

Module 4

Industrial Relations

What this Module is about

This module illustrates the importance of industrial relations as a key pillar in labour administration and present examples of good practices in industrial relations systems, collective bargaining, dispute prevention and settlement and the promotion of social dialogue.

In doing so, it highlights also the relevant ILO convention that have implications for labour administration and industrial relations, in particular:

- Collective Bargaining Convention; 1981 (No. 154)
- Convention on Labour Relations (Public service), 1978 (No.151)
- Voluntary Conciliation and Arbitration Recommendation, (No. 92)
- Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)

Objectives

At the end of this module, participants will be able to :

- Realize the importance of industrial relations as a key pillar in the labour administration convention
- Identify key functions of labour administration concerning industrial relations and social dialogue
- Describe some of the key institutional mechanisms for supporting and promoting sound industrial relations, social dialogue and labour peace
- Make reference to key ILO International Labour Standards concerning social dialogue, industrial relations in both, public and private sector and labour dispute prevention and resolution
- Analyze good practices and use them as reference for further experience-sharing and networking

Pre requisites

In order to be able to follow this module and actively participate in discussions and training activities, participants should previously read and be able to easily make reference to the following international labour standards:

- Convention N.150 and Recommendation N.158 on Labour Administration
- Convention N. 151 on Labour Relations (Public Service Convention, 1978) and Recommendation N.159 on Labour Relations (Public Service, 1978)
- Recommendation N.92 on Voluntary Conciliation and Arbitration (1951)
- Convention N.144 (1976) and Recommendation N.152 (1976) on Tripartite Consultation (International Labour Standards)
- Recommendation N.113 (1960) on Consultation at Industrial and National Levels
- ILO Resolution Concerning Tripartism and Social Dialogue (2002)

(Copy of these texts is available in the ILO WEB site www.ilo.org/ilolex.)

Participants should also know how the Labour Administration in their country is dealing with this issue and able to compare it with other countries during the workshop.

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Introduction

One of the important missions of labour administration is to promote harmonious labour relations and social dialogue.

The ILO Convention N.150 contains provisions on this topics, supplemented in detail by Recommendation N.158 which goes on to list the various means to achieve this goals, namely: creating a conducive environment for the free exercise of the right to association and the right to organize and bargain collectively; the provision of advisory services to employers' and workers' and their organizations; the set up of mechanisms for labour dispute prevention and resolution (such as consultation and mediation bodies); the promotion of voluntary negotiation and social dialogue machineries.

Recommandation N. 158, Chapter on Labour Relations (§ 7-10)

The competent bodies within the system of labour administration should participate in the determination and application of such measures as may be necessary to ensure the free exercise of employers' and workers' right of association.

There should be labour administration programmes aimed at the promotion, establishment and pursuit of labour relations which encourage progressively better conditions of work and working life and which respect the right to organise and bargain collectively.

The competent bodies within the system of labour administration should assist in the improvement of labour relations by providing or strengthening advisory services to undertakings, employers' organisations and workers' organisations requesting such services, in accordance with programmes established on the basis of consultation with such organisations.

The competent bodies within the system of labour administration should promote the full development and utilisation of machinery for voluntary negotiation.

The competent bodies within the system of labour administration should be in a position to provide, in agreement with the employers' and workers' organisations concerned, conciliation and mediation facilities, appropriate to national conditions, in case of collective disputes.

Many Labour Administrations have set up industrial relations departments, units or branches, to promote sound labour-management relations and operate in the above mentioned areas. Today, developing and maintaining a strong and efficient industrial relations department is a great challenge for Labour Administrations in many countries, but it's vital for promoting social justice and democracy.

In the current rapidly changing economic environment, there has been an increasing tendency since the 1990s for the industrial relations departments or units to promote an approach of labour-management cooperation, encouraging employers and workers and their organizations

to come together to create structures and mechanisms aimed at discussing and meeting their various interests at work. They have also urged more progressive companies and unions to use the collective bargaining process as a means to tackle the competitive pressures resulting from globalization. Some industrial relations departments/units have promoted partnerships based on new methods of communication, conflict resolution and joint decision-making.

The role played by labour administration in the field of Labour relations also includes the promotion of national social dialogue and tripartite cooperation. A first step is setting up mechanisms to ensure that employers and workers and their respective organizations are consulted and involved in all activities related to national labour policy. Tripartite cooperation necessarily implies healthy and constructive labour relations which require respect for the autonomy of employers and workers organizations and promote harmony between employers and employees.

In the next chapters we are going to analyse the main functions of the Labour relations Departments/Units of the Labour Administrations.

Promoting an enabling legal framework for labour relations

The labour/industrial relations departments within the labour administration system play an important role in promoting and maintain industrial peace and stability by providing a conducive legal framework. In particular, they promote legislation to protect the right to organize and collective bargaining and the free exercise of the right of association.

They review labour and employment laws regularly to ensure their continued relevance to both employers and employees and monitor that such legislation is applied effectively. They have the responsibility of creating an environment that enables social partners to organize, in full freedom and independence.

In recent years, government actions through the labour administration system have included provisions for new legal frameworks governing industrial relations.

An important function of an industrial relations department is to provide timely information to the public regarding the labour laws , and terms and conditions of employment and collective bargaining .

In some cases, Labour Administrations provide training on labour law to the social partners; these initiatives have been very effective in strengthening the capacities of the social partners in using labour law as a floor and reference for labour relations and in stimulating a

participatory approach in labour law making and enforcing. At the same time, training on labour law and alphabetization on basic labour rights can be an effective measure in preventing labour disputes.

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EXERCISE

1. Fill the matrix inserting the date in which the ILO conventions listed in the first column have been ratified by your country. If needed, be free to consult the ILO Web Site www.ilo.org/ilolex.

COUNTRY: _____

CONVENTION	DATE OF RATIFICATION
Labour Administration Convention; (No.150)	
Collective Bargaining Convention; (No. 154)	
Convention on Labour Relations (Public service) (No.151)	
Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87)	
Right to Organise and Collective Bargaining Convention, 1949 (No.98)	
Tripartite Consultation (International Labour Standards) Convention, (No. 144)	

2. Mention how these conventions have been integrated into the national law (mention specific bills of chapters)

Promote and support collective bargaining

Collective bargaining is defined by ILO as process and activities leading to the conclusion of a collective agreement. For the ILO, effective collective bargaining, culminating in an agreement which is mutually beneficial to the parties concerned, will occur most often where there is a framework for labour market governance that upholds the fundamental rights of workers and employers and promotes social dialogue and decent work.

Trends of Collective Bargaining In Africa

Some governments in Africa have promoted sectoral-level collective bargaining as a means of ensuring stability in industrial relations, and this remains the major level of bargaining in countries such as Nigeria, South Africa, United Republic of Tanzania, Tunisia and Zimbabwe. However, enterprise-level bargaining has arisen as the dominant bargaining level in a large number of countries (e.g. Cameroon, Ivory Coast, Ethiopia, Ghana, Kenya, Namibia and, increasingly, Zambia) and this process of decentralized bargaining seems to be gaining momentum in the region.

Besides the first ILO Convention N.98 on the right to collective bargaining, an important aspect of Convention N.154 on collective bargaining is the new definition of the term, according to which the subject matter for bargaining is not limited to working conditions and terms of employment. Rather, it now extended to relations between employers and workers and their respective representative organizations. In other words, the term “collective bargaining” was extended to encapsulate that it was a method of regulation of industrial relations themselves.

