moment, as it has been in the recent past, since other trade unions and employers' organisations have emerged alongside the "traditional" social partners, i.e. UGTT and UTICA³⁹.

Within the framework of the Social Contract, concluded in January 2013, there is provision for a National Council for Social Dialogue (see below) to be established. Its composition may require clarification of the criteria of representativeness.

In practice: the actors in social dialogue

Since the Revolution of 2011, the trade-union and employers' landscape has become more diversified and pluralism has made its appearance. In the following notes, we will briefly describe the main trade unions and employers' organisations, their membership, internal structure and capacity, and their key positions.

Trade unions:

- **UGTT**

The main trade union is UGTT (Union Générale des Travailleurs Tunisiens).⁴⁰ It is established at the national interprofessional level, grouping 24 regional federations, 19 sector federations and 21 general unions. As well as sectors and sub-sectors, it also has a regional structure (24 "governats").

Membership: the UGTT leadership mentioned in the interview a membership level of 650,000. 70% of membership (of which a number are retired staff) are public-sector workers, 30% private-sector workers.

It has a democratic structure, with an Executive Council on which the sector unions/regional unions are represented (though there are 2 private-sector union representatives), and holds general elections regularly. As a mass movement, it brings together several tendencies, ranging from far left to traditional socio democrats, with some more Islamist-oriented members also. Keeping the organisation together, without it being taken over by any one sub-group, requires skilful leadership.

It is autonomous from the government, although close links may exist between some part of the political elite and the organisation.

The total budget is around 13 million Tunisian Dinars (approx. 6.5 million USD). The main income sources are membership contributions (2 dn/month in public sector-1 dn/month in private sector) and public funding via an annual grant, awarded by a social security fund, which levies in total 0.5 % of the salary mass of the full Tunisian economy, of which UGTT receives a proportion each year. It also runs some cooperatives.

The total number of staff is 420, spread over sector, sub-sector and regional unions. It is affiliated to ITUC. The Secretary General is Houcine Habassi.

³⁹ on the trade- union side CGTT, UTT and OTT, and on the employers' side Conect

⁴⁰ www.ugtt.org.tn.

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Having played an important role as a mass movement in the independence process, UGTT has always been a major player in the Tunisian society, both politically and socially. It also has a very high press presence and is widely known in the country. So, apart from formal membership figures, UGTT has been for a very long time a powerhouse in Tunisia. It has had close political links with the different governments, and UGTT was the only trade union until the Revolution.

After the Revolution, however, when it quickly distanced itself from the autocratic regime of Ben Ali, it continued to play an important political role, going beyond industrial relations, in defending political freedom.

Quite a number of trade-union officials continue to play a role (during or after their trade-union career) in different political parties (although more with social democratic parties than with the Islamic parties). Some government ministers were trade-union officials. UGTT has been formally associated with major political events, such as the brokering the new Constitution in 2013,⁴¹ the conclusion of a national social contract in 2013 and, more recently, the conclusion of a tripartite agreement with employers and the government to provide a framework for sector-level negotiations. It is said that UGTT, together with UTICA, saved Tunisia from the chaos which other countries have been undergoing since the Arab Spring.

Being at the centre of politics, its political role is often subject to criticism: opponents reproach UGTT for have played a political role against the Islamist and economically neo-liberal Ennahda party during its period in government (2011-2014) and for having called wildcat strikes for political rather than industrial purposes. Proponents would argue that UGTT has been always a strongly stabilising force in the country⁴².

As far as its general vision on industrial relations and social policy generally is concerned, UGTT is said to take a moderate position, obviously trying to defend workers' rights and improve working conditions as much as possible, while not ignoring the socio-economic realities of the country. This balanced approach is reflected in its continuous attempts to put pressure on employers and/or the government (as public sector employer), including the use of strikes, but to maintain also a good social climate and relationship with employers and government, in which the country's socio-economic realities (unemployment issues, inflation, capacity to pay) are recognised and taken on board as part of the bargaining agenda. Some would qualify it as neo-corporatism. On the employers' side, it is remarked that the UGTT still has not sufficiently come to grips with the new realities, in which the State has become less powerful, and in which the competitive constraints on the private sector have become more difficult. It is said that the union's discourse and general attitude remains rather traditional socialist.

⁴¹ Its nomination for the Nobel Prize was accepted by the Nobel Committee on the basis of that role.

⁴² See Tunisian New Opposition, *Le monde diplomatique*, 3/11/2013

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- **CGTT**

The CGTT is a trade union which has recently been established as a split from UGTT, when in 2006 a former senior official re-formed again the Confederation Generale des Travailleurs Tunisiens.

The organisation, under the leadership of Secretary Habib Guiza, claims to be an important trade union, with thousands of members (30,000?).

As stated,⁴³ its main objective is to re-found the Tunisian labour movement, breaking with a past characterised by one centralised trade union.

In more detail, the CGTT proposes:

- Trade-union pluralism;
- Absolute priority for job creation;
- Prioritising the role of trade unions as a countervailing power, but without participating in power with the government;
- More democracy and modern functioning of the trade union;
- Clear strategies for the revaluing of labour, and a more green approach.

The main challenges for the labour movement in Tunisia, according to CGTT, are the following: violation of trade-union freedom in Tunisia, a more holistic civil-society-oriented approach (as contrary to the social contract, which is seen as too short-term and materialistic), the elaboration of an integrated model of social and economic progress. It has brought a legal action before the Administrative Tribunal relating to its representative status.⁴⁴

Looking at the main elements, most of the focus seems at present to be on a strategy to affirm the importance and rights of the organisation as a full social partner (in opposition to the main trade union UGTT).

- **UTT**

The Union des Travailleurs was founded in 2006, when some UGTT cadres split away. It claims to have a membership of 150,000. Other sources put membership much lower, at 50,000⁴⁵. It is internationally affiliated to WFTU⁴⁶. The Secretary General is Mr Ismail Shabani. It is organised into 18 regional unions and also groups a number of local unions.

This trade union is not officially recognised as representative, but has some influence⁴⁷

- **OTT**

The Organisation Tunisienne du Travail is the most recently created trade-union organisation. It was established in 2013 under the presidency of Mr Lasaad Abid. Next to the already mentioned trade unions, this organisation also seems to be a reaction to/split from UGTT, in this case more inspired by the political stance of UGTT vs. the Ennahda government. It is said that the trade union is very close to that party⁴⁸.

⁴³ Pages de gauche, no.139, December 2014

⁴⁴ See Conect news, July 2015

⁴⁵ Danish study, 2014, o.c.

⁴⁶ International Trade Union of communist tendency

⁴⁷ See, amongst other things, meeting of SG with President Essebsi in June 2015, during which it was insisted to give prior focus on economic recovery

⁴⁸ See HuffpostMagrheb, 26.8.2013 "OTT: un syndicat islamiste pour contrer l'UGTT?,- www.babnet.net, 26.8.2013

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Membership, international affiliation, etc. undocumented.

Employers' organisations:

- **UTICA**

The UTICA (l'Union Tunisienne pour l'Industrie, le Commerce et l'Artisanat), is the main employers' representative in Tunisia. Its membership is estimated at 6,000-7,000 by external sources⁴⁹. If indirect members (companies via local unions) are counted in, the number is probably higher. The staff interviewed at UTICA claimed a membership of 120,000 companies, acknowledging however that these were not all paying members, and also that membership fluctuated and was highest during union leadership elections. Other, probably more realistic, estimates (based upon interviews) are of a membership of about 30,000 companies. UTICA is structured in 17 (sector) federations (e.g. textiles, garment-making, chemicals, metalworking, etc.), 24 regional unions, 216 local unions, 370 national chambers and 1,700 local chambers. It also has a chamber for women company leaders. The members are estimated to account for about 70% to 80% of private sector employment, and a similar percentage of GDP. Its President is Mrs Wided Bouchamaoui. It is a member of BUSINESSMED and of the International Organisation of Employers.

It has significant internal capacity. The total number of staff stands at about 240. The secretariat is divided into several departments: economics, social affairs, international affairs, etc. The total budget is around 9 million dinars (4.5 million USD), a large part of which (70% at least) comes from the social security fund⁵⁰.

UTICA's mandate is much broader than just social affairs. It is much involved in economic development, trade and trade relations. In social affairs, it deals with vocational training, collective bargaining, services for members, national negotiations and interest representation. It is very well known in the country, and has high press coverage.

Like its trade-union partner UGTT, it is to be considered as a power house, with significant central power or influence, and plays a major role in the global politics of the country, without however being linked directly to a specific party.

Its past history confirms this. Closely linked to the ousted Ben Ali regime, it has been able to take a new direction and maintain its influence in post-revolution politics. As already mentioned, it co-brokered the new Constitution, the social contract of 2013, and maintains a central position in social negotiations at central and sector/local level. This is also thanks to a good working relationship with UGTT.

UTICA has a clear strategy and a clear lobbying and advocacy agenda, and by the very fact of producing such a document as Vision 2020⁵¹, it is clearly far more proactive and transparent than many other employers' organisations around the world.

In this remarkable document, UTICA has developed its long term vision for the development of the economy and social dialogue/industrial relations, taking into

⁴⁹ Denmark study, 2014

⁵⁰ See also UGTT

⁵¹ UTICA, Vision 2020, Dec. 2012, www.UTICA.org.tn

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account a number of themes. Under the title "*Completive enterprises for more growth and jobs*", it gives a clear overview of the most urgent issues in Tunisia, as perceived by the employers, and develops clear proposals for dealing with these issues. The document is comprehensive and deals with entrepreneurship, company finance, export issues, social dialogue, innovation, taxation, public services and regional development, as important themes by which competitiveness is improved and growth and employment is enhanced.

More specifically, as far as social affairs are concerned, the document develops very concrete proposals to tackle issues in social dialogue, industrial relations and labour legislation/social protection: in essence, increased flexibility in labour contracts, installation of a legal framework for interim work, better regulation of outsourcing, a renewed system of social protection (including establishment of an unemployment benefits system), and a revision of wages policies. Specifically, as far as social dialogue is concerned, it is clear that UTICA adheres fully to social dialogue with UGTT and the government. The proposals plead for an improved industrial relations system (not specified), improvement of social partners' capacity, promotion of a contractual policy with UGTT and government on wages, and a broader consensus on economic policy development.

In a more recent document⁵², prepared for the latest parliamentary elections, some additional proposals are developed on support for entrepreneurship, fiscal and budgetary policies, regional development, etc. Les attention is paid to social dialogue in this document, with the exception of a proposal to strengthen the link between wages and productivity.

- **CONECT**

A new employers' organisation was created in September 2011, the Confederation of Tunisian Citizen enterprises. The President is Mr Tarak Cherif.

It is building a federal and regional structure. Though not one of the "traditional" social partners, it has had contacts with the President of the Republic⁵³, and has also succeeded in organising some international high level contacts / visits. Its membership at present is not documented.

It presents itself as an entrepreneurial partner which will act as a dynamic proactive organisation, focusing mainly on constructive ideas for social and economic progress. It is also active in the field of CSR.

It has also organised direct meetings with CGTT to support their common demands for recognition and participation in the proposed National Committee for Social Dialogue, alongside the traditional partners: UTICA and UGTT.

2.3. ***The institutional framework to enhance and support social dialogue at the different levels***

In this section, we will review the legal organisation of support structures for social dialogue, and the factual functioning of social dialogue at different levels.

⁵² Plateforme d'action proposée aux partis politiques, September 2014

⁵³ 3 July 2015- News Conect

2.3.1. At the national interprofessional level⁵⁴

Key features:

- Limited formal committees
- Soon, a high-level formal body for tripartite social dialogue to be installed
- Strong active informal tripartite social dialogue
- Broad scope
- Probable strong influence of informal tripartite social dialogue
- Formalised central agreement on wages every three years

Legal framework / Institutions

* *National Council on Social Dialogue*

The Labour Code provided for a National Commission on Social Dialogue (Art. 335). These provisions, which concerned composition, attributions and the role of the Committee, have however not been implemented and the Committee has not existed in practice. The articles 335-337 have been deleted.

In the Social Contract of 2013, the tripartite partners called for such a Council to be effectively established.

At present, the preparatory work for introducing new legislation concerning the National Council for Social Dialogue (NCSD) is very far advanced and soon a proposal will be submitted to the Parliament. The new Council is regarded as the anchor for social dialogue at national level, and the finalisation of the text is therefore subject of delicate negotiations.

Since there is no formal text yet, it is only possible to give a number of principles which might govern the functioning and role of this Council:

- NCSD will be the top body for tripartite concertation / negotiation
- NCSD will be tripartite in composition: State representatives, trade union(s) and employers organisation(s). The precise number of members (how many per group of stakeholders), and its organisation (organisational chart, bureau, committee, etc.) is still under discussion. It seems accepted that each group will have autonomy to nominate its own representatives for official confirmation by the government.
- NCSD will have broad competencies to discuss and be consulted on all issues of socio-economic policy, but defining the scope of its activities is difficult. Most of those interviewed, however, expected it to cover the themes contained in the Social Contract 2013 (which dealt with labour issues, social protection issues, and issues of regional and economic development). NCSD will be granted a right of prior and obligatory consultation on these issues
- NCSD will have a right to raise matters on its own initiative (so-called *auto-saisine*), which means it will not passively submit to the agenda set by State

⁵⁴ Livre VII, Ch. IX, art 335-337

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representatives; its constituents will have the capacity to take initiatives on their own account.

- NCSO will have its own secretariat. We do not have details about its size and budget, but it seems the intention is to build a secretarial or budgetary capacity which will allow proper preparation of proceedings, including research.
- NCSO would work with specific committees. At present, a format whereby each major theme of the Social Contract would be subject to one committee (e.g. regional development or social protection) is not envisaged, but this may change, once the NCSO is functioning.

Certain issues, some of which are delicate, are still under discussion, according to various sources:

- Composition and representativeness. The Ministry is said to have commissioned a research paper to inform them on other countries' experiences and criteria. According to our sources, possible criteria under consideration for legislation are: number of members, past performance and tradition in collective bargaining and social dialogue (e.g. number of agreements signed), and transparency/good governance/democracy. Additionally, one of the interviewees made an interesting distinction, regarding the notion of representativeness, between information (low threshold for representativeness), concertation (higher threshold) and consultation/collective bargaining (highest threshold).
- The link between the functioning of the NCSO and the Parliament. Here the legislation is not expected to envisage obligatory communication of NCSO output to the Parliament, which implies that the NCSO would remain in essence a consultative body for the government, but not the Parliament. Connected with this is the publication of NCSO reports, whether these would be communicated only to the government, or also to the Parliament and/or also officially in the Gazette, or via website.
- The secretariat of the NCSO: its degree of investment, autonomy and capacity

* *The Economic and Social Council*

A Council of this kind existed until 2011, but the new Constitution has not prolonged its existence. The discussions have been difficult, but according to our sources, a trade-off may have been agreed, whereby other Councils will also not be installed (e.g. High Council for Religion; High Council for sustainable development. etc.).

It is now expected that the NCSO (see above) will exercise within its broad mandate the previous attributions of the Economic and Social Council.

* *Committee for National Dispute Settlement (Art. 379, Art. 383)*

In the framework of the collective dispute settlement regulations described above, a central level conciliation and arbitration board exists, with a tripartite representation. It is supposed to act when a conflict affects enterprises or sectors in several regions together, or when large public-sector companies are in collective dispute.

* *Social partners involvement in social security policies and management of social security institutions*

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The social partners are represented on the following boards of social security institutions:

- Tunisian Social Security Fund (CNSS)
- Board of National Health Insurance Fund (CNAM)
- Board of National Pension and Social Providence Fund (CNPRS)

The social security system is to a great extent a contributory system, with contributions made by both employers and workers⁵⁵.

* *Social partners involvement in labour market issues: Conseil Formation Professionnelle*

Art. 340 and following of the Code du Travail also provides for the existence of a Conseil de Formation Professionnelle. This is an advisory board, composed of a number of government representatives (six representatives of companies and six of the trade unions, proposed by the most representative employers' and trade-union organisations) to advise the Minister for Vocational Training on training issues (*formation professionnelle*). It is active and, among other things, deals with the use of the national vocational training levy (1% or 2%, depending on sector). The Minister has plans to associate the social partners much more actively in implementing the Social Contract (see below).

Social dialogue at national interprofessional level in practice

- Tripartite national social dialogue

There is as yet *no official body* where tripartite social dialogue is being conducted. Legal provisions on the committee for national social dialogue were available, but have never been implemented. A new proposal to install such body has been launched again recently (see above).

In spite of the absence of such a body, until now tripartite national social dialogue has nevertheless occurred fairly intensively, but in an informal way. The main actors involved are the two traditional social partners, UGTT and UTICA, via their respective Secretary Generals and Presidents, and, on the government side, both the Minister of Social Affairs and the Prime Minister.

The *scope* of this informal dialogue is wide, and goes beyond traditional issues of industrial relations. Looking at the themes of the social contract, one sees a very broad range of themes. At the same time, the degree to which they are tackled, at this stage, remains rather general, setting general principles, but not being so strongly involved in its concrete implementation.

The *format and the instruments for policy influence* remains largely informal. There is no formal agenda, nor a well organised system to support dialogue, such as "objective" data, a system of pre-information, institutional support via the detailed discussion of subjects (e.g. National Labour Council or other councils), or formal conclusions. The partners do not seem to use their presence in other tripartite committees (Council for Vocational Training, co-management of social security

⁵⁵ For more detail, see Paie Tunisia.

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institutions) very actively as potential sources of policy influence, nor is there coordination between these different bodies. While Tunisia has ratified Convention 144, it is not clear in which institution these tripartite discussions, limited to ILO questions, is to be conducted. The network for tripartite social dialogue also seems not to be very dense, given that the social partners' presence in other economic policy institutions (e.g. the National Bank, National Plan) is not provided for.

The *influence of the social partners* in shaping national economic policy is hence informal, and its weight is difficult to determine. Some may say that the traditional influence of social partners is very important because of the political/economic weight of the actors (UGTT political / UTICA economic); others may see it as more incidental, not well-structured, issue-oriented, and not permanent and proactive. This of course may just be the case at this stage of development (linked with the new post-revolutionary period). During interviews with the political authorities, it was clear that there was a strong political will to bring together the partners more, to promote the effective implementation of the landmark agreement of 2013 (Social Contract).

In terms of *outcome*, three formal instruments / outcomes have to be highlighted:

- The aforementioned crucial role of UGTT and UTICA in brokering the new Constitution
- The Social Contract of 2013
- The new central bargaining round of 2014, in which a framework for the increase of salaries at sector level was set (at 6%).

These points will be discussed in more detail under II.5 Outcomes of social dialogue (below).

- Bipartite national social dialogue

Given the central position of government in national politics and economics, it seems that most national dialogue is tripartite. In any case, specific bodies for bipartite concertation do not exist. Even the determination of a central framework agreement for salary increases at sector level (the so-called *accord cadre*) is mostly negotiated on a tri- than on a bi-partite basis, once every 2 or 3 years

2.3.2. Social dialogue at sector level

Key features

- No formal permanent structures for collective bargaining
- Collective bargaining exists to replicate the central agreement in almost all sectors "Central" control is augmented by the important role of labour inspectors in conciliation
- The variety, specificity and scope of such dialogue is therefore at present limited
- In some sectors this leads to negotiation difficulties on both sides

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Legal framework

Whilst the law provides very clearly for the possibility of sector-level bargaining (and also the practice), there seem to be no permanent negotiation bodies, nor or a specific structure, legally installed to enhance sector-level dialogue or negotiations.

As will be mentioned later, the procedures for collective disputes provide for conciliation and arbitration bodies, but these seem rather to be installed at regional level, not at sector level (Art. 377).

It should however be noted that the system for collective redundancies does provide for a sector-related structure⁵⁶: a committee, composed of a labour inspector and two representatives of employers and trade unions respectively to “control” collective redundancies and closures. It receives all requests for collective dismissals and issues authorisations to implement such requests. It may also determine redundancy payments/gratifications. Legal appeal against its decisions is possible.

Sector-level social dialogue and collective bargaining in practice

Facts and figures on the coverage of collective bargaining at sector level are scarce.

In the framework of the *accord cadre*⁵⁷, sectors and sub-sectors negotiate the concrete implementation at their level of these central agreements.

At present, this happens in about 54 sectors and sub-sectors. (In addition two important sectors, the financial and tourism sectors negotiate outside the general agreement, since the employers are not members of UTICA (the sector unions are member of UGTT).

The collective bargaining coverage is hence very high and estimated at about 90%.

Having said this, this coverage rate hides the fact that, at least in recent years, the sector level adds little of substance to the nationally concluded framework agreements.

Whereas before, sector-level bargaining had two components (a financial one in determining wages and a more specific one, still very financial, covering additional premiums such as transport, *primes de panier*, bonuses, etc., as well as some aspects of working conditions), the recent situation seems to be that the sector mainly reproduces the centrally determined outcomes for wages in its own sector. An example given by the employers concerned the textile sector, where the international multi-fibre agreement may have an important economic effect. The employers’ representative we interviewed regretted that it was impossible to raise this variable as an element in the negotiations, which ended up by copying the central agreement. On the trade-union side, it was regretted that some sectors are not bargaining in good faith, failing to apply the central agreement minima, which leads to the outbreak of strikes, used by the employers to put pressure on the government to obtain compensation for the additional costs occasioned by a new agreement.

Another point is the rather incidental character of sector-related social dialogue. Negotiations are held once every three years, and there is no further institutional

⁵⁶ Labour Code

⁵⁷ See supra

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support, so the partners do not meet frequently, apart from incidents where they intervene in the framework of the dispute resolution mechanisms.

Also the capacity of the negotiation partners is not everywhere guaranteed. The multitude of sector negotiations may result in a rather unsophisticated approach to social dialogue in some sectors and an approach to issues that is more intuitive than professional.

Greater clarity on the practice of collective bargaining at sector level⁵⁸ is needed.

It is also worth pointing out that the legal framework in which the role of the labour inspectors (and indirectly the government) is played out is large, via the procedure of conciliation and arbitration. In practice, it seems that sector-level bargaining is therefore mainly determined by the guidelines applied by the labour inspectorate, and that very little discretion is left to sector-level or local negotiators.

2.3.3. Social dialogue at enterprise level

Key features :

- A dual social dialogue structure : trade-union representation and comité consultative d'entreprise (CCE)
- Both weak in practice and only present in big companies
- Main practice: compliance and sometimes negotiation on redundancies, no permanent dialogue nor company information

The legal framework⁵⁹

At company level, social dialogue takes place within a dual structure: the *Commission Consultative des Entreprises* (CCE), on the one hand (a type of works-council approach), and social dialogue between the employer and the trade-union representation, on the other.

The so-called CCE is a structure provided for by law.

It is a body of a joint nature (employers' and workers' representatives) established in every company with more than 40 permanent workers . However, many companies do not fulfil the "permanent worker" criterion because of the widespread use of temporary or fixed-term contracts.

The number of employee representatives increases with the size of the workforce.

In smaller companies (between 20-40 employees), the law stipulates that they must be represented by one employee delegate.

The competences of the CCE are consultative, on issues related to work organisation, social activities in the company, professional promotion and enhancement (training), apprenticeships and discipline. It also has information rights regarding the socio-economic situation of the company. It also has, via a sub-committee, competences in

⁵⁸ Are there variations in wage increases between sectors? Are there specific areas of sector-level variation, such as working time, classification, productivity bonuses, transport premiums, "prime de panier", severance indemnities etc. allowed and available?

⁵⁹ Livre III, art 157-169 Code du travail

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the field of Occupational Health and Safety (OSH).

Workers delegates enjoy some rights of absence from work for representational duties and protection against dismissal. Worker delegates are elected in company-based elections.

Where social dialogue and collective bargaining is concerned, there is also a joint negotiating committee between employer and trade-union representatives at company level.

Social dialogue at enterprise level in practice

Again, very few figures are available to map local social dialogue as practised through legally constituted Committees at enterprise level (the so-called CCE) and collective bargaining at company level.

- **CCE**

Few figures are available for the extent of implementation, i.e. the presence of CCEs, at company level.

A research report⁶⁰ suggests that a total of 1,182 CCEs have been set up in Tunisia (in principle, in all companies with more than 40 workers, which would bring the percentage to about 30% of eligible companies). . Data from the Ministry of Labour (1st trimester 2015) indicate a much higher degree of implementation and coverage. These data give a figure of 2.065 CCE established. The number of workers employed in these companies amounts to 309.000. The coverage of CCE is hence very high at 94%, since the total workforce with permanent contracts in companies + 40 amounts to 329.000 workers. More detailed figures however show a high proportion of CCEs active in the textile sector (995 out of a total of 2951).

The Ministry also has data on the functioning of the CCE's: it noted in the first trimester 2015 a total of 1758 meetings of the CCE, of which 642 on social works , 340 on vocational training and 210 on promotion and professional reclassification.

The same report⁶¹ expresses certain scepticism on the part of UGTT where CCEs are concerned, which are seen as weakening the role of the trade union, aiming to create a disciplinary instrument in the absence of real social dialogue at company level.

As far as the subcommittee for health and safety is concerned, it would, according to figures of the Ministry, be active in 67% of all eligible companies.

- **Collective bargaining at company level**

Again, little data is available as to whether any real collective bargaining activities are taking place at company level.

It was estimated during the interviews that there are about 100 to 150 company agreements. Other sources put the level much lower, at only between 25 and 50 in the private sector, obviously only in big companies and often in large public or recently privatised companies.

⁶⁰ Le defi de la revolution du dialogue social, Said Sedrine and Mongi Amami, October 2014

⁶¹ o.c: 2014

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Neither are there data on the precise functioning, scope and activities of the controlling committees on collective dismissals. However, newspapers report that, if collective bargaining activities are undertaken at company level, they mainly concern these issues, as well as compliance with agreements at higher levels, and some limited negotiation on secondary working conditions.

A report by the Spanish Trade Union⁶² gives more insight in the practice of social dialogue at company level (limited to reporting on three visits to companies with workforces varying between 90 and 250 workers).

It noted the absence of a trade-union presence in all three companies and in general weak trade-union activities. In one company, there was no CCE (since the threshold of 20 permanent staff was not attained). In another company, there was a CCE composed, it seems, of workers who were mainly proposed by management to take part in the CCE. In the largest company, there were six workers' representatives, elected informally. There were regular meetings with management on working conditions, classification and individual solidarity. On wages, there were issues, mostly on the correct application of the law, but no negotiations on wage increases.

2.4. ***Rules of the game - status of collective agreements and dispute rules / compliance***

Key features

- A clear legal system on collective agreements favouring a more central bargaining approach
- Strict strike regulation, again favouring central control
- High level of strikes (including many wildcat strikes) partly due to the political situation, partly because strikes concern compliance issues as much as interest issues

Legal framework

• ***Collective agreements – legal status and regulation***⁶³

Collective agreements (CA) are defined as agreements regarding working conditions, concluded between employers, acting in the framework of an association, or individually, and one or more trade unions.

They can be concluded for a determinate or indeterminate period.

The organisations bound by a collective agreement are supposed to implement it loyally; legal actions to enjoin compliance with the CA can be introduced.

Binding character of a CA: the regulations of a CA are applicable and integrated in the individual labour contract.

Sector-level agreements (*conventions agréées*) can be concluded for a certain branch.

⁶² Tunisia 2014; Boix Isidor, *Approche syndicale de la confection Tunisienne fournisseuse de l'Inditex*, CCOO Industrie), December 2014

⁶³ Livre I, Chapter III, art 31-52

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Such collective agreements have to be concluded between the most representative organisations of the branch.

If “approved/extended” (*agrée*) by the Minister, the CA’s content is applicable to all employers and workers which fall within its field of application. A minimum number of issues have to be provided for in such agreements: respect for freedom of association, salaries and classification procedures, conditions of hiring and firing, holidays, dispute resolution.

Company agreements, on the contrary, may only be concluded in branches where an approved sector-level agreement is applicable to the company. Its provisions may not derogate from the level of the sector agreement.

A consultative commission on CA has been instituted, tripartite in composition. It advises the Minister on extending sector-level agreements and can also examine the effects of CAs on prices, production and the cost of living.

- ***Collective dispute resolution mechanisms***⁶⁴

The Labour Code provides for an extensive and strict procedure for dealing deal with collective disputes.

The first step is the submission of a collective dispute to the Company’s *commission consultative* (see “Institutions for social dialogue – company level”, above).

If no solution is reached, it must be submitted to the regional conciliation office.

Every decision to call a strike or lock out (which must first be approved by the central office of the trade union or the employers) must be preceded by an announcement (*préavis*) giving 10 days notice, officially submitted to the authorities, with a number of items of information (reason, place and estimated duration).

The tripartite conciliation bureau will discuss the strike and attempt to conciliate.

If no agreement can be reached, the diligent party may refer the dispute to the arbitration office, again tripartite in composition. It will render its verdict, which may concern legal and interest disputes, within 10 days.

During the full period of the conciliation/arbitration, implementing a strike/lock-out, is illegal. It must also be noted that there is a specific system of arbitration in case where the collective dispute affects enterprises providing essential services. In such cases, its submission to arbitration may be considered by the Minister.

A system to ensure that essential services are maintained is also then available.

The rules of the game in practice

Collective agreements

We have already pointed out that collective agreements, especially at the national and sector levels, are an important regulation mechanism for social dialogue (54 sector agreements and “2 accords cadre” , including recently the agriculture sector ;).

They set wages and working conditions.

Nevertheless, there are some issues where articulation between levels and compliance are concerned.