Social partners tend to use it to settle a wide range of issues which were not negotiated a few decades ago. Through collective bargaining at various levels social partners have been increasingly able to achieve agreements on different matters concerning labour market, employment and employability, gender-related issues, and many others, including the rules governing their mutual relations¹.

More negotiations are featuring flexible use of working time and work organization arrangements, including greater use of part-time, flexi time, time banking and job sharing. Provisions for limiting temporary work, managing outsourcing and workforce restructuring, and promoting employment stability and security are appearing in negotiated agreements in a number of countries. Occupational safety and health

¹ For further reading on this issue see GB.300/ESP/1 paper on Collective Bargaining and the Decent Work Agenda

provisions, an area of traditional concern, have broadened to recognize other issues. For example measures concerning mobbing, sexual harassment and discrimination are appearing more frequently in the agenda of collective bargaining to face the increasing incidence of stress and violence in the workplace. Thanks to awareness raising and information campaigns, emerging topics in working conditions such as HIV/AIDS are more and more present in negotiations.

Changes in work organization and working conditions following the introduction of new technologies ask for negotiated rules, for example concerning telework, use of internet and e-mail, exposure to PC screens, etc.

In the past, and with the exception of maternity leave, the concerns and interests of women have in many cases been underestimated during collective bargaining. Substantially increased union membership among women in many countries and changes with respect to gender equality in the labour force and shared family responsibilities have resulted in greater consideration for reconciling work and family life through collective bargaining. In this context, ensuring equal pay for equal work, maternity leave, paternity leave, adoption leave and parental leave, flexibility in working time and organization, as well as establishing grievance procedures against discrimination and harassment, are increasingly part of collective negotiations in many countries².

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² For further reading see: Goodson, E., Maloba-Caines, K., Olney, S. and O'Neill, F. (1998), *Gender equality: A guide to collective bargaining*, ILO, Geneva and Bertino, D. (2004), *Gender and collective bargaining*, ITC/ILO, handout.

Examples of topics of the New Agenda of Bargaining³

Labour market and employment

Competitiveness

Unregistered work

Relocation of production

Lifelong learning and competence building

Re-training

Employability

Sabbatical and training leave

Savings accounts for training and education

Work-Family conciliation

Equal opportunities and treatment

Pay equity

Parental and family leaves

Positive actions

Sexual harassment

Non-discrimination plans

Mobbing

Combating child labour

Working time arrangements

Flexitime

Time-saving accounts

HIV/AIDS

Social protection and social inclusion

Supplementary occupational pensions

Flexible retirement

Active ageing

New forms of work organization

New forms of remuneration (linked to performance, productivity, profits, etc)

³ See also GB.300/ESP/1 paper on Collective Bargaining and the Decent Work Agenda

Collective bargaining provides firms with a mechanism to encourage participation in the workplace. Indeed, there is now a large body of evidence showing that workplace participation through collective bargaining can enhance quality and that enterprises with higher degrees of worker participation have better performances.

Collective bargaining has also been shown to increase training intensity and human capital accumulation in companies, thereby improving productivity ⁴.

While collective bargaining is a voluntary process between social partners, the role of the labour administrations - in particular of their labour relations departments/units - is vital for facilitating, promoting, supporting and strengthening this process.

The ILO Recommendation N.158, in laying down the role played by the government in the labour relations at various levels and sectors, emphasizes the role of Collective bargaining as the key pillar in the industrial relations.

In some countries, an important function of this department is the registration and facilitation of workers organizations. Within these departments, the registry of trade unions assists in the registration of trade unions and also provides advisory services to trade union officers and members on matters relating to the laws and regulations on trade unions.

In recent years, government actions through the labour administration system have included provisions for new legal frameworks governing labour relations, such as: modifications to the scope of bargaining; determination of bargaining partners (i.e. recognition of the most representative organizations); the setting of framework bargaining rules and procedures; the hierarchy of collective bargaining levels; rules and conditions pertaining to administrative extension of collective agreements; and settlement of collective labour disputes, etc. While most of these legislative measures have only fine-tuned existing frameworks, some of them radically changed traditional collective bargaining systems.

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⁴ For further reading see GB.300/ESP/1 paper on Collective Bargaining and the Decent Work Agenda

EXERCISE

- 1.** In your group, making reference to your country and your own experience, list the levels in which collective bargaining is taking place
- 2.** For each level, mention the contents of the negotiations.
- 3.** For each level, mention the role labour administration plays or could play.
- 4.** Register the outcomes of the group in a flip chart (or a power point) and present in plenary.

A discussion will follow.

Collective bargaining in the Public sector: the double role of the Public Administration

In the public sector, the Government play a double role; on one side it is called to promote sound labour relations, establishing a conducting environment, as mentioned in the previous chapter. On the other side, it represent the employer and play the active role of a key social partner in negotiations.

The ILO Convention N. 151 on Labour Relations (Public Service Convention, 1978) and its Recommendation N.159 promote sound labour relations for public employees, as well as other methods allowing public employees' representatives to participate in the determination of their conditions of employment. It also provides that disputes shall be settled through negotiation between the parties or through independent and impartial machinery, such as mediation, conciliation and arbitration.

Convention N.151 on Collective Bargaining in the Public Service

Main provisions:

- protection of public employees' right to organize
- non-interference by public authorities
- negotiation or participation in determining terms and conditions of employment
- machinery for settling disputes concerning terms and conditions of employment

Main principles:

- Public servants and officials must have the same rights of representation and negotiation as have been engage in by workers in the private sector in line with Conventions N.87 and N.98;
- The need of good labour relations between public authorities and public service unions/associations.

Over the past two decades, there have been significant changes in the public sector at the national level in many countries. Major reforms have been implemented almost everywhere in an effort to increase its effectiveness, ensure that it contributes to harmonious economic and social development and meets the needs of the population more fully. The nature and structure of public employment have often been substantially modified. An increasing proportion of the activities hitherto carried out under the direct responsibility of the State have been subcontracted or privatized.

The traditional concept of the public employee engaged for life and protected by the a State has been considerably eroded, giving way to a much less monolithic panorama of employment in the public sector and to conditions of service and types of status that are more variable. The resulting uncertainties have given rise to discontent and to claims which have not failed to lead to serious labour disputes.

In parallel, while the development of labour relations in the sector is undeniably moving towards the increased participation of employees and their organizations in the determination of conditions of work, it is nevertheless true that public employees are among the categories of workers whose right to organize and to collective bargaining is still most frequently restricted. The conjunction between more precarious conditions and the still limited and incomplete development of collective rights means that there is currently a period of uncertainty that is, in many respects, unfavourable for public employees, their employers and the State as a whole.

The underlying trend seems to be the movement of labour relations in the public and para-public sector towards a system of collective bargaining approximating that used in the private sector.

When national situations are examined, it can be seen that the scope of collective bargaining between unions and administrations or public and para-public bodies is tending to broaden, irrespective of the political orientation of the governments concerned. Either the State is tending to withdraw from the economic and social life of the country, and many employees are therefore governed by the general provisions of labour law, particularly with regard to collective labour relations, or the State maintains a determining or significant role and, with a view to preventing collective disputes in such cases, it is necessary to have recourse to methods of the co-determination of terms and conditions of employment. In recent years, the number of countries using collective bargaining to determine terms and conditions of employment in the public sector appears to have increased (for example, Greece and Lithuania have adopted legislation in this respect). Others have extended and deepened their system of collective bargaining (Argentina, New Zealand, and Spain)⁵.