⁶⁴ Livre VII, Ch XIII , art 376 and following

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As far as articulation between levels is concerned, the system in principle is clear: the basis is laid by the national agreements, which are then further specified/elaborated at sector level and possibly in large companies at that level.

However, some problems arise in practice. In some cases, it is said; the central approach does not fit, or is for employers too high to fit, with sector realities. This results, in some sectors, in a refusal to copy the central agreement, which gives rise to strikes, and this is then be used by the employers as a way of outing pressure on government to obtain compensatory measures to offset the additional costs caused by the agreement. Also on the employers' side, there are complaints about the articulation between bargaining levels. In this case, the complaints are concerned rather with the absence of opting-out mechanisms from higher sources, which would allow certain sectors and companies to get exemptions from applying a one-size-fits-all agreement.

There are also some outstanding issues in the field of compliance. It is said that a number of employers do not respect the collective agreements. This failure to comply with the agreements is responsible for quite a lot of strikes (e.g. on the grounds of non-payment of wages). Due to the legal system (which is not fully clear on the enforceability of the provisions of a collective agreement) and/or legal practice such as long delays before a court order is obtained, workers tend to use strikes as a way of exerting pressure, rather than consider the non-application of a provision of a CA as cause for legal action, to be settled by a tribunal. And obviously, this process of transforming non-compliance into a strike dispute quickly adds interest issues to the initially legal issue of non-compliance.

Finally, the meaning and/or obligatory effect of social peace clauses is not always clear. Many wildcat strikes indicate that there is a problem of social peace.

Strikes and collective disputes

Data on strike and disputes (Ministry of Social Affairs, Statistics) are available with up to last 11 months of 2015.

The incidence of strikes (in all their components: number of strikes, number of workers involved) was very high in the years 2011-2012, coinciding with the political revolution. It started declining in 2013, and then remained more or less stable for 2014 and 2015, 2015 however being slightly higher again. In 2015 (11 months) 415 strikes were registered, of which 88% in the private sector.

Where the nature of these strikes is concerned, i.e. the distinction between regular and irregular strikes, it appears that about 25% are irregular, which is a substantial decline of irregular strikes, as compared to the previous years. . The reasons for strikes are divided by the Ministry into four sub-categories, which may overlap. The two major causes are wages and indemnities (59%) and the improvement of working conditions (22%).. The Friedrich Ebert Stiftung report,⁶⁵ and newspapers reports, indicate that an important number of strikes in the private sector are concerned with compliance with basic legal conditions, such as payment of salaries or health and safety, and are often more of a defensive than offensive nature.

The latest data concern the sector-related and regional distribution of strikes in the private sector. This distribution reflects the industrial composition of the country (i.e.

⁶⁵ 8 o.c. 2014

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the most affected sectors are metal-working textiles, services). As far as the regional distribution is concerned, it is remarkable that certain regions (eg Sfax) are far more strike-prone than Tunis.

Data on the number of collective disputes which have been solved peacefully via the conciliation and arbitration mechanisms available for sector and company conflicts indicate an important degree of success of conciliation services. 59% of the strike notifications have been stopped via conciliation and did not result in a strike or industrial conflict. The degree of success of in the public sector is even higher.

2.5. ***Outcomes of social dialogue***

Having reviewed the prerequisites, we will look briefly at the outcomes of social dialogue.

A distinction is made between procedural outcomes and content-related/substantive outcomes.

2.5.1. Procedural outcomes – relations between parties

In general, the processes of social dialogue are sound and organised. The dominant partners have a long-term relationship, a significant degree of maturity and a dense agenda on which they work together.

The surrounding legal framework enhances this relationship and will be strengthened further with the establishment/activation of the NCSD.

This new development reflects a growing political will to see the social partners as real partners. The Nobel Prize recognition may enhance the process and also increase public awareness of the role and added value of social dialogue.

At lower levels, sector negotiations are at present a weak spot, by being reduced to merely copying the central approach, not allowing, legally or factually, for more variation and creativity.

At company level, social dialogue is underdeveloped. Representation is limited to big companies and there is little sign of continuity of a positive dialogue (supported, for instance, by good information on the economic performance of the company).

The fact that existing rules are not complied with tends to lead to strikes, instead of fast legal intervention through the courts, and this sometimes renders local relations difficult.

There may however be some barriers which, if overcome, would make it possible to build even stronger bi- and tri-partite relationships:

- Solving the issue of representativeness and most representativeness;
- Involving the social partners in wider policy issues in the economic and social field, via participation in additional formal committees or via the planned extension and broadening of the work of the NCSD
- Establishing a well-thought-out and well-equipped NCSD capable of becoming a really well-informed, respected and well-documented body for social dialogue;

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- Provide for better accompanying structures at sector level to maintain a more permanent dialogue, which may also be more sector specific and less centrally driven;
- Providing a space for company-level social dialogue, via better functioning CCEs, and better/ faster conflict resolution, especially as regards compliance issues;
- Capacity building at these levels to create trust and awareness at the general level, and translate this into valid agreements.

2.5.2. Substantive outcomes

In many of the previous paragraphs, it has been made clear that social dialogue has made a very important contribution to the shaping of Tunisia.

There are first of all a number of landmark events resulting from social dialogue (sometimes in the broad sense):

- The brokerage of the new Constitution by the end of 2013
- The conclusion of a new Social Contract at the beginning of 2013
- The continuation of the practice of *accords cadres*, ensuring central guidance for wage developments.

Thematically, the outcomes are important:

at the global level, stability and very strong involvement of the social partners in the peaceful and democratic transition of the country, in others words the strong political role of the partners;

at the level of socio-economic policies, the outcomes are at present difficult to judge, partly because the impressive numbers of governments in power since the Revolution have not had sufficient time to conduct a long-term economic and social policy which brings results.

The contribution of the Social Contract of 2013 (signed on 15 January 2013, in a period of political turmoil before the Quartet started its political role around the Constitution) must be stressed. It seems that the intention of the present government is to take the tripartite consensus as the guideline for its future policies and to start with effective implementation.

The Social Contract is a very ambitious text, with important principles to be implemented.

It is divided into five major parts:

Part 1 deals with economic growth and regional development, highlighting the need for tripartite approaches, active inclusive growth and employment creation, concrete measures for improving the business environment and good governance, the need to review fiscal policies and alleviate fiscal pressure on individuals.

Part 2 is concerned with employment policies and vocational training. It highlights the need to review educational policies, to strengthen tripartite approaches in the development of employment policies, and the need to promote a competency-based approach to training.

Part 3 deals with industrial relations and decent work. It proposes the creation of an unemployment benefits scheme, and draws attention to the need to respect labour law and existing legal provisions in collective disputes.

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Part 4 has an important chapter on social protection. *Part 5* focusses on the institutionalisation of social dialogue via a Council for National Social Dialogue. However, though concluded in January 2013, many chapters of the social contract still await implementation. This will start soon and will be the major work of the new NCSD.

Other outcomes of less formal social dialogue are unclear.

The question of whether the social partners have an *important influence* on:

- Labour legislation;
- Determination of minimum wages;
- Definition and extent of social protection policies;
- Definition of non-wage labour costs;
- Employment policies;
- Training and life-long learning policies;
- Labour market institutions, etc.

remains unclear as far as the recent past is concerned. Again, activation of the process of implementing of the Social Contract may now change this.

2.5.3. Specific issues

*** Social dialogue and the informal economy**

Social dialogue is not concerned in a direct way with informal economy. Indirectly, of course, given the extent of the informal economy, the subject of formalisation is for various reasons a policy concern in the background of many discussions (business climate, support for entrepreneurship, easy registration, flexibility in labour contracts vs security, etc.). The impression exists that some social partners do not have a very positive approach to the subject and sometimes equate the informal economy with contraband (in regions neighbouring Libya), false competition and even crime.

The representativeness of the partners to deal with these topics may also be questioned. UGTT is mainly representative of formal workers, first and foremost in the public sector. It seems to be less concerned about informal economy workers. The same is true of UTICA, which also has no structured or specific activities focussing on formalisation of the informal economy, although of course many of its policy proposals touch upon improving the business environment (e.g. labour law, ease of registration), which could also lead to more formalisation.

Within the Ministry of Labour, important efforts are undertaken to deal with informal economy such as pilot projects on awareness raising and control. The Ministry points at the important role of social and labour inspection to the informal sector. As far as social dialogue within the informal sector is concerned, the Ministry points at the fact that C87 of the ILO provides for the FOA for all workers, without distinction of the formality of their labour contract. . It also points at attempts of the social partners to extend the field of application of legislation to the informal sector, and attempts to organise the informal sector. Examples are given of the creation of a partnership with a local professional association in some regions (region Benguerdenne, regio Sfax), to solve social and fiscal issues. This approach via professional associations may be more effective in order to advance negotiations with regional and local authorities, related to fiscal issues, social security and access to credit.

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In general however, the Ministry also concludes that at present there is a strong weakness or absence of social dialogue in the informal sector, due to many factors. A lack of fundamental labour protection; a lack of trade union representation; a deficit in property rights and lack of access to capital and financing. It remains convinced that the trade unions of the formal sector should amplify their efforts to organise workers and include their issues in the social affairs agenda.

* **Innovative practices**

Some good practices of open social dialogue at company level in German and Danish companies were mentioned. The trade union commended these companies for their capacity to respect agreements to deal properly with representation and for the provision of open information on company performance.

3. CONCLUSION

3.1. *The present state of affairs in social dialogue.*

- Social dialogue has a close links with the political environment in Tunisia. A turbulent political period has brought turbulence in the IR system, too, partly because the main actors in IR and social dialogue are also strongly involved in politics, and spill-overs between the two fields (IR in the narrow sense and socio-economics policies/politics) are frequent.
- Social dialogue is very tripartite oriented at national and also at lower levels, due to the combination of strong social partners and the important role of state agencies in the determination of the outcomes of social dialogue, such as salaries, working conditions etc.. The existence of State control or strong State influence, which may stem from national traditions and history, has permeated the system.
- Centralisation goes hand in hand with tripartism. This centralising tendency is reflected in the legal system, but also in the practical behaviour of the actors: because of central guidelines for wages, little differentiation between sectors and little room for decentralised bargaining, the system remains centrally directed. The present multiplication of actors on both the trade-union and employers' sides may introduce new turbulence into the traditional way of solving issues centrally. The number of irregular strikes also indicates a certain number of tensions and lack of discipline within the organisations, making it difficult to adhere to the central guidelines.
- There is some room for autonomous bipartite bargaining, again centralised at national level, but also executed at sector level. But the scope available seems not to be much exploited: the *accords cadres* are "thin" and not wide in scope (minimum wage and generally moderate wage increases, in many cases equal to inflation).
- The density of social dialogue is paradoxical. On the one hand, the embeddedness of the traditional social partners in politics may suggest a highly corporatist State. At the same time, their power is not (yet?) reflected institutionally, where the partners, at least at the formal level, have limited presence. This may hamper the enrichment of their dialogue to cover issues other than industrial relations which might also contribute to a more inclusive state (employment, training, social security, etc.). Moreover, their absence

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from formal bodies to define economic and regional policies is limiting their field of action. The scope of their interventions is also limited, at least formally.

Finally, a major caveat: the picture sketched out above may change very rapidly. There are positive elements in place, such as the political will of the new government to go ahead with more intensified social dialogue. This may be further enhanced by the boost given to the partners in social dialogue by the award of the Nobel Prize. Meanwhile, externalities, such as security issues, and developments in neighbouring countries, may play negatively.

3.2. ***Possible projects to strengthen and promote bipartite and tripartite social dialogue***

Here after a short list of possible themes, which were suggested by the Tunisian actors. Obviously these suggestions have to be developed further if there is scope for developing such projects. It should be underlined that no extensive capacity assessment has not been undertaken in the framework of this study.

Target groups are in most cases the tripartite constituency, sometimes together, sometimes separate per group.

Themes for such projects

- Support for legal reform: comparative study and support (including study visits) for reflection on the legal architecture of collective labour relations, with the accent on, among other things, the issue of representativeness, a clearer articulation of levels of social dialogue, conflict prevention with a possible distinction between legal and interest conflicts, extension of the network/institutions for social dialogue nationally, and promotion of sector and local social dialogue.
- Institution building. This may concern the different institutions at different levels. National tripartite: development of NCSO, its constituent groups and the secretariat to ensure a smoothly functioning and well endowed (secretariat/data) NCSO. It may also concern the functioning of other tripartite committees in policy fields like employment, labour market institutions, training. It may also concern the establishment/functioning of bodies at sector level, including the labour inspectorate and its role as conciliator. The formats and methodologies may be training, mentoring and coaching, temporary overseas placements, support for development.
- Capacity building directly and via ToT (training of trainers). The three constituent parties are in need of further capacity building, with middle management and lower management as the target audiences, and with concentration on sector level and HR and TU representatives at selected company level. The themes are manifold and of a technical nature: active labour market policies, macro-economics, negotiation techniques, conflict management and prevention of wildcat strikes, social protection and especially unemployment protection, regional economic development, wage formation at lower levels including productivity concepts and their use in wage formation and diversification, better OSH management. The capacity building should be a mix of national/ international best practices and embed the training in institution building.

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- Public awareness campaigns around the added value of social dialogue, based upon facts, good experiences and aiming at trust-building.
- Research to better capture the reality of social dialogue at all levels, including analysis and evaluation of collective agreements, analysis and experience sharing around innovative practices.
- Informal economy. Here there is again a wide gap, both in terms of knowledge needs and awareness- motivation of actors, and needs for training on how to tackle the issue.

IV. JORDAN: REGULATIONS AND REALITIES OF SOCIAL DIALOGUE



Population: 6.5 million

GDP: USD 33.9 billion

GDP/capita: USD 5,174

1. INTRODUCTION

Understanding the regulation of social dialogue and related practices in any country is assisted by providing an overview of the economic, political and historical context of that country. Below is a brief overview of the recent political and economic context, as well as some basic data about the economic and employment structure of the country.

1.1. *The political situation*

Main issues

In 2011, large movements for greater democracy, but less violent than in other Arab countries

Some steps towards greater democracy have been undertaken, but the traditional power centres, under the direction of the King, remain largely in place and no organized opposition exists

Concern about political stability and security, partially due to a clandestine Islamist movement, and a region in full turmoil, remain central to Jordan's policies. Some observers believe that the political context thus inspires some suspicion about free trade unionism and consequently free social dialogue, which could be erroneously seen as a security risk.

The turmoil of the Arab Spring has largely passed Jordan and has brought less violence and disruption than in many other Arab countries.

The social protests started in **January 2011** when left-oriented persons and tribal leaders called for the dismissal of Prime Minister Samir al-Rifai's government as well as growing support among opposition groups for a "constitutional monarchy", which, among other things, would mean an elected prime minister and a significantly stronger

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parliament. Demonstrators complained mainly about high taxation, rising prices and the lack of jobs.

On February 1 2011, King Abdullah dissolved the government and appointed a new Prime Minister.⁶⁶ Within less than 2 years, 4 successive governments have followed.

Greater stability has returned under the government of Prime Minister Abdullah Ensour since October 2012.⁶⁷ He continued to lead the government after the **Parliamentary elections of 23 January 2013**. These were the first elections held under the newly adopted *Election Law* (2012).

Results showed that most of the candidates elected in the 150-seat Parliament were loyal to the government. The percentage of government opponents in this parliament is higher than in the previous one: 37 Islamist and other government opposition entered the 150-seat Parliament. Voter turnout was 56.7%. The Islamic opposition party, the Islamic Action Front, closely linked to the Muslim Brotherhood, is not represented in the Parliament, as it refused to take part in the elections.

Jordan has 30 different political parties, but apart from the opposition Islamic Action Front and neutral Jordanian National Youth Party, none of them play a real role due to a lack of organization and clear political platforms.⁶⁸

King	Abdullah II bin al Hussein
Prime Minister	Abdullah Ensour
Minister of Labour and Minister of Transport:	Nidal Katamine
House of Representatives:	

27 elected

(on closed national list):

Islamic Centrist Party 3,
Nation 2, National Union 2,
Stronger Jordan 2,

⁶⁶ Marouf al-Bakhit

⁶⁷ Since October 2012

⁶⁸ European Forum for Democracy and Solidarity, 2013

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Ahl al-Himma 1, Al-Bayyan 1,
Citizenship 1, Construction 1,
Cooperation 1, Dawn 1,
Dignity 1, Free Voice 1,
Labour and Trade 1,
National Accord Youth Block 1,
National Action 1,
National Current 1 (member
resigned in February 2013),
National Unity 1,
Nobel Jerusalem 1, Salvation 1,
The People 1, Unified Front 1,
Voice of Nation 1

Other 123

In practice, according to observers, whilst democracy has gained importance since the elections, **the power centres of the country have not fundamentally shifted**: the royal court and the government still dominate politics, with an important role for the security services in the background, and a far less important role for Parliament.

The major challenges for Jordan are to: ensure stability in an unstable region; deal with the refugee crisis; maintain economic growth and increase employment via structural reforms and have a controlled public finance policy.

In 2014 and 2015, Jordan continued to grapple with the economic, social, and security implications of the ongoing Syrian conflict. Public services and the national budget are under acute strain. With the help of the international community, additional refugee camps were created in Jordan, but the estimated 700,000 to 1 million refugees (20% of the population) obviously are a major challenge. The regional rise of jihadist groups has led to policies to tackle growing extremism within Jordan.

Some observers make the link between the political challenges and the governmental attitude to freedom of association: the absolute concern about stability explains the inflexibility of the government towards further liberalization of rules on assembly (and freedom of association to new unions, or to the public sector).

1.2. *The economic and social situation*

Main issues

Jordan's economy continues to grow steadily, albeit at a slower pace than in previous years. Major hubs of growth are certain industrial sectors aimed at export (and hence subject to competitiveness pressures) and real estate financing.

Public finances are under huge strain, due to external events (refugees – less tourist income) and structural handicaps (energy dependency and a strong public sector) and impede government efforts to implement active labour market policies.

Economic growth is insufficient to cater for necessary job creation.

Unemployment (and invisible unemployment due to low labour participation) is moderately high (12%); youth unemployment levels are alarming.

A large presence of refugees which may affect the labour market.

These contextual issues may not be the best external conditions for active social partners and social dialogue.

Jordan experienced robust growth in 2000–2009 (around 6.5% on average). It is among the most open economies in the Middle East. Tourism income, remittances, FDI flows, and external grants play an important role. Jordan imports most of the hydrocarbon products and grains it requires.

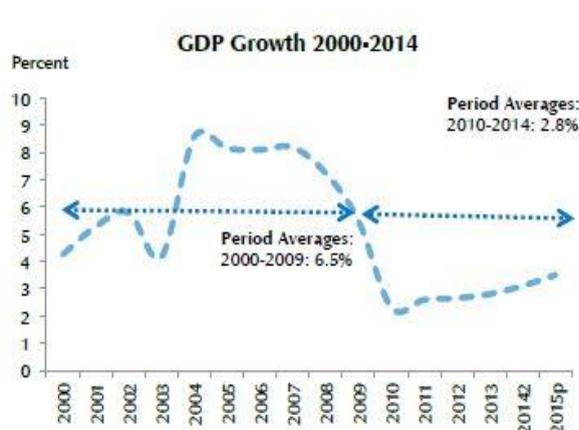
After a period of high growth, Jordan's economy is continuing to slowly but steadily recover from the spill over of the Arab Spring. These spill overs include Egypt's gas disruptions (forcing Jordan to import oil), conflicts in neighbouring Syria and Iraq and associated security incidents.

Notwithstanding these shocks, the real GDP growth rate reached 3.1% in 2014, up from 2.8% in 2013, and is expected to be at 3%-3.5% in 2015. On the supply side, recent growth was led by the construction, wholesale and retail trade, and finance and insurance sectors, with an upturn in the mining and quarrying sector. On the demand side, growth was predominantly fuelled by higher public investments, mostly due to earmarked GCC grants, continuing high levels of remittances, and a narrower trade deficit.

The following tables illustrate the growth trajectory, in comparison to neighbouring countries in the MENA region, and give some other basic indicators on the state of the economy.

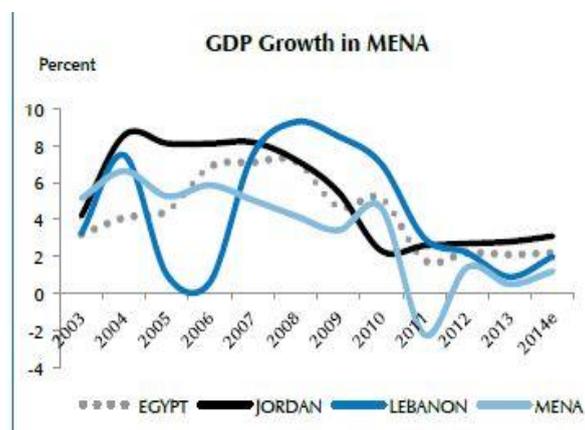
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Growth trajectory and growth rate in MENA Region



Growth trajectory significantly affected by external shocks yet steadily recovering

Source: Department of Statistics and World Bank staff



Jordan outperformed the MENA region in terms of growth rate
Source: World Bank Global Economic Prospects, January 2015

Jordan: Selected Economic Indicators, 2011 - 2015

(Percent of GDP, unless otherwise indicated)

	2011	2012	2013	2014	2015
GDP growth, percent	2.6	2.7	2.9	3.5	4.0
CPI inflation, period average, percent	4.4	4.6	5.6	3.0	2.6
General government balance ⁶⁹ , excl. grants	-11.7	-10.4	-13.7	-15.6	-9.0
Current account balance, excl. grants	-19.0	-20.2	-16.5	-14.2	-10.7
Fiscal financing needs, (excl. grants), US\$ billion ⁷⁰	3.8	3.7	5.2	6.6	5.1
External financing needs (excl. grants), US\$ billion ⁷¹	6.0	6.8	6.1	6.1	5.8
Public debt	70.7	80.2	85.8	90.0	91.1
External debt	21.9	23.6	26.4	30.0	30.0

⁶⁹ Starting in 2013, the government balance includes direct transfers to NEPCO.

⁷⁰ Budget deficit, excluding official grants, plus public external amortization.

⁷¹ Current account deficit, excluding grants, plus amortization.

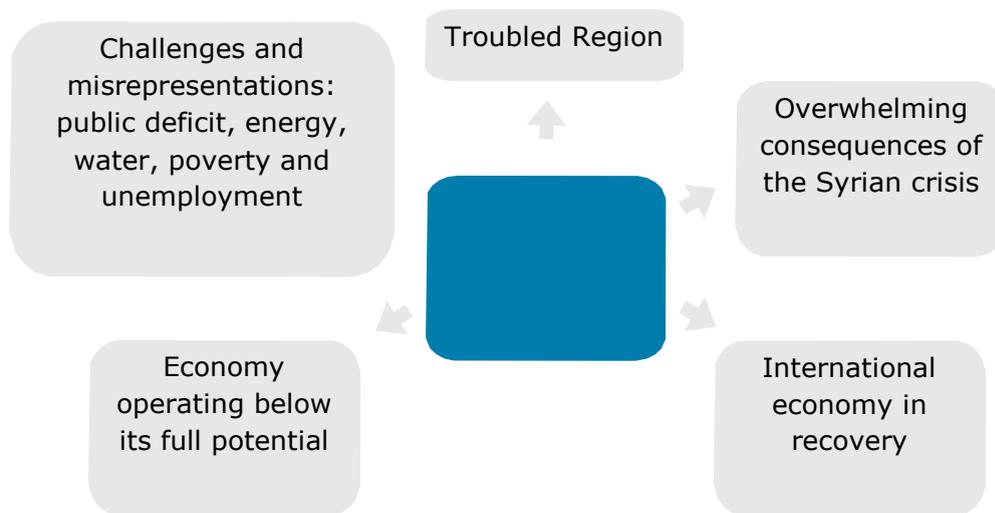
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Reserves in months of imports	5.9	3.6	5.1	5.8	6.1
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Sources: National authorities; and IMF staff calculations.

The most prominent risks and challenges are summarized as follows:

Current Challenges at the local, regional and international levels



Most issues are self-explanatory:

- Instability in the region and the effects of the Syrian crisis are obviously a major ongoing risk in several ways: risk of loss of the transit role which Jordan plays at present between the Iraqi economy and its port at Aqaba; major (further) influx of Syrian refugees, already at a very high level; negative effects on tourism (influxes declined by 75% in 2015) and investments in general; further disruptions of gas flows from Egypt, which could hurt current and fiscal accounts.
- Imbalances: Jordan faces a high public deficit and a large public debt (to a great extent domestically owned), partially due to expansionary policies in the public sector that tried to absorb labour market surplus. Thanks to large overseas budgetary support, and an agreement with the IMF, short-term solutions have been found, but this budgetary situation clearly puts a heavy strain on public finances and the capacity of the state to continue to conduct expansionary policies, including policies to increase employment. Its

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traditional dependency on imported energy is again temporarily alleviated by low oil prices, but remains structural.⁷²

- Unemployment is high, especially among the youth and well-educated, and continues to grow, also due to the influx of refugees in the (informal) labour market. The labour participation rate of women in particular is at a record low (13%), and even in comparison to the other MENA countries is extraordinarily low.
- There is also the high number of refugees, estimated between 750.000 and 1 Mio. Additionally, there are large numbers of foreign workers – non refugees. Figures are all estimates: about 300.000 non Jordanians have a work permit; the Minister of Labour mentioned the presence of about 1 Million illegal workers (newspaper Albawaba, January 3, 2013).
- Weaknesses in the economy: the key obstacles to inclusive growth relate to weaknesses in the business environment, labour markets, and institutions. Indicators in both the Doing Business ranking and the World Economic Forum Global Competitiveness Report progress slowly, and as far as the WB is concerned, even deteriorate.⁷³ Jordan's ranking on the perception of corruption has also deteriorated in relation to other countries over the past decade.

The authorities are taking steps to address these weaknesses. They have passed several laws to improve the business climate—including laws on investment and Public-Private Partnerships—and have taken steps to improve access to finance, including through mobilizing donor support for SME finance; drafting a secured lending and insolvency law currently under consideration in parliament; and working towards the licensing of a credit bureau.

At the same time, the authorities have established a committee to monitor the implementation of an ambitious agenda for governance reforms; they have also devised a National Employment Strategy (NES) aimed at addressing labour market challenges.

Moving forward, the IMF and the World Bank state that Jordan needs to accelerate its structural reform agenda. This includes (1) transforming the NES into an action plan with a concrete timeline and specific measures; (2) expediting the approval of pending legislation to create a more level playing field for investors; (3) prioritizing public investment toward maximizing its impact on growth and unemployment; and (4) working on making tangible progress toward transparency and accountability.

⁷² Unless experiments in fracking technology for oil exploration, supported by big Chinese investments, prove to be successful

⁷³ See below

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Business climate and Competitions

International business climate indicators show a medium position, which remains more or less stable. In the **World Bank Doing Business 2015-2016** Report, Jordan slipped from 111th place to 117th over 4 years, but still remains in a comparable position to other neighbouring countries.

	Jordan	Lebanon	Saudi Arabia
Doing Business World Bank			
2015-2016 Report			
For Jordan, also data	2015-2016	2010-2011	
<i>Ease of Doing Business Rank (out of 189)</i>	113	111	123
Starting a Business	88	127	114
Dealing with Construction Permits	103	92	130
Getting Electricity	56	43	116
Registering Property	98	106	103
Getting Credit	185	128	109
Protecting Minority Investors	163	120	134
Paying Taxes	52	29	45
Trading Across Borders	50	77	147
Enforcing Contracts	126	129	135
Resolving Insolvency	146	98	134

The **World Economic Forum** ranking gives a more detailed assessment of national competitiveness.

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Global Competitive Index ⁷⁴				
2015-2016 edition (out of 144)	Jordan	Egypt	Lebanon	Saudi Arabia
	64	116	101	25

A more detailed assessment of the main components of competitiveness is shown below, including a timeline comparison.

Jordan	Global Competitive Index ⁷⁵ 2015-2016 edition (out of 144)	Global Competitive Index ⁷⁶ 2010-2011 edition (out of 142)
Global Competitive Index	64	65
Basic requirements (40%)	75	57
Institutions	36	41
Infrastructure	70	61
Macroeconomic Environment	130	103
Health and primary education	54	65
Efficiency enhancers (50%)	67	73
Higher education and training	50	57
Goods market efficiency	39	46
Labour market efficiency	93	112
Financial market development	71	54
Technological readiness	76	62
Market size	76	84
Innovation and sophistication factors (10%)	40	65
Business sophistication	40	66
Innovation	40	68

74 Global Competitive Index, World Economic Forum 2015-2016 edition

75 Global Competitiveness Report, World Economic Forum 2014-2015 edition

76 Global Competitiveness Report, World Economic Forum 2010-2011 edition

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The **enterprise surveys** finally, respectively by the World Economic Forum⁷⁷ and the World Bank, give a more qualitative type of information with private sector perception of the main issues and obstacles they are confronted with in business climates.

Both surveys are similar in listing the 5 main issues:

- Access to finance,
- Tax rates,
- Political instability,
- Labour regulations
- Inadequate workforce.

Unemployment

The steady economic recovery has improved unemployment rates slightly, although this masks underlying structural weaknesses. While the unemployment rate dropped from 12.6% to 11.9% from 2013 to 2014, this improvement was not driven by increased employment but by an equivalent and worrying fall in the labour force participation rate from 37.1% in 2013 to 36.4% in 2014, the lowest average since 2007.

This was possibly driven by discouraged workers given the perceived competition from refugees. It could also be driven by jobseekers aiming for a public sector job who dropped out of the labour force given the fiscal consolidation programme, which has limited the public sector's traditional role as the major employer in the economy.