The Public Service Co-coordinating Bargaining Council (PSCBC) in South Africa

In South Africa, in contrast with the bargaining councils in the private sector, which are the outcome of a voluntary process, the Labour Relations Act (section 35) establishes the Public Service Co-coordinating Bargaining Council (PSCBC) for the public service as a whole. The PSCBC may perform all the functions of a bargaining council as envisaged in the law in respect of those matters that are regulated by uniform rules, norms and standards that apply across the public service, or terms and conditions of service that apply to two or more sectors.

⁵ For further reading see "Labour relations in the public and para-public sector" by Bernard Gernigon ILO 2007

EXERCISE

In your group, list in two columns, respectively:

- The topics which are part (or could be part) of the collective bargaining process in the public service;
- The topics which are jointly discussed and implemented in bipartite social dialogue bodies (such as joint management-employees representatives committees) in the public service.

SUBJECTS OF COLLECTIVE BARGAINING IN THE PUBLIC SERVICE	SUBJECTS OF JOINT DECISIONS IN BIPARTITE BODIES

Labour Dispute Prevention and Resolution

Direct negotiation between the social partners is the best mean for solving labour disputes. However, when the collective bargaining process is reaching a breaking point it tend to give rise to industrial actions⁶; the social and economic costs of conflicts and disputes have become a particularly important consideration in many countries and have influenced the approach taken to dispute resolution. In more and more countries, the establishment of a system for the prevention and resolution of labour disputes is nowadays a cornerstone of industrial relations policies in Labour Administrations⁷. It helps to contain labour conflicts within economically and socially acceptable bounds⁸ and to promote an atmosphere of industrial peace. This in turn contributes to the maintenance of a climate that is conducive to development, economic efficiency and social equity.

Labour Administration in some countries also assist employers and employees in both, unionized and non-unionized sectors, to resolve trade or employment/salary disputes amicably through conciliation, with a view to promoting harmonious labour-management relations.

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⁶ Such as, for example, strike, occupation of factories, boycotts on one side and lockout and layoff on the other side.

⁷ For further reading see: *Labour Legislation Guidelines*, ILO Geneva, Chapter 4 on settlement of disputes and *Handbook on Alternative Labour Dispute Resolution*, by Felicity Steadman, ITC-ILO, 2008.

⁸ For example, a strong link between conciliation/mediation and industrial action is made by several countries by requiring the parties to give advance notice of industrial action to the conciliation authority, or by making it illegal to take industrial action without first endeavoring to resolve a dispute by means of conciliation.

ILO Principles concerning Labour Dispute Resolution

Several ILO Conventions and Recommendations deal with dispute prevention and dispute resolution. Member States are encouraged to design their own dispute settlement systems in accordance with the following general principles:

- Governments should make available voluntary conciliation machinery, which is free of charge and expeditious, to assist in the prevention and settlement of industrial disputes (*Recommendation N. 92 concerning voluntary conciliation and arbitration, 1951, Paragraphs 1 and 3*)
- Disputes in the public sector should be settled through negotiation between the parties or through independent and impartial machinery, such as mediation, conciliation and arbitration (*Convention N. 151 concerning protection of the right to organise and procedures for determining conditions of employment in the public service, 1978, Article 8*)
- Bodies and procedures for the prevention and settlement of labour disputes should be designed to also promote of collective bargaining (*Convention N. 154 concerning the promotion of collective bargaining, 1981, Article 5, paragraph 2e*)
- Procedures for the settlement of labour disputes should assist the parties to find a solution to the dispute themselves (*Recommendation N. 163 concerning the promotion of collective bargaining, 1981, paragraph 8*)
- The parties to disputes should be encouraged to abstain from strikes and lockouts while conciliation or arbitration is in progress (*Recommendation N. 92 concerning voluntary conciliation and arbitration, 1951, Paragraphs 4 and 6*)
- Agreements reached during or as a result of conciliation should be drawn up in writing and accorded the same status as agreements concluded in the usual manner (*Recommendation N. 92 concerning voluntary conciliation and arbitration, 1951, Paragraph 5*)

Within these general principles, ILO Conventions and Recommendations leave ample room for Labour Administrations to design their own dispute resolution systems. They should be designed to promote collective bargaining, for example by requiring the parties to exhaust all the possibilities of reaching a negotiated solution (or to exhaust the dispute settlement procedures provided for by their collective agreement) before having access to State provided procedures.

The main methods of dispute resolution a Labour Administration can set up are:

- Conciliation/mediation (which may or may not be differentiated)
- Arbitration

Indonesia

According to the Industrial Relations Dispute Settlement Act (2004) all disputes are required to be resolved first through bipartite bargaining. In the event that bipartite bargaining fails then one or both of the parties can refer their dispute to the local authorised manpower offices. The local authorised manpower offices will then offer to both parties the option of conciliation or arbitration. In the event that the parties do not select either conciliation or arbitration within 7 (seven) working days, the authorised manpower offices will transfer the dispute to a mediator. In the event that settlement is not achieved through either conciliation or mediation the parties may refer their dispute to the Industrial Relations Court.

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Conciliation and Mediation

Conciliation and Mediation are the most widely used methods of dispute settlement under the government auspices.

The terms 'conciliation' and 'mediation' are often used interchangeably, although they may have different meanings in different countries. In some countries, conciliation and mediation refer to the same type of procedure, while in others they denote distinct procedures. Sometimes conciliation is distinguished from mediation on the basis that a conciliator does not suggest solutions but act as facilitator, helping the parties to settle their differences on their own terms, whereas a mediator may have the authority (and in some cases the duty) to formulate proposals for the settlement of the dispute.

In both cases, conciliation/mediation consists of a means of helping the parties, when negotiations have failed or reached an impasse, to

overcome the obstacles and solve the dispute by themselves , reaching a mutually agreed settlement.

Conciliation/mediation in its least interventionist form of dispute resolution, as the conciliator or mediator assist the parties and facilitate the process, but is not empowered to impose a settlement of the dispute.

In most industrialized market economy countries, it is by far the most common procedure employed for the settlement of collective interest disputes.

Conciliation/mediation may be voluntary or compulsory.

It is voluntary where the parties are free to have recourse to it or not: it is also defined as voluntary where it is undertaken by mutually chosen private third parties, outside the machinery established by the government or by law. In some cases, the law requires that both parties consent to the use of conciliation.

The ILO Recommendation N.92 promotes voluntary conciliation, as mentioned above.

Conciliation/mediation is compulsory where the parties to a labour dispute are required to have recourse of it. Compulsory conciliation/mediation can be used as a means of ensuring that the hostile parties to a labour dispute come together at the negotiating table. Compulsory conciliation is in general present in countries where the labour relations system is not yet well developed and/or in cases where the parties are not used to negotiate with each other. Conciliation is often compulsory in systems where also compulsory arbitration is adopted.

Although the way of organizing conciliation/mediation services vary from country to country, they tend to fall into one of the following categories of providers:

- The State (Labour Administration)
This is the case, for example, in Barbados, Jamaica, Guyana and Trinidad and Tobago.
- Independent Agencies funded by the State
e.g. the Advisory Conciliation and Arbitration Services (ACAS) in the United Kingdom; the Federal Mediation and Conciliation Services (FMCS) in the United States; the Commission for Conciliation, Mediation and Arbitration (CCMA) in South Africa; the Australian Industrial Relations Commission (AIRC); and the Mediation Services of Aruba, Netherlands Antilles and Suriname;
- Private institutions

EXERCISE

By country, please fill the questionnaire. The information will be processed by the course team and a document will be compiled and distributed to the participants.