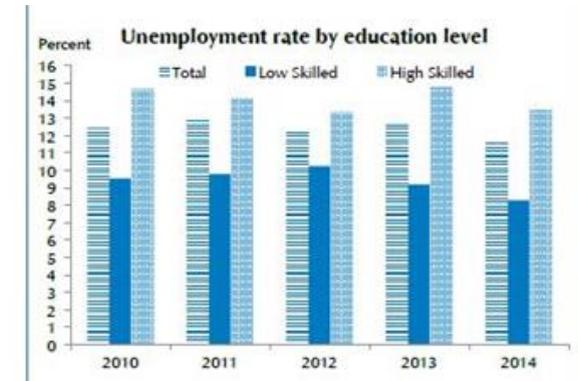
Women and youth are particularly affected by unemployment with 20.7% of women unemployed in 2014 compared to 22.2% in 2013, also accompanied by a 0.6% reduction in women's labour force participation rate to 12.6% in 2014 (the lowest in the region). Unemployment among youth remains high at 29.3%.

Another issue is the difficulty in absorbing the highly educated workforce. In many cases, emigration seems now a preferred career path for more educated Jordanian youth.

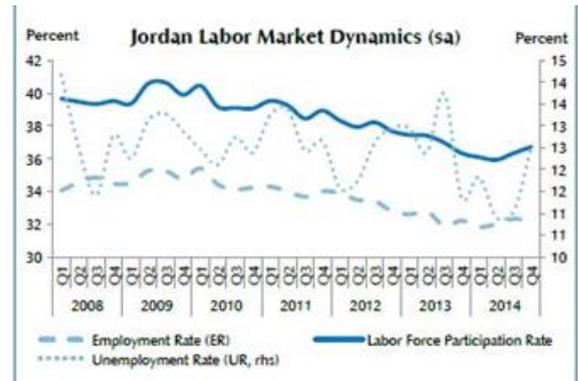
The prospects for employment levels in general are not very positive. To absorb the new youth cohorts, the number of jobs to be created would be, by 2020, around 400.000. The expected level of job creation, at present levels, falls very short of that objective.

⁷⁷ World Competitiveness report 2015-2016, and the World Bank Enterprise Survey Jordan, 2013

Unemployment rates, Skills range.



Source: Ministry of Tourism and World Bank staff calculations



Source: Department of Statistics

The IMF⁷⁸ uses a number of factors to explain the low level of employment and labour force participation. Skills mismatches; large public sector having led to misrepresentations about the labour market at the expense of the private sector; high reservation wages and inflated wage expectations amongst new entrants (eager to join the public sector), untapped talent (mainly expressed in very low female labour participation rates).

Measures to be taken, according to the IMF are: address skills mismatches, reform public sector hiring practices and compensation, unlock female potential in the labour market and move workers out of the informal sector.

Specifically on the problem of the refugee presence and the impact on employment / unemployment, very few data are available and they are contradictory.⁷⁹ The main contradiction concerns the so-called crowding out of Jordanians by Syrian refugees, where research, according to the source, presents highly contradictory conclusions, ranging from very limited effects (ILO) to very major effects.⁸⁰ The Chatham House report notes that apart from facts and figures, public sentiment has become much concerned about the permanency of such a large Syrian refugee presence, and about the perceived imbalance between the international focus on Syrians, compared to concern for similar aid to struggling Jordanians.

⁷⁸ Jordan – Outlook, October 2015

⁷⁹ See Carrion , D., Syrian refugees in Jordan: confronting difficult thrust, Chatham House, 2015

⁸⁰ Research by Jordanian Economic Social Council

1.3. ***Some structural features of the Jordan economic and social environment***

Main elements

The structural features of the Jordanian economy and employment are not particularly geared towards supporting a strong trade union movement and consequently lively social dialogue: many small companies; employment of nationals of neighbouring countries; a large informal economy; the service sector representing a large part of the economy, and finally an extensive public sector (where trade unionism is not allowed).

The employment structure with focus on the private sector

The data are limited.⁸¹ The total labour force stood at 1.4 million in 2012. In comparison to a total working age population of approx. 3.5 million, the total labour force participation is low: 36% in total (the lowest in MENA countries), and particularly low for women.⁸²

The structure of employment shows a large public sector (around 40% of total employment), and a private sector which is mainly composed of wage employment. The percentage of self-employed is low: only 9.0% of employed people work for themselves and 5.6% are reported as self-employed with employees (employers). These figures mirror a tendency among Jordan's population to favour job security over the risks of self-employment.

Sector-wise, most employment is in the services sector (about 77%), with a small agriculture sector (3%) and about 20% in the industrial sector (including construction), which nevertheless is responsible for most exports (94%). The most important sectors for industrial employment are textiles, foodstuffs, engineering and chemicals.

In terms of employment distribution, SMEs are the backbone of the Jordanian economy. Almost 50% of the Jordan workforce is employed by companies with less than 10 workers; 22% in companies with 10 to 50 workers, 31% in companies with 50 or more workers (of which the bulk is in larger companies of 100+).⁸³

⁸¹ See annex

⁸² Only 13%, which is about half of the average labour force participation rate of women in the MENA region

⁸³ See further details in National Employment Strategy 2011-2020, Joint publication government – ILO, 2011

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Finally, it must be noted that there is a very high level of non-Jordanian employment in the private sector, estimated at 40% (home countries Asia, Egypt, Iraq and Syria) .

This latter figure, when combined with the necessary condition of Jordan nationality to create unions, highlights the impact of such a condition.

Informal economy

The estimated total size of the informal sector in the Jordanian economy is between 26% and 30%.⁸⁴

The Social Economic Council itself estimates that, on the basis of a survey, the total size of the Jordan informal economy is 44%, including wage earners and self-employed workers in this (high) estimate.

Informal employment in the private sector, according to the same study, is concentrated in the following sectors: trade, manufacturing, transport and construction.

Skills levels in the informal sector are, as to be expected, lower than in the formal sector: 71% have not completed secondary education; nevertheless, 13% also hold a BA or higher.

There is interesting data available on the wage distribution between the formal and informal sectors. These data (2010) slightly contradict what would be expected: it indicates that wage levels in the informal sector, according to skills levels, hardly differ from informal to formal sectors: for the unskilled, the wage differential is about 20% and this difference fades for skilled workers. In other words, informal workers earn as much or almost as much as formal workers, from secondary education level onwards. Clearly working conditions are worse for the lesser educated.⁸⁵

⁸⁴ IMF Regional Economic Outlook, Middle East, quoted in ECOSOC Jordan, The Informal Sector in the Jordanian Economy, 2013

⁸⁵ e.g. Paid leave

2. SOCIAL DIALOGUE AND COLLECTIVE BARGAINING IN LAW AND IN PRACTICE

2.1. *Freedom of Association.*

Although Jordan has not ratified ILO convention no. 87, Freedom of Association is provided for in national legislation.

There are however important limitations: not in the public sector; private sector only, non- Jordanians cannot establish a trade union.

In practice, there are sometimes reports of anti-union behaviour.

The level of unionization in the private sector is estimated at 10-12%.

The legal framework in national and international law

National law

Trade union freedom is guaranteed in the Constitution and labour law.

Art 23 (f) of the Constitution states that free trade unions may be formed within the limits of the law.

The Jordanian Labour Code⁸⁶ provides workers the freedom to organize themselves in a trade union, in accordance with the provisions of the Code. Any worker in such trade shall have the right to join a trade union.

It is also said that no employer shall make the employment of a worker subject to the condition that he does not join a trade union, or withdraw his membership.

In these provisions, there are no distinctions or conditions for workers' freedom to join trade union related to nationality or employment in certain regions. This implies that formal limitations to trade union membership in certain Industrial Zones (QIZ) or for migrants are not applicable anymore.

However, to be a founding member⁸⁷ one needs to be Jordanian, and 21 years old. To

⁸⁶ Section 97

⁸⁷ See further

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apply for membership, a minimum age of 18 is required.

In addition, to create a company union, 50 members are required – which is a difficult threshold to reach in a small company.⁸⁸

Furthermore, this trade union freedom applies in the private sector, not the public sector, where civil servants still face major limitations on trade union membership.

International conventions

Jordan has ratified 7 out of the 8 Fundamental Conventions of the ILO. The only fundamental Convention it has not ratified is [C87](#) - Freedom of Association and Protection of the Right to Organise Convention, 1948. Jordan also ratified [C144](#) - Tripartite Consultation⁸⁹ Convention, 1976 in 2003 and [C135](#) Workers Representatives, in 1979.

Below, we briefly review the ILO's compliance comments.

Observations (CEACR) - adopted 2014, published 104th ILC session (2015)

Right to Organise and Collective Bargaining Convention, 1949 C. 98) - Jordan (Ratification: 1968)

The Committee notes the observations made by the International Trade Union Confederation (ITUC) in a communication received on 31 August 2014, which refer in particular to the trade union rights of public employees, domestic workers and agricultural workers.

Articles 1–6 of the Convention. Scope of the Convention. Foreign workers.

In its previous comments, the Committee had noted that Law No. 26 of 2010 no longer required Jordanian nationality for membership in trade unions and employers' associations, but that founding members, and maybe even union leaders, should be Jordanian nationals. The Committee notes the Government's indication that foreign workers are not prohibited from becoming union leaders, and that employers' associations and trade unions formulate their own conditions for the election of leaders. The Committee requests the Government to take the necessary legislative

⁸⁸ See further

⁸⁹ International Labour Standards

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measures to ensure that foreign workers may become founding members and leaders of trade unions and employers' associations.

Domestic and agricultural workers.

In its previous comments, the Committee raised the issue of coverage by the Labour Code of domestic and agricultural workers. The Committee notes with satisfaction that the 2008 amendments to the Labour Code extend protection to domestic workers and agricultural workers especially, according to the Government, in matters relating to the provisions of the Convention. The Committee requests the Government to indicate whether cooks and gardeners enjoy, through the 2008 amendment, the guarantees set out in the Convention and whether by-laws on any specific categories of workers, including agricultural and domestic workers, cooks and gardeners, have been issued in accordance with section 3 of Act No. 48 amending the Labour Law.

Minimum age.

In its previous comments, the Committee had noted that section 98(f) of the Labour Code specifies that trade union members must be at least 18 years of age. The Committee notes the Government's indication that the required age was specified in this regard in line with national legislation. The Committee again requests the Government to ensure the right to organize to minors who have reached the legal age for employment, either as workers or trainees, and to provide information on measures envisaged or adopted in this respect.

Article 2. Protection against acts of interference.

In its previous comments, the Committee had requested the Government to take measures in full consultation with the most representative organizations of workers and of employers in order to strengthen the sanctions against interference under section 139 of the Labour Code, as it had considered that fines between 50 and 100 Jordanian dinar (JOD)⁹⁰ did not have a dissuasive effect. Noting the Government's indication that it will consider this matter when amending the legislation, the Committee hopes that the Government will soon take the necessary steps to amend the legislation in this respect.

Articles 4 and 6. Right to collective bargaining.

In its previous comments, the Committee had requested the Government to provide information concerning the right to collective bargaining in the public sector. The Committee welcomes the Government's indication that recent amendments to the

⁹⁰ USD 70–140

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Constitution have authorized the right to organize and to collective bargaining in the public sector, and that more than one sector in the civil service has been regulated. The Committee also notes the Government's indication that a draft law on trade union work for public sector employees has been prepared. The Committee requests the Government to provide the recent constitutional amendments and the draft law on trade union work for public sector employees, and expresses the firm hope that the national legislation will recognize explicitly the right to collective bargaining in the public sector.

The comments also concern the Convention on *(C.144) and more in particular Article 5(1) of the Convention. Effective tripartite consultations.*

In reply to previous comments, the Government recalls that the application of the Convention's provisions is ensured through national legislation, particularly the Statute of the Tripartite Committee, which was issued pursuant to section 43 of the Labour Code. As regards the frequency of the meetings, the Government specifies that, by virtue of section 7 of the above-mentioned Statute, the Tripartite Committee meets three times a year or whenever deemed necessary. The Committee notes that no information is available on meetings held during the period covered by the report. The Committee invites the Government to provide detailed information on the content and outcome of the tripartite consultations held on matters regarding international labour standards covered by the Convention. Moreover, the Committee once again draws the Government's attention to the possibility of availing itself of ILO's technical assistance to address the implementation gaps of the Convention.

Finally, also the FOA Committee was confronted with 1 case, i.e. *Case No 2977 (Jordan) – on recognition of the Independent Trade Union of Phosphate Sector Workers (ITUPSW) and Independent Trade Union of Workers in the Jordanian Electricity Company (ITUWJEC).* The complainant organizations denounce the refusal by the authorities to register them in application of the labour legislation and regulations, which they consider are not in conformity with the principles of freedom of association; the ITUWJEC also alleges acts of discrimination in favour of non-strikers, the refusal by the employer to recognize the union and the denial of its right to collective bargaining.

Freedom of Association in practice

Trade unionisation

The OECD⁹¹ estimates that between 10% and 30% of the working population is in trade unions.

⁹¹ Investment Policy Review Jordan 2013, referring to data Freedom House report

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Figures cited by a researcher (Phenxi Center) estimate the total number of trade union members to be 100,000 to 120,000 members in the private sector out of 1 million: this would bring **unionization to a level of 10% to 12%**.

Most trade union members are skilled workers, concentrated in big companies, and are considered “insiders”, as opposed to a type of trade union membership concentrated on the lower skilled.

Some commentators mention actual discriminatory practices against trade unionists, such as acts of dismissal when workers want to start unions at company level. An ILO study⁹² mentions a few incidents whereby employers discouraged trade union membership at some electricity companies, or where workers aiming to create a company trade union were dismissed.

At the same time, when there are company agreements,⁹³ trade unions tend to favour union dues clauses, whereby the company pays (with written agreement of the worker) the union dues directly to the union.

Employers’ level of affiliation

Membership of the Industrial Chambers (covering the industrial sector) is free and not obligatory. Many larger companies are members. The total number of companies that are member of the JCI (Jordan Chamber of Industry), or, indirectly via membership of one of the industrial regional chambers, is estimated at 1,800 companies (out of a total of about 18,000 industrial companies). With respect to employment coverage, JCI member companies cover around 60%-70% of all employees.

Membership of the Chambers of Commerce is obligatory. However, the Chambers of Commerce are relatively inactive in social dialogue.

⁹² Scoping study for Pilot Collective Bargaining Initiative, 2015

⁹³ Very limited numbers – see below

2.2. ***Social dialogue actors: Trade unions and employers' organizations: legal framework and situation in practice***

Main elements

A legal framework is provided to regulate trade unions and employers' organizations. For trade union, it is centralizing and implicitly recognizes only one central trade union

In practice, trade unionization is rather limited and estimated at 10%. Employers' unionization is much higher, at least in the industrial sector.

On the union side, there is one recognized central trade union, the GFJTU, which includes 17 sector unions. The GFJTU is not very strong or well equipped; it is discreet and embedded in traditional policies. An independent trade union movement is in the making but at present is very weak.

On the employers side, the JCI, representing industry, is the main actor. It has greater capacity, but its major concern does not lie in social dialogue.

The basic Labour Code of 1996 was reformed in law no. 82 of 15 July 2010, especially on a number of collective labour relations issues. At present, a new labour law reform is being considered by the Jordanian Parliament. This reform, however, concerns individual labour law rather than collective labour law, but it is not excluded that some collective labour relations issues will be tackled too. The speed of reform is slow nonetheless.

The legal framework for trade unions and employers' organizations– legal status⁹⁴

Trade Unions

Trade Unions are defined as an organization of workers in a trade, formed in accordance with the provisions of the Code. Workers are defined as any person, male or female, performing work against remuneration for employers and under his directions including minors, trainees and persons under a trial period. In other words, in principle every worker can become a member of a trade union.

Whilst membership is regulated as per the rules above, the creation of a trade union is subject to additional rules. The creation of a trade union (e.g. at company level) requires at least 50 founding members in the same occupation. If, as in Jordan, trade

⁹⁴ Chapter XI, sections 97- 119

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unions start their establishment at company level, and are not established centrally by a sector union, it is not easy to reach the threshold of 50 founding members in a smaller company. Furthermore, the nationality condition for founding a trade union is problematic, given that around 50% of the workforce is not Jordanian.

It is not permitted to establish a trade union whose activities include the performance of any activities based on race, religion or sectarianism.

The law also sets the objectives of a trade union: to protect the interest of workers, to improve labour relations including by engaging in collective bargaining and concluding collective agreements, to contribute to avoiding individual and collective labour disputes, to provide health and social services and to raise the professional, economic and cultural level of workers.

Additionally, it should be noted that the so-called occupations in which trade unions can be active are fixed. The tripartite committee specifies the groups of occupations in which no more than one general trade union may be established. The result of this process is that the freedom to establish a union, even at sector level, is strongly impeded and at present only 17 (sector) trade unions exist.⁹⁵

Governance of the trade union: sections 100 et seq. provide specific rules on governance, and the relation of the sector trade union with the general confederation of trade unions: it is the General Federation that draws up its statutes and a number of obligatory provisions on internal governance, such as names, purpose, union branches, members' rights, etc.

Currently, there are only 17 trade unions, and that figure is fixed. It is at the level of the tripartite committee that this figure is considered and can be amended – clearly, the tripartite committee composed of existing unions may be reluctant to change that. An appeal is possible before the court. Up until now, however, it remains fixed at 17. Sector unions can create additional company unions.

Furthermore, the registration and continuation of trade union activities is subject to precise rules and procedures, regarding the deposit of data at the start, and the continuous maintenance and submission of records on financing, budget, registrar, etc.

The notion of representativeness is not defined. The Labour Code regularly mentions the General Federation of Trade Unions, but does not specify its status, or the conditions for representativeness.

⁹⁵ See also here after

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Not respecting these rules may lead to dissolution of a trade union (and/or an employers' organization); the consequences of dissolution are sanctioned by penal provisions.

To summarize, the legal system is strongly centralizing and gives the General Federation a de facto monopoly role, and provides, via the registration system, a certain degree of state control. The legal framework in other words favours the status quo and makes the creation of additional unions very difficult.

Employers' organizations

Section 108 of the LC, modified by section 31 of the 2010 law, mentions the possibility of employers organizing themselves in employers' organizations. An association is defined as an organization representing employers.

The creation of an employers' organization requires at least 25 members. Similar to trade unions, the founding member needs to be Jordanian, a minimum of 21 years of age and not be convicted.

The same procedural rules as for trade unions – publication of budgets, etc. - apply to employers' organizations. There are no rules or specifications on the notion of representative of employers' organizations.

Trade unions and employers' organizations in practice

Trade Union Organizations:

- ***General Confederation of Jordanian Trade Unions (GFJTU)***

There is only one trade union at central interprofessional level, i.e. the General Confederation of Jordanian Trade Unions (GFJTU).

At present, it covers all 17 (sector) unions.⁹⁶

The total number of members as communicated by the trade union is 120,000; this is

⁹⁶ For more detail see Friedrich Ebert Stiftung. 2014, The structure of the Jordanian labour movement

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lower than the numbers presented as membership levels in previous publications.⁹⁷ The GFJTU is a member of ITUC, and is led by Mr Mazen Al-Ma'ayta, who is also president of the Union of Private Education Employees.

The capacity of the central union is limited: 7 staff, budget of around JD 200,000 (USD 280,000). Others estimate the annual budget to be higher (up to USD 500,000). Nonetheless, a large part of the income is subsidized by the State. Membership fee income is limited; in principle, all 17 unions should transfer 10% of their membership fees to the main Trade Union (GFJTU), but that is not done. Buildings are also made available to the trade union by the government.

The total number of staff members in all unions together (17 sectors and GFJTU) is 50.

- * *Power:* In spite of the limited budget, capacity and attributions, the trade union is not without power. There are important relations between the Prime Minister and the trade union leader informally, and some examples have been given of the informal power of the trade union.
- * *Governance:* on paper, the union has the traditional decision making structures, such as a general council and an executive committee. In practice, it must be noted that the same leadership has remained in power for 25 years and that real elections, according to some sources, have not taken place in a long time.

At the level of the sector unions, there are major differences between the affiliated unions in terms of size: they range between 175,000 members⁹⁸ and many other unions have a membership varying between 1500 and 8000 members. Differences are also accentuated in other aspects: decision-making structures;⁹⁹ activities;¹⁰⁰ between more politically oriented unions (banks, textile, electricity, food) and more apolitical ones (municipalities, air transport, railways, and general services).¹⁰¹ At sector level, the unions are stronger in certain sectors such as banks and newly privatized big companies, and rather weak in other sectors.

- * *Political links:* since there are no real political parties in Jordan, there are clearly no formal links between the trade union movement and political parties as such. As already mentioned, there is a certain informal influence by the central trade union leadership on the highest decision-making powers in the country.

⁹⁷ 200.000-250.000

⁹⁸ Union of Land Transport- official figures, which in reality are probably lower

⁹⁹ From simple structures to more sophisticated decision-making structures, obviously varying with size

¹⁰⁰ Ranging from unions mainly organized for small and medium sized companies, up to those who are mainly active in modern larger scale business such as banks, electricity, food, textile

¹⁰¹ Friedrich Ebert Stiftung

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- * *Views on social dialogue:* In interviews, representatives of the GFJTU emphasized that they consider social dialogue to be important, but that many challenges are faced at present in Jordan. These affect the possibility of pushing social dialogue too far, as it may be dangerous in the present situation (reference to the security situation). They also point to limited bargaining power due to the surplus labour force available at present in the labour market, linked to the presence of many refugees. Furthermore, they point to important challenges in the lack of political will and lack of interest and awareness amongst employers of the benefits of social dialogue. The GFJTU hence is awaiting initiatives from the government to revitalize the social dialogue.

Content-wise, the main problems to solve are, according to the GFJTU: better wages and minimum wages, sustainability of jobs, and finally social security and in particular health services and the system of special health insurance.

- **Independent Unions (FITU-J)**

Jordan has an independent trade union movement, which is coordinated by the so-called Federation of Independent Trade Unions – Jordan. Outside that network, there are also a number of totally independent trade unions active at company level in some bigger companies and in the education sector.

This new trade union movement is currently weak. According to the Chairman who was interviewed, membership is around 2,000 to 3,000 members. There are possible hundreds or thousands of other “members” of company unions, although they are not recognized as unions, and may only have a loose link to the FITU-J. Legally, however, these independent associations of workers are not recognized as a trade union; a union can only exist in the 17 occupations and the creation of a new union needs the agreement of the GFJTU and registration at the Ministry of Labour. This implies that independent unions have many difficulties in getting organized, receiving membership payments, opening accounts, etc.

Observers say that the government has no intention of changing this situation, partially due to the lack of pressure,¹⁰² but also partially because it is feared that multi-unionism would create more instability. It is also said that employers are not in favour of multi-unionism.

The FITU-J itself is at present based in a few sectors and some large companies.¹⁰³ An ILO study,¹⁰⁴ covering three sectors (Electricity, Construction and Pharma) also mentions that several large companies have local committees of workers with several hundred members per sector. They sometimes work together with the FITU-J.

The FITU-J has no staff and operates with volunteers; it has no formal offices either. It

¹⁰² Linked to the weakness of the independent labour movement.

¹⁰³ Education, Electricity, Mining, Agriculture, Pharma.

¹⁰⁴ Scoping Study for Pilot Collective Bargaining Initiative, ILO, 2015, mimeographed

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was established following several failed attempts to change the GFJTU from inside.

It has no formal or informal involvement with employers' organizations.

It has no political links. There is no link either with the Islamic movement; the latter is concentrated on the middle class and educational sector, and at present does not appear inclined to use the labour agenda as a way to increase its political power.

Its programme is rather straightforward: try to establish FOA, which would allow this organization to become a real recognized trade union; achieve better wage increases; secure jobs and fight unemployment.

The ITUC tries to ensure some informal links with FITU-J and has attempted some collaboration schemes between the GFJTU and the New Labour Movement.

Employers' organizations:

- *Jordan Chamber of industry (JCI)*

The JCI is the apex organization of the 3 Regional Chambers of Industry of Jordan,¹⁰⁵ established under the Chambers of Industry Law no. 10 of 2005. Internationally, it is a member of the International Organization of Employers.

The total membership is around 1800 companies, spread over the 3 Regional Chambers. It is limited in scope to the industrial sector. The main sectors are: textiles, paper, foodstuffs, engineering, construction, plastics and chemicals.

The membership of 1800 companies is out of a total of around 15,000 companies active in the industrial sector (of which, however, only around 1800 qualify as industrial - the rest qualify as handicrafts), and total employment in industry of around 200,000 (of which 150,000 is in industrial companies). The degree of representativeness of the JCI is hence very high in terms of the number of employees and the turnover of the industrial sector (estimated at around 50% - 70%).

The JCI has a budget of about JD 600-700K (USD 1 million) and would hence largely surpass the trade union budget (varying, according to estimates, between JD 200,000 and 500,000). The budget is mainly derived from handling of certificates of origin (where they have a role as a Chamber); 5% of income comes from membership fees, via regional chambers.

¹⁰⁵ Amman, Irbid, Zarqa

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The JCI employs 27 staff, of which many work on an on-project basis and/or with project funding from international or governmental organizations. At the sector level, a total of around 50 employers' (sector) unions are active. They are very fragmented over many subsectors, and have few staff or activity in social dialogue.

The degree of autonomy vis à vis the government is unclear. It has voluntary membership, but the main staff is nominated at government level. The heads also seem to be closely linked to the government. As an example, the previous president is now the Minister of Industry.

The level of power is substantial, it is said: through personal links between company owners and the political centres of power (a number of company owners are independent MPs), and informal channels. An example that suggests the direct influence of the Chairman of the JCI on fiscal policy is that a proposal to increase taxes was blocked efficiently by personal intervention by the Chairman.

The scope of activities of the JCI is very wide, and focuses on issues other than social dialogue, i.e. industrial policies, trade, export, production standards, technical support, SME support, taxes, foreign trade relations between industry and other countries. Social dialogue is limited: there is no special department for it, or a specialized staff member.

During interviews, representatives of the organization had a positive view on social dialogue. However, they highlighted the many challenges that face social dialogue in Jordan: no political will and the weakness of trade unions. Their approach also implied that social dialogue was not seen as a priority issue; the existing dialogue was confirmed as interesting, but they also underlined that they are not pursuing this social dialogue very actively at present (implying its limited importance at present).

- ***Jordan Chamber of Commerce and Agriculture sector***

In addition to the JCI, the Jordanian Chamber of Commerce and the Agriculture sector are represented in the national social dialogue.¹⁰⁶ There have been no interviews scheduled with these partners. Comments by other partners – the JCI and GFJTU – clarify that social dialogue is only a minor issue and concern for both organizations, which mainly represent non-unionized parts of the economy (trade and agriculture).

¹⁰⁶ Economic Social and Tripartite Committee

2.3. ***Institutions and support structures for social dialogue at different levels***

Jordan has developed some institutions to conduct social dialogue at national level, such as the Economic and Social Council, and the Tripartite Committee: in practice, they are not very active or influential, and their scope is limited.

At sector and company level, with the exception of one particular sector and some big companies, there is little or no social dialogue, or collective bargaining.

2.3.1. At the national inter-professional level

National Economic and Social Council

A National Economic and Social Council was set up in 2007. Its establishment was pushed by the EU, and by some other bilateral sponsors (Spain).

It has 44 members, using a *four-tier* group system, each with 11 members:

- Group 1: Ministers and their representatives¹⁰⁷
- Group 2: Employers¹⁰⁸
- Group 3: Workers¹⁰⁹
- Group 4: Others¹¹⁰
- Soon 5th Group: Youth¹¹¹

The composition and the functioning of the tier system are specific. On the one hand, the Council is split into groups; on the other hand, members are nominated by the Government as individuals for their personal qualities/skills. This implies that the Council is not composed of organizations, but of individuals. However, this more organizational–institutional approach is strengthened via the *Bureau*, where a chief representative of each group has a representation. Since the *Bureau* seems to make the more political decisions, one can say the council has a strange mix of individual

¹⁰⁷ Finance, Labour, etc.

¹⁰⁸ Mandates are given to individual representatives and not a certain number of organizations

¹⁰⁹ This includes the chairman of the GFJTU, and some other high-level sector union representatives, as well as some individuals

¹¹⁰ High-level individuals dealing with human rights, economics professors, etc.

¹¹¹ Includes representatives of the youth and some academics.

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and collective representation.

The frequency of meetings is not determined: the Council meets on average every two months, and may also – as it does – maintain more frequent working relations via its several Committees (Economic Policy, Social Policy etc.). At the same time, the frequency of the meetings even of these committees is not such that one could qualify the council as the centre or the hub of up-to-date negotiations or social dialogue.

The secretariat has several staff and also a large budget for (outsourced) studies; it produces extensive and authoritative studies and publications.¹¹²

Its formal roles and attributes are very broad in scope. Generally, the Council undertakes research, policy analysis and policy advice. Content-wise, the scope is very broad and covers many very diverse topics such as social policy, apprenticeships, tax and fiscal policies, regional development, energy, water crisis, educational policies, refugees, labour market needs, etc. on which the council works.

As far as its real role in social dialogue is concerned, the perspective of the Council's role and significance differs depending on who one speaks to.

Some underline its broad mandate and its activity level¹¹³ and the fact that the Council's recommendations are followed by the Government in many instances.¹¹⁴ Others, whilst not denying these points, stress the fact that the Council is more a high-level think tank, with a highly consensus-driven approach, whose policy recommendations very often are so general in nature that real policy influence cannot be expected.

As far as technical capacity is concerned, interviewees stressed the high-level capacity of members and their staff to conduct negotiations and discussions. Lack of influence hence may not be associated with lack of technical capacities.