QUESTIONNAIRE

NAME: _____

SURNAME: _____

COUNTRY: _____

1. How are labour interest disputes typically resolved in your country? Number in order from the most used (1) to the least used

- ☐ By direct bipartite Negotiation
- ☐ By Voluntary Conciliation or Mediation
- ☐ By Mandatory Conciliation or Mediation
- ☐ By Voluntary Arbitration
- ☐ By Compulsory Arbitration
- ☐ By Adjudication

2. How are labour rights disputes typically resolved in your country? Number in order from the most used (1) to the least used:

- ☐ By direct bipartite Negotiation
- ☐ By Voluntary Conciliation or Mediation
- ☐ By Mandatory Conciliation or Mediation
- ☐ By Voluntary Arbitration

- ☐ By Compulsory Arbitration
 - ☐ By Adjudication
3. Briefly describe the dispute settlement system in your country. For example; is there a progression of steps that must be followed? First bipartite negotiations, then mediation, then arbitration? Are there any legally prescribed time frames for each of these steps?
4. Conciliation and mediation in your country are :
- ☐ a voluntary system, where the consent of both parties is required
 - ☐ a compulsory system in certain cases
(if so, specify which cases; for example if conciliation/mediation is a requirement before the parties can initiate a strike or lockout)
 - ☐ both (mixed system)
(if so, specify the cases when it becomes compulsory)
5. Conciliation and mediation services can be provided by a number of different sources: the Ministry of Labour; a state agency attached to a Ministry; an independent state agency; private institutions; private individuals. Please describe the situation in your country.
6. The right to strike in your country is:
- ☐ an unlimited right
 - ☐ recognized with some limits (if so, specify which limit)
 - ☐ recognised by the law but never or hardly ever used in practice. (Please specify for which reasons)
 - ☐ not recognised by the law

Please add any further information you consider useful to better understand the labour dispute settlement system in your country.

EXERCISE

Selection, appointment and status of dispute settlement personnel

The selection, appointment and status of dispute settlement personnel is vital in order to ensure quality, efficiency and equity of the dispute settlement process.

In small groups, participants will share their views and experiences of the following issues:

- The ethics of the third parties;
- The selection of the personnel and the necessary competencies (knowledge of the matter of the dispute; mediation skills; main characteristics; etc), background and provenience of the personnel.

The findings will be reported in plenary, using flip charts or power points presentations. A discussion will follow, taking note of the main common findings.

Arbitration

Arbitration is a process in which an independent third party hears the parties' respective cases, determines the dispute between them and issues an 'award' or 'decision'. The award or decision is typically final and binding, subject to review but not to appeal. Both disputes of interest and disputes of right are capable of being arbitrated; arbitration of disputes of right is sometimes referred to as 'grievance arbitration'.

Arbitration in some form has a place in most government labour dispute settlement systems, and is also sometimes used voluntarily by the parties to settle their disputes. It may be provided for under the terms of collective agreements to deal mainly with rights disputes arising out of the agreement (as is common in the United States and Canada) or to deal with interests disputes.

Like conciliation, the submission of a dispute to arbitration may be either voluntary or compulsory. Arbitration is voluntary when it can be set in motion only with the agreement of the parties, and compulsory when it can be invoked by either party or the government at its own initiative. The imposition of compulsory arbitration is not deemed to be in accordance with the principles of freedom of association, other than in essential services or in exceptional emergency situations.

In most countries, rights disputes are adjudicated by a court or tribunal, except in the case of arbitration systems established by collective bargaining for the settlement of disputes relating to the application of collective agreements, which in any case function more like adjudication than arbitration.

As mentioned above, Governments may also establish permanent arbitration tribunals, courts or other bodies. The administrative support for such bodies is often provided by the same services which support conciliation machinery, although they may also have their own administrative services.⁹

Parties in some countries have experimented with processes that mix the best of both the interest-based and rights-based processes of mediation and arbitration (*see Note on Hybrid processes in annex*).

The ILO recommendation N.92 concerning Voluntary Conciliation and Arbitration (1951) says that if a dispute has been submitted to arbitration for final settlement with the consent of all parties concerned, the parties should be encouraged to abstain from strikes and lockouts while the arbitration is in progress and to accept the arbitration award.¹⁰

⁹ www.ilo.org/public/english/dialogue/ifpdial/IIg/index.htm

¹⁰ www.ilo.org/ilolex/english/recdisp1.htm

United Kingdom: the Advisory Conciliation and Arbitration Services (ACAS)

ACAS is a publicly funded independent organisation created in 1974 that performs a wide range of functions, from handling complaints and giving advice, to conciliation, mediation and arbitration services. Its services are available to the public and private sectors alike. Conciliation conducted under its auspices is voluntary, confidential, and free and is conducted by independent third parties who take a neutral role. ACAS offers conciliation in interest disputes involving trade unions and employers, often known as 'collective conciliation'. ACAS research has shown that in 2004 around 90% of collective conciliations had a successful outcome. During 2007 ACAS facilitated negotiations between the parties in all large-scale disputes, including North Sea divers, university and further education college lecturers, Central Trains, British Airways and the Civil Service.

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Labour dispute prevention

There is a growing emphasis on building and maintaining strong relationships between the parties by genuine and effective information-sharing, consultation and mutual gains bargaining, as well as dispute prevention and early intervention in conflictual situations so that the likelihood of disputes is reduced.

In some countries, the prevention of disputes is explicitly mentioned in the labour laws and departments of labour and their staff are empowered to work proactively within the economy and in particular dispute situations to prevent disputes. These activities include getting involved in negotiations before deadlock has been declared and the growth of an advisory function for third party agencies. These approaches are generally based on a recognition that conflict is an inevitable factor in employee/employer relationships. They aim to deal with disputes quickly and as close to their source as possible, addressing the root causes of conflict and not just the outward symptoms of the problem. One of the goals of 'proportionate dispute resolution' is to

increase advice and assistance to help people resolve their disputes earlier and more effectively.

An important mean Labour Administrations can use for promoting a climate that prevents conflicts is providing training to employers, managers and workers representatives in a wide range of topics linked to conflict management, including labour standards, labour law, problem solving and interest-based negotiation process and techniques. Joint union-management workshops (conducted by mutually acceptable trainers-facilitators) can be extremely useful to enhance the quality of the negotiation process and its outcomes and limit the potential for disputes.¹¹

The prevention mediation programme in Canada

To help improve ongoing relationships and keep the lines of communication open between employers and unions, the Federal Mediation and Conciliation Service (FMCS) in Canada offers a comprehensive Preventive Mediation Program designed to help parties build and maintain constructive working relationships. A variety of services are offered, but must be jointly requested by the union and the employer. All Preventive Mediation services are delivered by mediators with extensive experience in both traditional and alternative approaches to labour relations. The programs are customized to meet the specific needs of a particular workplace.

The Preventive Mediation Program (PMP), is designed to help management and labour work together to improve communications, increase cooperation and resolve employment issues through joint problem solving with the aid of a neutral mediator. The PMP encourages a shift to a more positive labour relations environment and promotes responsible collective bargaining in the Province. The Preventive Mediation Program was implemented in 1992. Since then, the Labour Relations Division has continued to refine and expand the services offered under the Program to meet the varying challenges associated with unionized labour management relations. More than 1500 requests for service involving 250 private and public sector clients have been received since 1992. The program continues to gain wide acceptance within the labour management community. In particular, the grievance mediation component has been in high demand and has operated with a high rate of success - approximately 85% on average.¹²

At an in-house level conflict prevention/management activities may include grievance and disciplinary procedures, in-house mediation services and the use of neutral third parties to facilitate meetings and negotiations.