The Tripartite Committee (sections 52-54)

A so-called Tripartite Committee is provided for in section 52¹¹⁵ of the Labour Code. It is responsible for fixing the minimum remuneration either in general or for a particular

¹¹² See Economic and Social Council, reports of activity 2012, 2013, and 2014.

¹¹³ And high level quality studies and diagnostics

¹¹⁴ A figure of 50% is cited

¹¹⁵ Modified in 2010

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area, region or occupation. It must take into account the cost of living indices issued by the authorities. It must decide unanimously, otherwise the Minister decides.

It is a tripartite structure, with 9 members, which represents the government, employers and trade unions. Each group has three representatives, e.g. high level representatives of the 3 parties, including the President of the GFJTU, JCI, and JCC.

The secretariat is not independent (run by the Ministry of Social Affairs), nor has much staff and acts as a logistical secretariat.

The frequency of meetings is limited, and it works on an *ad hoc* basis. Its main role is to propose minimum wage increases; it may and has occasionally tackled other issues such as labour legislation amendments.

The scope is hence limited, and does not concern wider socioeconomic policies: employment, skills, not to mention economic policies. Its powers are also formally limited: there is no obligatory pre-consultation on draft legislation, no official advisory role, or a link between the Tripartite Committee and the legislator.

Nonetheless, it is unclear whether the network, created via the Tripartite Committee, does not serve also as an informal network in which social partners are more closely involved in policymaking, albeit on an informal basis. Some commentators mentioned during interviews that some legislation or major policy deals were influenced by the partners¹¹⁶ and referred to this to highlight the influence of the informal network around the TC.

As far as formal operation is concerned, the comments indicated that the work was done with high-technical skill¹¹⁷; this suggests that the technical capacity of the social dialogue - when taking place - was sufficiently ensured.

Other Committees

Committee for national dispute settlement (sections 121-122)

As part of the collective dispute settlement regulations (see below) a central level conciliation and arbitration board exists, composed of a tripartite representation. It is supposed to act in conflicts affecting enterprises or sectors in several regions together, or when large public sector companies are involved in a collective dispute.

¹¹⁶ e.g. tax reform – opposed and blocked partially by employers; e.g. labour law reform partially blocked before Parliament was to decide

¹¹⁷ e.g. minimum wage setting was done on the basis of carefully prepared data and inflation projections

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Commission for Extension of Collective Agreements (section 43)

Section 43 of the LC provides for a Commission for the extension of collective agreements to all employers in a certain branch or region. Its operation is very limited, as hardly any agreements at sector level are concluded.

iii) Social partners involvement in social security policies and management of social security institutions

The social partners are represented in the National Social Security Board. During discussions, no link was made between this role and the capacity or influence of the social partners.

Social partners' involvement in labour market issues: training boards etc.

The High Council for Human Resource Development was approved in May 2011 and includes tripartite representation. However, once again, serious involvement of social partners in employment policy or skills policies was not mentioned during interviews.

Finally, it should be noted that **bipartite social dialogue at central level does not exist**. All social dialogue activities are conducted on a tripartite basis

2.3.2. Social dialogue structures at sector or regional level

Legal framework

Permanent structure for sector collective bargaining

There are no permanent structures for social dialogue or collective bargaining at sector level.

Remuneration Authority (section 54)

This body can be set up under the provisions of section 54 (1), modified by the law of 2010. It is said that a body, the Wage Authority, can be set up for a region, consisting of several labour experts, to examine claims related to underpayment, overtime, unlawful deductions etc. The text seems to suggest this body is rather a compliance than a negotiation body.

Social dialogue and collective bargaining at sector level in practice

Sector level social dialogue and collective bargaining are quasi-absent in Jordan.

The number of sector level agreements is extremely limited. As far as we know, there are two sectors in which there are agreements: the textile sector¹¹⁸ and the restaurant sector.

An ILO study which did a prospects study in three sectors (electricity, construction and pharma) with some level of unionization (as opposed to other sectors with low unionization), saw little immediate prospects for the development of sector level bargaining in these sectors, with the exception of the electricity sector.

An observer estimated the **total collective bargaining coverage** – including company level bargaining which we will look at later- at a level of about **5%** for the whole private sector. If, however, the textile agreement is included, coverage would be higher and reach around **10%**.

Also, other forms of social dialogue at sector level - not reaching the stage of collective bargaining – are extremely rare. When social dialogue takes place, it is under the form of *ad hoc* dispute resolution, with a reactive approach, limited to the issues raised by the case.¹¹⁹

Since the agreement is almost unique in Jordan, and for that matter in the Middle East, we will go briefly into more detail about the textile sector agreement.

The sector level agreement was concluded in May 2013, for 3 years; at present, the extension process, for the prolongation of the agreement, is underway.

The textile-garment sector employs about 50,000 workers, mainly migrant workers. The agreement was strongly supported by the ILO¹²⁰ in a specific context:

the conclusion of a Free Trade Agreement between the US and Jordan, which provided preferential access of Jordan garment and textile products in the US market, under the condition of Decent Work practices.

the conduct of national minimum wage negotiations, which excluded the textile sector from the application of the national minimum wage system (at JD 190 per month).

the presence of mostly migrant workers who for a very long time suffered from

¹¹⁸ Which came about under ILO auspices – see below

¹¹⁹ Mostly at company level, and then maybe referred to a sector panel – see disputes mechanisms

¹²⁰ Better Work Programme

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unequal treatment in Jordan.

The agreement was concluded between the General TU Federation for Textile, Garment and Clothing Industries, and the sector employers' federations.¹²¹ It is a general agreement covering and providing for regulation of working hours, improved Occupational Safety and Health (OSH), equal treatment of (migrant) workers, union dues check off, settlement mechanism to deal with conflicts, and wages at the level of minimum wages in Jordan (JD 190) and some benefits. Trade union presence at company level is also provided for.

In a brochure¹²² this trade-off is further explained. Benefits for workers are listed as follows: improvement of working conditions; giving workers better representation through the union. Advantages for employers: establishment of dispute settlement procedures at factory and sector level with a representative partner which helps to decrease incidents of strikes; fostering a more positive working environment to also boost morale and productivity, greater predictability of wages and cost, allowing more efficient planning of production.

As already suggested, the situation in other sectors, and the prospects of quickly developing a sector-level approach, are considered more limited. The main impediments, as listed in the ILO study examining these sectors, are: lack of interest by employers in engaging with trade unions in general; low unionization rates; lack of representative employers' organizations (construction industry); overrepresentation of migrants and informal workers (construction) which make the conclusion of a CBA difficult.

2.3.3. Social dialogue structures at enterprise level

Legal framework

Committees for occupational health and safety (section 85)

In this section, the Council of Ministers is given the possibility of setting up occupational health and safety committees and appointing supervisors for public and private enterprises.

This provision was implemented by regulation no. 7 of 1998 on forming OSH committees and supervisors. It provides that every corporation with 50 workers or more must form a safety and health supervisors committee.

¹²¹ Association of Jordan Exporters in Garment and Association of Factories in Garment

¹²² See ILO, Collective Bargaining Agreement in Jordan's Garment industry, 2013

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It includes the company director, the OSH supervisors, equal number of department heads and worker representatives and the company doctor.

It must meet at least once a month.

It is listed here under a social dialogue instrument. Looking at the legislation and also at the practice, it is essentially conceived as a technical committee in which technicians and specialists play a major role (and ensure the main representation).

It has not been used as a vehicle to start social dialogue on OSH, or other issues in industrial relations at company level.

Collective bargaining committees in companies + 25 workers (section 44)

In this section¹²³ it is provided that in enterprises employing 25 workers or more, the employers and representatives of workers shall hold periodic meetings at least twice a year in order to organize and improve working conditions, to enhance workers productivity and to negotiate other related matters.

Facilities for Trade Union representatives (sections 107-108)

In two places, the labour law refers to the role of trade union representatives at company level:

Section 107 modified states that the Tripartite Committee has to lay down basic conditions and criteria to enable trade union representatives to discharge their duties, including the conditions for the reduction of working hours or for full time union work, taking into account the possibilities for the enterprise and the number of persons employed.

Section 108 modified states that the employers shall not take any action against any trade union representative on account of his union activities.

Both sections seem to suggest the presence of trade union representatives at company level, but it is not clear if this is legally imposed, what their roles are etc.

Social dialogue at company level in practice

No precise data are available on the question if any social dialogue and/or real collective bargaining activities are taking place at company level.

¹²³ Modified via section 15 of the modifying law of 2010

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As far as the functioning of the factory/collective bargaining committees¹²⁴ is concerned, there are very few data; very few interviewees mentioned them during interviews. Some reference was made to these committees, suggesting there were very few, in some bigger companies. The scant literature¹²⁵ suggests the existence of such committees in some large companies, and mostly in companies which are still partially public or which have been recently privatized. Even then, autonomy and possible employer dominance may be an issue. Some comments on the functioning of these committees in big pharma companies suggest thus.

Figures on company collective agreements are also incomplete.

In the garment sector, the trade union reported a few company agreements¹²⁶ and also mentioned health agreements, related to special health insurance for workers.¹²⁷

The ILO study mentions the existence of several company agreements in big companies in the electricity sector, cement sector, ports and also some big mining companies.

A Jordanian study¹²⁸ gives a more systematic overview of collective bargaining at company level.

The number of agreements over a period of 5 years amounts to 360. The number increases from 47 over 2009 to 115 in 2012 and declines again to 65 in 2013. As a percentage, these are concentrated in the food industry (24%), textiles (19%) and transport (17%). On average about 30,000 workers would be covered by company agreements, which would put the collective bargaining coverage by company agreements at a 3% level.¹²⁹

In substantive terms, they provide for regulations on wages (90% of all agreements), on additional benefits such as bonuses, transport, meals, training, on health insurance and additional social protection and additional holiday entitlements (13%).

Also, the information on processes and mechanisms to conclude collective agreements is interesting. Most are agreed through direct negotiation (78%), and the rest requires external assistance via conciliation (14% at company level) or at higher levels (8%). Award setting via arbitration, where the risk for both parties is that they win or lose all

¹²⁴ See above for legal system

¹²⁵ Awad, Company level bargaining, 2015; ILO, Scope of Pilot collective Bargaining

¹²⁶ Next to the sector agreement 2013 see above

¹²⁷ Annually about 5, with a coverage of about 65,000 beneficiaries.

¹²⁸ Awad, Collective agreements at company level, 2015

¹²⁹ See supra on the global estimated collective bargaining coverage, including sector agreements

of their claims is limited to 1%.

In any case, these figures again confirm the low collective bargaining coverage, already established at sector level, and now also at company level.

2.4. ***The rules of the game – status of collective agreements and collective disputes in law and practice***

Jordan has an elaborate legislation on collective agreements and settlement of disputes

In practice, there are issues of wildcat strikes, and very limited practices of solution-oriented regular social dialogue at company level

Legal status and regulation

Collective agreements and disputes –

A collective agreement is defined as a written agreement regulating terms of employment between an employer or an association and a group of workers or a trade union on the other.

The Labour Code provides for some formal conditions for a collective agreement to be valid: the duration, which may be of a defined or indeterminate duration; its deposit; the necessary themes and content (parties covered by the agreement; start and expiry date; the fact that it deals with terms and conditions of employment); and measures to guarantee its implementation, e.g. the establishment of a committee of representatives to settle disputes.

As far as its binding character is concerned, the LC provides that it is binding on employers and workers covered by the agreement, and also workers employed by the employer covered by the agreement.

Collective bargaining agreements can be extended by the Minister to make it binding on all employers in a certain branch of region. The advice of a commission is needed.

The hierarchy is also provided for: an individual labour contract will have at least to respect the collective labour agreement.

Also the process is provided for in section 44¹³⁰ employers and workers may engage in collective bargaining concerning any matters related to the improvement of terms and

¹³⁰ Modified by the new section 15 of 2010.

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conditions of work and enhancement of worker productivity, provided that such bargaining is carried out at the request of employers or the trade union within a period of less than 21 days as of the date on which written notice is given by the party wishing to engage in bargaining, with a copy to the Ministry.

An amendment to allow the conclusion of collective agreements outside a formal trade union:¹³¹ the status of that discussion is at present unclear, since the composition of the Parliamentary Committee of Labour changed again.

Collective dispute resolution mechanisms and the right to strike/lock out¹³²

A collective labour dispute is defined as any dispute occurring between a trade union and an employer or employers association concerning the application or interpretation of a collective agreement on terms and conditions of employment.

The procedure to deal with collective labour disputes is:

Direct Conciliation attempts between the two parties concerned by the conciliation officer

In case of failure, report to the Minister within 21 days after the start of the case and referral to a conciliation board composed of representatives of workers and employers

In case of failure following referral to the minister, referral to the industrial tribunal to be settled finally and rapidly

The right to strike and lockout cannot be exercised:

During conciliation before the conciliation board or the industrial tribunal

During the period in which the award is in force

Additionally, before a strike/lockout is effective, the workers or the employer have to give a notice period of at least 14 days. There are fines for not respecting these rules and wages cannot be paid during a strike period if it is unlawfully called for.

The legal framework obviously makes the conduct of legal strikes very difficult.

This legal situation does not prevent the occurrence of labour disputes, as we will see below.

¹³¹ e.g. when 50% of the workers give a mandate, has been considered at a certain moment in the Parliament Labour Committee

¹³² Chapter XII, sections 120-142

The rules of the game: practice

Collective agreements in practice are limited, as we described above.

Also compliance with collective agreements may be problematic. As far as compliance with sector agreements is concerned, some observers mentioned that some companies do not fully respect the agreement. Compliance with company collective agreements was also suggested to be lacking in some cases, and being the cause of strikes.

Strike data are limited on the official side. The figures delivered by the Ministry¹³³ indicate low strike figures. In the pre-2011 period, it registered 2 or 3 strikes per year; in the post-2011 period an average of 25 strikes per year. According to the data, most are solved by direct negotiation, and mediation – labour court solutions are rare.

More comprehensive data have been gathered by a research institute,¹³⁴ which measured labour protest (defined broader than strikes and including sit-ins, threats etc.).

The data first of all present interesting information regarding the evolution of labour protests. They indicate a serious decline in labour protests in 2014, as opposed and compared to 2011-2013 inclusive. The number falls from a high of around 800-900 protest annually to about half (474) in 2014. The number of strikes in that figure is much lower: out of 474 "labour protests", only 124 are strikes.

Again starting from the concept of labour protest, the data indicate that about half occur in the private sector, the rest being in the public sector (37%) or undertaken by the unemployed (13%).

The causes are classified as follows in declining order: wages (32%), protest against laws and regulations (25%), demands for job opportunities (17%), demands for benefits (11%) and protests against dismissal.

An interesting classification element is the "leadership" of protest. This shows that 62% of the protests were carried out by groups that are not organized in any trade union framework. Trade unions¹³⁵ carried out 70 protest (15%). Others were

¹³³ Ministry of Labour , Annual reports 2008-2013, cited in ILO mission report 2015

¹³⁴ Labour Protests in Jordan 2014, Jordan Labour Watch, Phoenix Centre for Economics and informatics Studies, March 2015.

¹³⁵ Official and independent unions together

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unemployed or professional associations.

Duration: 66% are one-day actions. As far as the reaction of public authorities is concerned, the research points at the increasing reluctance of the government to react positively to these protests (if the public sector was concerned) and also increasing support for employers (for private sector actions). It also notes forced intervention in 29 protests and some penal actions undertaken in a major port strike, whereby workers and trade union representatives were arrested.

The total number of involved workers would have been 250,000.

Overall, from these data appears a certain degree of labour unrest, which is not really managed in a proper organizational culture and under proper leadership, resulting in many wildcat strikes and movements. The data also indicate that a serious proportion of strikes are also "compliance" strikes than strikes in preparation of new agreements.

During interviews, emphasis was also put by some contact persons on the lack of trust between parties, linked to the lack of proper understanding, and information, on behalf of workers' representatives, of the real state of economic affairs at company level. Some underlined that workers' demands tend to be unrealistic and reflect ignorance about the current challenges companies face.

2.5. ***Outcomes of social dialogue***

Social dialogue is not important in Jordan as a representation or regulation mechanism for labour issues. There is a strong imbalance between social partners and the role of the state is dominant.

Content-wise, social dialogue, if already existing, touches upon limited subjects.

2.5.1. Procedural outcomes – relations between parties

In the present social dialogue configuration in Jordan, relations between parties are limited, not formally organized, and not very intensive.

There is a serious imbalance in power, between the three actors: a dominant state, a powerful employers' constituency based on powerful individuals rather than powerful organizations, and a weak trade union, and as outsiders, a grassroots labour

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movement which is unorganized, dispersed and not sufficiently trusted or strong enough to become part of the system.

In between the formally recognized partners, there seems to be little confrontation and a silent consensus, leaving each party to its main business,¹³⁶ and maintaining the stability of the system as it is. Social dialogue is not a key problem in the country; the political will to increase its weight is missing; employers are not keen, or aware of its usefulness and added value, and not pressured; trade unions seem to lack dynamism but are not strongly challenged.

Informal arrangements may fill the space and may be used to solve key issues which may affect part of the core business of the partners: security and stability for the State; a business environment with not too high taxes and not too high wages for employers as well as to ensure a fertile ground for foreign investment and national economic development built on a few headlines such as becoming/remaining a financial hub, a hub for real estate and a logistics heaven for the Middle East via Aqaba; the maintenance of the formal power basis of the existing trade unions. Formally, social dialogue is limited in scope, frequency and interaction.

The threat of disturbance of the stability, by grass roots movements, which created some concern in 2011-2014, has withered away, and with that the urgent need to renovate the system. A further reform of the procedural system of industrial relations and social dialogue seems hence a matter for later, unless internal or external factors suddenly change.

2.5.2. Outcomes of social dialogue – substantive issues

Given the weakness and/or lack of real interest by the social partners, the outcomes of social dialogue are weak.

At the national level, they are skilfully involved in the fixing of a minimum wage on a three-yearly basis. Informally, they are involved in labour law reform, but do not set the agenda, or the pace of reform.

Furthermore, the social partners are involved, as part of a multi-stakeholder forum, in the Economic Social Council, with an academically interesting output, whose real weight at policy level remains to be seen.

In other policy domains, be it of a social nature,¹³⁷ or a more economic one, the role of

¹³⁶ With a minor role for the trade unions

¹³⁷ Social protection, social security, employment policy, skills policies, regional development

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social dialogue seems very limited.

At lower levels, the output of social dialogue is also very limited. In 2 sectors, collective bargaining takes place as well as in some larger companies. The agreements are traditional, mainly dealing with wages and secondary working conditions.

The outcomes are substantively weak. The minimum wage is set at a low level (JD 190) and is not regularly adapted. The secondary working conditions are mainly determined by the markets (and employers), apart from some very small pockets of big companies where social dialogue has some influence on increasing current market rates via a collective approach.

2.5.3. Specific issues

Social dialogue and informal economy

Social dialogue is not really concerned with the informal economy. Although important in size¹³⁸ social dialogue partners have no particular interest, in their limited agenda, in informal economy and policies/process to transit from informality to formality. Also the interest represented by the concerned groups is limited. Trade unions represent more highly-skilled workers, and not the masses of unemployed or low-skilled informal workers. Employers are also more focussed on bigger companies. In spite of the enterprise surveys which indicate the concerns of SMEs related to unfair competition by the informal economy, they do not have many proactive proposals to tackle the issues posed by the informal economy.

Also the Syrian refugee crisis is not really a topic of discussion for social dialogue. There is obviously a strong concern in Jordanian society about the effects of the huge numbers of refugees on the socioeconomic situation (employment, pressure on wages) but real policy measures by the social partners have not been mentioned in spite of questions on that issue during interviews.

Innovative practices in social dialogue

In the chapter on social dialogue at sector level, the landmark sector agreement in the textile sector was already highlighted and analysed at length. Other innovative practices, at any level, were not signalled. It seems also that further progress in following the sector level example in the textile sector is not to be expected in the near future.

¹³⁸ See part I – estimated at about 30% minimum

3. CONCLUSION

3.1. *Conclusions on present practices of social dialogue*

Provisions are made to ensure that the basic prerequisites of a social dialogue system, such as freedom of association, collective bargaining are in place.¹³⁹ There are also issues and limits: rights of non-Jordanian workers to establish unions; strict rules leading to a centralized controlled trade union movement under the leadership of the GFJTU; the lack of trade union freedom in the public sector.

A limited network of institutions is available to support social dialogue at national and company level: Most of these networks are tripartite or quadripartite, and not institutionally based (rather individuals are stakeholders).

But the genuine will to conduct an extensive social dialogue is not present at either of these levels. At national level, there seems to be a tendency for rather strong state control in the system, linked to a major concern with security and stability. At sector level, even a support mechanism is missing, not to mention the will amongst the bipartite social partners to conduct social dialogue.

In general it seems that social dialogue in Jordan is still at a developmental stage: social partners have little influence and are weak, also in terms of membership, especially on the union side. Social dialogue hence remains dominated by politics and has no independent course of influence.

A regulatory framework is available to provide for collective bargaining, via collective agreements and dispute regulation at lower levels. The process is very strict (with conciliation, strict process); the right to strike is limited. Collective bargaining hardly takes place and it has a very limited scope. Labour disturbances, linked with this lack of self-regulatory capacity between workers and employers, were at a certain time high, but are now diminishing, due to the labour market situation. The need for a collective and organized approach to labour relations seems hence not to be felt strongly. .

3.2. *Possible projects to promote and enhance social dialogue*

Whilst taking into account the caveat that events may change quickly in a troubled

¹³⁹ Regarding the respect of ILO Conventions (see above for comments Committee Experts)

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region, it seems that in the present circumstances in Jordan, social dialogue will remain limited for the near future. There is a close connection between social dialogue and politics, and since politics aim for stability, grand reforms or changes are not in the immediate line of expectations. Gradual reform is the maximum which may realistically be expected.

If that line of thinking is correct, the projects that could support social dialogue also may have to be modest of design and of a cautious nature: rather than suggesting fundamental changes of a political nature, they could mainly focus on some gradual improvements in social dialogue.

In the same line of thinking, possible projects should basically aim at trust building between partners, awareness raising on possible positive effects of social dialogue, capacity building and some experimental enrichment of social dialogue.

The target groups of such projects are the high level government/parliamentary officials, trade unions and employers.

Possible projects may be:

i) Awareness raising

-via i) study courses on and visits to some countries with a more active record on social dialogue at national or sector/company level. The Tunisian experience may be a useful example for better insight of the added value of social dialogue at national level and at company level (some foreign companies). Other countries in the region (Turkey?) or Europe (TBD) could be identified, also to show participants examples of dynamic social partner behaviour;

-via ii) national actions for HR directors, trade unionists, civil society, labour Ministry officials, under different formats (courses, campaigns) to increase knowledge and information on the solution capacity of social dialogue at company and sector level

ii) Capacity building for policy makers and practitioners of social dialogue in the tripartite constituency.

The subject of this study was not to do an extensive capacity assessment. However, the issue of capacity was discussed (under proviso of further in-depth verification).

A number of capacity gaps appeared:

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- i) general lack of knowledge on social dialogue mechanisms and roles, especially at the level of mid-level officials amongst all social partners
- ii) lack of technical insight in issues where often social dialogue can contribute positively, such as employment policies, skills policies etc. (technical knowledge on best practices; design, implementation of policies etc.)
- iii); lack of good insight in organizational development, mandates, membership policies, and communication tools within trade unions and employers' organizations;

These gaps should be addressed via training and concrete small scale projects (which provide practical tools) internally within social partners.

iii) Strengthening data systems.

The data availability on issues of relevance to social dialogue in Jordan is limited discussions.¹⁴⁰ A project to provide up-to-date data to guide better discussions on wages, productivity, employment situation and policies, sector level bargaining, informal economy, industrial conflict, compliance, labour law development and update, etc., would be useful.

iv) Experimental strengthening of social dialogue.

Some small scale projects may be useful to experiment with enriching or enhancing social dialogue, without endangering the present political consensus that stability is the main guiding line.

They may relate to:

- * At national level, the opening of a more active role for social partners in discussions on measures to be taken concerning the informal economy; skills policies, employment policies. These aforementioned themes are all crucially important in the context of Jordan. At the same time they are hardly touched upon at present in the framework of social dialogue, whilst social dialogue may have important contributions to make, not only on studying the subject, but also in proposing win-win measures. Content support (via data collection, specific training, research support) offered by the project could enhance the conduct of such discussions. The question of how independent unions or broader civil society (e.g. on informal economy issues) are to be associated to such dialogue remains open; such association could be a means to remove a certain possible degree of scepticism towards these "non-traditional" organizations.
- * At sector level, identify 1 sector (e.g. electricity, metal) where the creation of a more permanent forum for sector dialogue (and conflict resolution) could be

¹⁴⁰ At the level of the Ministry, the existing consultative bodies, as at the level of social partners.

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started, to test the capacity for a more frequent, more peaceful and broader and richer social dialogue.

- * At company level, identify some companies with a certain level of collective representation for workers, to experiment with more engaging social dialogue activities, including the provision of regular economic information, specific training for workers and HR representatives and testing of ways to avoid recurring conflict.

It is obvious that the suggested projects need further verification on their relevancy, feasibility and acceptability within the present situation of social dialogue in Jordan.

ANNEXE A

List of interviewed persons Morocco

MINISTÈRE DE L'EMPLOI ET DE LA FORMATION PROFESSIONNELLE

M. Ahmed Bouharrou, Directeur du Travail

CONSEIL ÉCONOMIQUE, SOCIAL ET ENVIRONNEMENTAL

M. Fahd Assilah, Direction du travail

CONFÉDÉRATION GÉNÉRALE DES ENTREPRISES DU MAROC (CGEM)

M. Hicham Zouanat, Président de la Commission Emploi et Relations sociales
M. Yassir Meski, Chargé d'études, Commission Emploi et Relations sociales

FÉDÉRATION DES CHAMBRES DE COMMERCE, D'INDUSTRIE ET DE SERVICES (FCCIS)

Mme Narjiss Loubaris, Directrice générale
M. Bakkali, Direction

UNION MAROCAINE DU TRAVAIL (UMT)

M. Miloudi Moukharik, Secrétaire générale
M. Mohamed Alaoui, Secrétaire national
M. Kabbaj Mohamed Larbi,

UNION GÉNÉRALE DES TRAVAILLEURS MAROCAINS (UGTM)

M. Kabbaj Mohamed Larbi,

CONFÉDÉRATION DÉMOCRATIQUE DU TRAVAIL (CDT)

M. Noubir Amaoui, Secrétaire général
El Alami Lahouir Khaled
M. Alami Lahouir
M. Bouchta Boukhalfa

UNION NATIONALE DES TRAVAILLEURS MAROCAINS (UNTM)

M. Andellilah Elhalouti, Vice-Secrétaire général
M. Merimi Abdessamad
M. Elhadi Noureddine
M. Yousefi Alaoui

ANNEXE B

List of interviewed persons Tunisia

UTICA

Mr KhelilGhariani, Membre du bureau exécutif de l'UTICA et président de la commission sociale,
Mr Sami Silini, Membre de la commission sociale,

UGTT

Mr Anouar Ben Gaddour, Secrétaire général adjoint chargé des études.

MFPE «MINISTERE DE LA FORMATION PROFESSIONNELLE ET DE L'EMPLOI»

Mr Imed Turki, Chef de Cabinet du Ministre de la Formation Professionnelle et de l'Emploi,
Mme EmnaArifa, Directrice Générale de l'insertion Professionnelle et Chef de File Dialogue Social au Ministère,
MmeFaizaKallel, Directrice de la promotion de l'Emploi,
Mr Nizar Ata, Directeur de la coopération Internationale.

MAS « MINISTERE DES AFFAIRES SOCIALES

Mme Samia Baccouche, Directrice Générale du Travail,
Mr Foued Ben Abdallah, Directeur Général de l'Inspection du Travail et de la Conciliation,
Mr Mohamed Salah Chatti, Directeur Général Chargé de Mission au Cabinet.

UNIVERSITE DE SFAX

Pr Nouri Mzid, Professeur en Droit du Travail I.

JOURNAL LE MAGHREB

Mr Najeh Mbarek, Journaliste

ANNEXE C

List of interviewed persons Jordan

MINISTRY OF LABOUR

Mr Abdallah al-jbour, director labour inspection
Ms Suha lababi, director international cooperation
Mr Ayman Khawaldeh, director labour inspection
Mr Ibrahim ALSaudi, assistant secretary general

PHENIX CENTER ECONOMIC AND INFORMATICS STUDIES

Mr Ahmad Awad (studies for ecosoc- councillor labour committee Parliament)

NATIONAL CENTRE FOR HUMAN RIGHTS

Mr Issa Almaraziq,

PARLIAMENT

Mr Abdallah Obeidat, (replaced) by Malik Al Gueheree, Labour Committee
Parliament

TAMKEEN (NGO, DEALING WITH MIGRANT WORKERS)

Ms Linda Alkalash

GENERAL FEDERATION OF JORDANIAN TRADE UNIONS

Mr Maazen, President GFJTU
Mr Khaled Habahbeh, Foreign relation GFJTU

JORDANIAN FEDERATION INDEPENDENT TRADE UNIONS

Mr Azad Somadi, President

ECONOMIC AND SOCIAL COUNCIL, PRESIDENT

Prof. Munther Sharé , President , and collaborators,

JORDANIAN CHAMBER OF INDUSTRY

Mr Mahrouq, Director General, Mr Adnan Abu Al Ragheb, Board Member

EU DELEGATION

Mrs Iarrera