¹¹ The International Training Centre of the ILO organizes on a regular basis international courses on Conciliation and Mediation and on Joint Union-Management Negotiation Skills. It also organized tailor made bipartite courses on these issues at country level, upon requests of ILO constituents; curricula are available in English, French, Spanish, Arabic, Albanian and Bahasa-Indonesia. In collaboration with the ILO project PRODIAF, several workshops have been organized in French-speaking Africa.

¹² For further information visit the WEB site of the Federal Mediation and Conciliation Service Labour Program, Human Resources Development ,Canada

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Promoting Tripartism and Social Dialogue

Successful social dialogue structures and processes have the potential to resolve important economic and social issues, encourage good governance, advance social and industrial peace and stability and boost economic progress.

There are many definitions of social dialogue.

According to the ILO working definition, Social Dialogue includes all types of negotiation, consultation or simply exchange of information between, or among, representatives of governments, employers and workers, on issues of common interest relating to economic and social policy. Social dialogue can be informal or institutionalised, and often it is a combination of the two. It can take place at the national, regional or enterprise level. It can be inter-professional, sectoral or a combination of these.

Social dialogue can exist as:

- A bipartite process only between labour and management (or trade unions and employers' organizations), with or without indirect government involvement
- A tripartite process, with the government as an official party to dialogue
- A "tripartite plus" process, including also experts and representatives of the civil society (e.g. farmers, owners of small enterprises and crafts, cooperatives, community groups, consumers' groups, environmental associations etc.). This modality is also called "civil dialogue"

Such bipartite, tripartite or tripartite plus fora have a variety of focus, functions and mandates.

They can be focussed on labour issues or dealing with wider economic and social policies.

Examples of socio-laboral issues treated by national social dialogue bodies

- wage setting (and minimum wage)
- labour legislation
- working conditions
- labour market policy
- labour dispute resolution
- occupational safety & health

Examples of macroeconomic issues treated by national social dialogue bodies

- macroeconomic policy framework and economic growth;
- structural change and transformation of the economy;
- wage increases and inflation; monetary policy;
- employment policy;
- gender equality;
- education and vocational training;
- productivity and economic competitiveness;
- taxation and fiscal policy;
- social welfare, security and protection;
- economic and social strategies to deal with externally originating pressures for reform (such as: transition to a market economy; regional integration; structural adjustment programmes).

The mandate of the national social dialogue bodies is often reflected in their name: on one side there are the National Labour Councils, on the other side the Economic and Social Councils.

Their functions can be one or a combination of the followings: advice to Government (and/or Parliament) on policy issues (including research); direct negotiation; policy implementation; monitoring of policies and agreements' implementation.

EXERCISE

Views about social dialogue¹³

The aim of this group exercise is to help you think about different perspectives on social dialogue.

In your group, discuss the following statements. Decide how you would respond.

1. "Social dialogue will not work here. There is too much conflict in our industrial relations system" (employers, workers).

2. "For democracy to work, there must be pluralism and tolerance. Social dialogue is an essential part of that. Strong social dialogue at national level should be part of building democracy."

3. "Before we can talk of social dialogue, the Government must abolish the laws which are too restrictive on workers' organizations' right to organize and/or the right to strike" (workers).

4. "Social dialogue could give too much say to workers, and the result will be that enterprises, and the economy as a whole, will become less competitive" (employers).

5. "We can have social dialogue, but at the end of the day, the final decision must remain with the government" (civil servants, ministers).

Please put your report on a flipchart.

Elect a reporter for your group.

¹³ Taken from the ILO training manual on Promoting National Social Dialogue

EXERCISE

*Tripartism and social dialogue: tasks for all*¹⁴

In a small group, read the *Resolution concerning Tripartism and Social Dialogue* adopted at the 2002 International Labour Conference.

The resolution invites various parties to undertake different tasks - governments, employers' and workers' organizations and the ILO itself.

- 1.** Look at the section which refers to your own constituency - governments, employers' and workers' organizations. What obstacles exist to implement this?
- 2.** Then look at the section which refers to the tasks of the ILO. Which parts are most important in your national context?
- 3.** Make any other suggestions you may have about the implementation of the Resolution.

Report the findings of your group in plenary. A discussion will follow.

¹⁴ Adapted from the ILO training Manual on Promoting National Social Dialogue

The Role of Labour Administration in Social Dialogue

The capacity and willingness of the governments to share regulatory authority with organizations of civil society that they do not administratively control is considered as one of the most crucial factors in successful tripartite social dialogue¹⁵.

Government, and, in particular, labour administration, can play different roles in the advancement and sustainability of national social dialogue:

- Creating an enabling framework for social dialogue;
- Promote social dialogue
- Be an active partner in tripartite or tripartite plus social dialogue machineries
- Support and facilitate social dialogue
- Engage in social dialogue in the public sector

Creating an enabling framework for social dialogue

One of labour administration's main functions is to create a stable political and civil climate which enables autonomous employers' and workers' organizations to operate freely and state their views independently, without fear of reprisal.

Government is responsible for promoting and enforcing the appropriate legal framework for sound social dialogue, starting from the ratification of key ILO International Labour Standards concerning social partners' fundamental rights, such as freedom of association and the right to bargain collectively (Conventions N.87 and N.98).

Several ILO instruments (Conventions, Recommendations and Resolutions) can help governments in setting up a conducive legal framework for promoting social dialogue, among others: Convention N.150 and Recommendation N.158 on Labour Administration; Convention N.144 (1976) and Recommendation N.152 (1976), on Tripartite Consultation (International Labour Standards); Recommendation N.113 (1960) on Consultation at Industrial and National Levels and the ILO Resolution Concerning Tripartism and Social Dialogue (2002)¹⁶.

Convention N.150 recognizes that employers and workers organization have essential role in achieving economic social and cultural progress

¹⁵ See Visser, J. (1999) "Societal Support for Social Dialogue. Europe's Trade Unions and Employers' Associations" in Huemer, G. Mesch, M. and Traxler, F. eds. *The Role of Employer Associations and Labour Unions in the EMU: institutional Requirements for European Economic Policies*. Aldershot, UK: Ashgate.

¹⁶ See full texts in annex

through tripartite consultation and social dialogue and asks labour administration to promote consultation, co-operation and negotiation with the social partners (Art.5) on all labour matters. The Convention also suggest the possibility of entrusting certain activities of labour administration to employers' and workers' organisations (Art.2)

Convention N. 144 asks Governments to consult effectively employers' and workers' representatives at each stage of the standards-related activities of the ILO, from setting the agenda of the International Labour Conference, through the supervision of the application of standards, to denunciation¹⁷. In many countries the creation of a consultation body on ILO matters has triggered successful social dialogue on a range of matters beyond those set out in the Convention.

The Government should promote a culture and system of inclusive decision-making by being open and willing to take into account the views of social partners in national policy-making. Setting up a favourable legal framework is part of this general social dialogue system, together with other means. For example, the media are an important vehicle Labour administrations can use to reaffirm their commitment in social dialogue and their recognition of workers' and employers' organizations as viable partners.

Such government's attitude is particularly important because of its responsibility in setting and implementing economic policies which have wider social implications.

Promote social dialogue

Governments are responsible for promoting social dialogue with social partners by promoting a general favourable climate, taking appropriate measures for regular and effective consultation, establishing suitable fora or institutions of national social dialogue. The characteristics of these machineries (in terms of status, mandate, composition, dimension, focus, way of functioning etc) varies from country to country.

In accordance with national custom or practice, such consultation and co-operation could be provided for or facilitated by voluntary action on the part of the employers' and workers' organisations; by promotional action on the part of the public authorities; by laws or regulations, or by a combination of any of these methods (Paragraph 3 of Recommendation N. 113).

¹⁷ i.e. the formal act by a member State of declaring non-binding a Convention which it had previously ratified.

Be an active partner in tripartite or tripartite plus social dialogue machineries

According to the different types, mandates, functions and composition of the national machineries for social dialogue, Government can be directly involved as member of tripartite or tripartite plus bodies, or being the recipient of the advices formulated by this bodies.

In many countries, both informal social dialogue and formal social dialogue (through bipartite, tripartite and/or tripartite plus bodies) coexist. To discuss and decide on key labour issues and to solve labour-related problems, the Minister of Labour him-her self takes the initiative to have ad hoc consultations with the social partners, very often outside the institutional framework of social dialogue bodies.

Support and facilitate social dialogue

The government should support social dialogue machineries by providing institutional framework and administrative support, by establishing a secretariat charged with preparing, organising and following up the activities of the social dialogue body. It also furnishes the expert studies and other background material required for accomplishing its missions. (*See in annex an example of creation of national tripartite body*).

In operational terms, the secretariat is usually attached to an administrative unit of the relevant ministry (division for research and planning, or for labour, employment or industrial relations, or even to a department of the administration), regardless of whether the consultation covers labour administration in general or one of its specific areas of activity.¹⁸ The human, material, information and financial resources made available to the secretariat must be appropriate and should enable it to play its role in keeping with the tasks entrusted to it.

Also in the case of bipartite employer-worker bodies, a unit within the labour administration system could provide support to the parties with secretariat services and, in some cases, act as a facilitator.

¹⁸ See Lecuyer, N., *Guide for Secretariats of National Tripartite Consultation Bodies in English speaking African Countries*.

The National Economic Development and Labour Council in South Africa

In South Africa, the National Economic Development and Labour Council (NEDLAC,) aims to make economic decision-making more inclusive, to promote the goals of economic growth and social equity.

The main labour administration department is the Department of Labour, out of which NEDLAC is funded, but the Departments of Trade and Industry, Finance and Public Works are also centrally involved in NEDLAC. Other departments attend when there is an issue which relates to their portfolio.

NEDLAC's most senior body is the Executive Council, which consists of Ministers and senior officials of Government; General Secretaries and senior office bearers of Labour; captains of industry and senior officials of employer organizations; and senior representatives of the NEDLAC Community Constituency. It meets four times per year and discusses key strategic issues facing South Africa's economy. Once per year, NEDLAC holds an Annual Summit, which provides an opportunity to review the work conducted during the year and give direction for the coming year¹⁹.

Engage in social dialogue in the public sector

In all countries, the State also represents a major employer. As such, it must have in place a mechanism through which it will engage in social dialogue with its own employees, by respecting the principles of the ILO Convention N.151 on Labour Relations (Public Service), (1978).

By adopting dialogue as a way of functioning, public administration can better identify the needs of the users of its services and of its customers and improve its quality, effectiveness and relevance.

Many countries have engaged in public sector reform; restructuring the organization of public services, outsourcing, computerizing many functions, introducing means for measuring the performance of public sector workers in view of improving quality, efficiency and productivity and reducing costs. Permanent social dialogue between the management of public administration and the representative of employees plays a key role in driving reform processes in an equitable and socially sustainable way.

Concerning specifically Labour Administration, the involvement of the social partners can enhance its persuasive capacity as well as its ability to influence economic and social policies of governments in general, and labour policy in particular. This constitutes a significant comparative advantage that labour administration must use in reaffirming the importance of its role and promoting social policies designed to impact government policies as a whole.

¹⁹ For further information see www.nedlac.org.za

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EXERCISE

Advantages and disadvantages of social dialogue²⁰

The aim of this exercise is to help you to think about social dialogue from different perspectives.

In a small group, think about the advantages and disadvantages of social dialogue from different points of view and fill the matrix.

Please write your report on a flipchart and elect a reporter for reporting the findings of your group in plenary.

	ADVANTAGES	DISADVANTAGES
GOVERNMENT		
EMPLOYERS		
WORKERS		
OTHERS (specify)		

²⁰ Adapted from the ILO training Manual on Promoting National Social Dialogue

SUMMARY

Promoting harmonious labour relations and social dialogue is one of the most important roles of a labour administration system.

The ILO Convention N.150 and Recommendation N.158 provides guidance on the key means that can help in achieving this goal, namely: creating a conducive environment for the free exercise of the right to association and the right to organize and bargain collectively; the provision of advisory services to employers' and workers' and their organizations; the set up of mechanisms for labour dispute prevention and resolution (such as consultation and mediation bodies); the promotion of voluntary negotiation and social dialogue machineries.

In consultation with the social partners, Labour Administration could formulate policies on industrial relations and provide a normative framework to balance the interests of employers and employees and review labour and employment laws regularly to ensure their continued relevance to both employers and employees.

Many Labour Administrations have set up industrial relations departments, units or branches, to promote sound labour-management relations and operate in the above mentioned areas.

Tripartite cooperation implies healthy and constructive labour relations which require respect for the autonomy of employers and workers organizations. Labour Administration should set up, support and strengthen mechanisms to ensure that employers and workers and their respective organizations are consulted and involved in all activities related to national labour policy.

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Annexes

- I. Recommendation N.92 on Voluntary Conciliation and Arbitration (1951)*
- II. Convention N.150 and Recommendation N.158 on Labour Administration (see Annexes of Module 2)*
- III. Convention N.144 (1976) and Recommendation N.152 (1976) on Tripartite Consultation (International Labour Standards)*
- IV. Recommendation N.113 (1960) on Consultation at Industrial and National Levels*
- V. ILO Resolution Concerning Tripartism and Social Dialogue (2002)*
- VI. Hybrid processes*
- VII. Creation of a Tripartite Consultation Body*

Annex I

R92 Voluntary Conciliation and Arbitration Recommendation, 1951

Recommendation concerning Voluntary Conciliation and Arbitration

Date of adoption: 29:06:1951

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Thirty-fourth Session on 6 June 1951, and

Having decided upon the adoption of certain proposals with regard to voluntary conciliation and arbitration, which is included in the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation designed to be implemented by the parties concerned or by the public authorities as may be appropriate under national conditions,

adopts this twenty-ninth day of June of the year one thousand nine hundred and fifty-one, the following Recommendation, which may be cited as the Voluntary Conciliation and Arbitration Recommendation, 1951.

I. Voluntary Conciliation

1. Voluntary conciliation machinery, appropriate to national conditions, should be made available to assist in the prevention and settlement of industrial disputes between employers and workers.

2. Where voluntary conciliation machinery is constituted on a joint basis, it should include equal representation of employers and workers.

3.

(1) The procedure should be free of charge and expeditious; such time limits for the proceedings as may be prescribed by national laws or regulations should be fixed in advance and kept to a minimum.

(2) Provision should be made to enable the procedure to be set in motion, either on the initiative of any of the parties to the dispute or ex officio by the voluntary conciliation authority.

4. If a dispute has been submitted to conciliation procedure with the consent of all the parties concerned, the latter should be encouraged to abstain from strikes and lockouts while conciliation is in progress.

5. All agreements which the parties may reach during conciliation procedure or as a result thereof should be drawn up in writing and be regarded as equivalent to agreements concluded in the usual manner.

II. Voluntary Arbitration

6. If a dispute has been submitted to arbitration for final settlement with the consent of all parties concerned, the latter should be encouraged to abstain from strikes and lockouts while the arbitration is in progress and to accept the arbitration award.

III. General

7. No provision of this Recommendation may be interpreted as limiting, in any way whatsoever, the right to strike.

Annex II

C150 Labour Administration Convention, 1978

Convention concerning Labour Administration: Role, Functions and Organisation

Date of adoption: 26:06:1978

Date of coming into force: 11:10:1980

(see Annexes of Module 2)

R158 Labour Administration Recommendation, 1978

Recommendation concerning Labour Administration: Role, Functions and Organisation

Date of adoption: 26:06:1978

(see Annexes of Module 2)

Annex 3

C144 Tripartite Consultation (International Labour Standards) Convention, 1976

Convention concerning Tripartite Consultations to Promote the Implementation of International Labour Standards

Date of adoption: 21:06:1976

Date of coming into force: 16:05:1978

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Sixty-first Session on 2 June 1976, and

Recalling the terms of existing international labour Conventions and Recommendations--in particular the Freedom of Association and Protection of the Right to Organise Convention, 1948, the Right to Organise and Collective Bargaining Convention, 1949, and the Consultation (Industrial and National Levels) Recommendation, 1960--which affirm the right of employers and workers to establish free and independent organisations and call for measures to promote effective consultation at the national level between public authorities and employers' and workers' organisations, as well as the provisions of numerous international labour Conventions and Recommendations which provide for the consultation of employers' and workers' organisations on measures to give effect thereto, and

Having considered the fourth item on the agenda of the session which is entitled "Establishment of tripartite machinery to promote the implementation of international labour standards", and having decided upon the adoption of certain proposals concerning tripartite consultation to promote the implementation of international labour standards, and

Having determined that these proposals shall take the form of an international Convention,

adopts this twenty-first day of June of the year one thousand nine hundred and seventy-six the following Convention, which may be cited as the Tripartite Consultation (International Labour Standards) Convention, 1976:

Article 1

In this Convention the term ***representative organisations*** means the most representative organisations of employers and workers enjoying the right of freedom of association.

Article 2

1. Each Member of the International Labour Organisation which ratifies this Convention undertakes to operate procedures which ensure effective consultations, with respect to

the matters concerning the activities of the International Labour Organisation set out in Article 5, paragraph 1, below, between representatives of the government, of employers and of workers.

2. The nature and form of the procedures provided for in paragraph 1 of this Article shall be determined in each country in accordance with national practice, after consultation with the representative organisations, where such organisations exist and such procedures have not yet been established.

Article 3

1. The representatives of employers and workers for the purposes of the procedures provided for in this Convention shall be freely chosen by their representative organisations, where such organisations exist.

2. Employers and workers shall be represented on an equal footing on any bodies through which consultations are undertaken.

Article 4

1. The competent authority shall assume responsibility for the administrative support of the procedures provided for in this Convention.

2. Appropriate arrangements shall be made between the competent authority and the representative organisations, where such organisations exist, for the financing of any necessary training of participants in these procedures.

Article 5

1. The purpose of the procedures provided for in this Convention shall be consultations on--

(a) government replies to questionnaires concerning items on the agenda of the International Labour Conference and government comments on proposed texts to be discussed by the Conference;

(b) the proposals to be made to the competent authority or authorities in connection with the submission of Conventions and Recommendations pursuant to article 19 of the Constitution of the International Labour Organisation;

(c) the re-examination at appropriate intervals of unratified Conventions and of Recommendations to which effect has not yet been given, to consider what measures might be taken to promote their implementation and ratification as appropriate;

(d) questions arising out of reports to be made to the International Labour Office under Article 22 of the Constitution of the International Labour Organisation;

(e) proposals for the denunciation of ratified Conventions.

2. In order to ensure adequate consideration of the matters referred to in paragraph 1 of this Article, consultation shall be undertaken at appropriate intervals fixed by agreement, but at least once a year.

Article 6

When this is considered appropriate after consultation with the representative organisations, where such organisations exist, the competent authority shall issue an annual report on the working of the procedures provided for in this Convention.

Article 7

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 8

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 9

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 10

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 11

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 12

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 13

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:

a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 9 above, if and when the new revising Convention shall have come into force;

b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 14

The English and French versions of the text of this Convention are equally authoritative.

R152 Tripartite Consultation (Activities of the International Labour Organisation) Recommendation, 1976

Recommendation concerning Tripartite Consultations to Promote the Implementation of International Labour Standards and National Action relating to the Activities of the International Labour Organisation

Date of adoption: 21:06:1976

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Sixty-first Session on 2 June 1976, and

Recalling the terms of existing international labour Conventions and Recommendations - in particular the Freedom of Association and Protection of the Right to Organise Convention, 1948, the Right to Organise and Collective Bargaining Convention, 1949, and the Consultation (Industrial and National Levels) Recommendation, 1960 - which affirm the right of employers and workers to establish free and independent organisations and call for measures to promote effective consultation at the national level between public authorities and employers' and workers' organisations, as well as the provisions of numerous international labour Conventions and Recommendations which provide for the consultation of employers' and workers' organisations on measures to give effect thereto, and

Having considered the fourth item on the agenda of the session which is entitled "Establishment of tripartite machinery to promote the implementation of international labour standards, and having decided upon the adoption of certain proposals concerning tripartite consultations to promote the implementation of international labour standards and national action relating to the activities of the International Labour Organisation, and

Having determined that these proposals shall take the form of a Recommendation,

adopts this twenty-first day of June of the year one thousand nine hundred seventy-six, the following Recommendation, which may be cited as the Tripartite Consultation (Activities of the International Labour Organisation) Recommendation, 1976:

1. In this Recommendation the term ***representative organisations*** means the most representative organisations of employers and workers enjoying the right of freedom of association.

2.

(1) Each Member of the International Labour Organisation should operate procedures which ensure effective consultations with respect to matters concerning the activities of the International Labour Organisation, in accordance with Paragraphs 5 to 7 of this Recommendation, between representatives of the government, of employers and of workers.

(2) The nature and form of the procedures provided for in subparagraph (1) of this Paragraph should be determined in each country in accordance with national practice,

after consultation with the representative organisations where such procedures have not yet been established.

(3) For instance, consultations may be undertaken--

(a) through a committee specifically constituted for questions concerning the activities of the International Labour Organisation;

(b) through a body with general competence in the economic, social or labour field;

(c) through a number of bodies with special responsibility for particular subject areas; or

(d) through written communications, where those involved in the consultative procedures are agreed that such communications are appropriate and sufficient.

3.

(1) The representatives of employers and workers for the purposes of the procedures provided for in this Recommendation should be freely chosen by their representative organisations.

(2) Employers and workers should be represented on an equal footing on any bodies through which consultations are undertaken.

(3) Measures should be taken, in co-operation with the employers' and workers' organisations concerned, to make available appropriate training to enable participants in the procedures to perform their functions effectively.

4. The competent authority should assume responsibility for the administrative support and financing of the procedures provided for in this Recommendation, including the financing of training programmes where necessary.

5. The purpose of the procedures provided for in this Recommendation should be consultations--

(a) on government replies to questionnaires concerning items on the agenda of the International Labour Conference and government comments on proposed texts to be discussed by the Conference;

(b) on the proposals to be made to the competent authority or authorities in connection with the submission of Conventions and Recommendations pursuant to article 19 of the Constitution of the International Labour Organisation;

(c) subject to national practice, on the preparation and implementation of legislative or other measures to give effect to international labour Conventions and Recommendations, in particular to ratified Conventions (including measures for the implementation of provisions concerning the consultation or collaboration of employers' and workers' representatives);

(d) on the re-examination at appropriate intervals of unratified Conventions and of Recommendations to which effect has not yet been given, to consider what measures might be taken to promote their implementation and ratification as appropriate;

(e) on questions arising out of reports to be made to the International Labour Office under articles 19 and 22 of the Constitution of the International Labour Organisation;

(f) on proposals for the denunciation of ratified Conventions.

6. The competent authority, after consultation with the representative organisations, should determine the extent to which these procedures should be used for the purpose of consultations on other matters of mutual concern, such as--

(a) the preparation, implementation and evaluation of technical co-operation activities in which the International Labour Organisation participates;

(b) the action to be taken in respect of resolutions and other conclusions adopted by the International Labour Conference, regional conferences, industrial committees and other meetings convened by the International Labour Organisation;

(c) the promotion of a better knowledge of the activities of the International Labour Organisation as an element for use in economic and social policies and programmes.

7. In order to ensure adequate consideration of the matters referred to in the preceding Paragraphs, consultations should be undertaken at appropriate intervals fixed by agreement, but at least once a year.

8. Measures appropriate to national conditions and practice should be taken to ensure co-ordination between the procedures provided for in this Recommendation and the activities of national bodies dealing with analogous questions.

9. When this is considered appropriate after consultation with the representative organisations, the competent authority should issue an annual report on the working of the procedures provided for in this Recommendation.

Annex IV

R113 Consultation (Industrial and National Levels) Recommendation, 1960

Recommendation concerning Consultation and Co-operation between Public Authorities and Employers' and Workers' Organisations at the Industrial and National Levels

Date of adoption: 20:06:1960

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Forty-fourth Session on 1 June 1960, and

Having decided upon the adoption of certain proposals with regard to consultation and co-operation between public authorities and employers' and workers' organisations at the industrial and national levels, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation,

adopts this twentieth day of June of the year one thousand nine hundred and sixty, the following Recommendation, which may be cited as the Consultation (Industrial and National Levels) Recommendation, 1960:

1.

(1) Measures appropriate to national conditions should be taken to promote effective consultation and co-operation at the industrial and national levels between public authorities and employers' and workers' organisations, as well as between these organisations, for the purposes indicated in Paragraphs 4 and 5 below, and on such other matters of mutual concern as the parties may determine.

(2) Such measures should be applied without discrimination of any kind against these organisations or amongst them on grounds such as the race, sex, religion, political opinion or national extraction of their members.

2. Such consultation and co-operation should not derogate from freedom of association or from the rights of employers' and workers' organisations, including their right of collective bargaining.

3. In accordance with national custom or practice, such consultation and co-operation should be provided for or facilitated--

(a) by voluntary action on the part of the employers' and workers' organisations; or

(b) by promotional action on the part of the public authorities; or

(c) by laws or regulations; or

(d) by a combination of any of these methods.

4. Such consultation and co-operation should have the general objective of promoting mutual understanding and good relations between public authorities and employers' and workers' organisations, as well as between these organisations, with a view to developing the economy as a whole or individual branches thereof, improving conditions of work and raising standards of living.

5. Such consultation and co-operation should aim, in particular--

(a) at joint consideration by employers' and workers' organisations of matters of mutual concern with a view to arriving, to the fullest possible extent, at agreed solutions; and

(b) at ensuring that the competent public authorities seek the views, advice and assistance of employers' and workers' organisations in an appropriate manner, in respect of such matters as--

(i) the preparation and implementation of laws and regulations affecting their interests;

(ii) the establishment and functioning of national bodies, such as those responsible for organisation of employment, vocational training and retraining, labour protection, industrial health and safety, productivity, social security and welfare; and

(iii) the elaboration and implementation of plans of economic and social development.

Annex V

Resolution concerning tripartism and social dialogue (2002)

The General Conference of the International Labour Organization,

Recalling the Constitution of the International Labour Organization,

Recalling Conventions Nos. 87, 98, 144, 150, 151 and 154, and the Recommendations accompanying them as well as Recommendation No. 113,

Underlining the founding of the International Labour Organization in 1919 as a unique tripartite structure with the objective of “universal and lasting peace”,

Reaffirming the importance of the tripartite nature of the International Labour Organization, which is the only international organization where governments and representatives of workers’ and employers’ organizations can freely and openly exchange their ideas and experiences and promote lasting mechanisms of dialogue and consensus building,

Stressing that among the strategic objectives of the International Labour Organization is the strengthening of tripartism and social dialogue,

Aware that social dialogue and tripartism have proved to be valuable and democratic means to address social concerns, build consensus, help elaborate international labour standards and examine a wide range of labour issues on which the social partners play a direct, legitimate and irreplaceable role,

Reaffirming that legitimate, independent and democratic organizations of workers and employers, engaging in dialogue and collective bargaining, bring a tradition of social peace based on free negotiations and accommodation of conflicting interests, therefore making social dialogue a central element of democratic societies,

Recalling the numerous challenges and opportunities facing the world of work in the framework of ongoing globalization and the importance of strengthening the collaboration between the social partners and governments in order to achieve appropriate solutions at national, regional and international levels and, most pertinently, in the International Labour Organization,

Recalling the essential role of the social partners in stable economic and social development, democratization and participative development and in examining and reinforcing the role of international cooperation for poverty eradication, promotion of full employment and decent work, which ensure social cohesion of countries, Stressing that social dialogue and tripartism are modern and dynamic processes that have unique capacity and great potential to contribute to progress in many difficult and challenging situations and issues, including those related to globalization, regional integration and transition,

Emphasizing that the social partners are open to dialogue and that they work in the field with NGOs that share the same values and objectives and pursue them in a constructive manner; recognizing the potential for the International Labour Office to collaborate with civil society following appropriate consultations with the tripartite constituents,

Noting the valuable contributions of civil society institutions and organizations in assisting the Office in carrying out its work – particularly in the fields of child labour, migrant workers and workers with disabilities; and recognizing that forms of dialogue other than social dialogue are most useful when all parties respect the respective roles and responsibilities of others, particularly concerning questions of representation;

1. Invites the governments to ensure that the necessary preconditions exist for social dialogue, including respect for the fundamental principles and the right to freedom of association and collective bargaining, a sound industrial relations environment, and respect for the role of the social partners, and invites governments as well as workers' and employers' organizations to promote and enhance tripartism and social dialogue, especially in sectors where tripartism and social dialogue are absent or hardly exist:

(a) invites workers' organizations to continue to empower workers in sectors where representation is low in order to enable them to exercise their rights and defend their interests;

(b) invites employers' organizations to reach out to sectors where representation levels are low in order to support the development of a business environment in which tripartism and social dialogue can flourish.

2. Invites the Governing Body of the International Labour Office to instruct the Director-General to ensure that the International Labour Organization and its Office within existing resources of the Organization:

(a) consolidate the tripartite nature of the Organization – governments, workers and employers – legitimately representing the aspirations of its constituents in the world of work;

(b) continue to this end their efforts to strengthen employers' and workers' organizations to enable them better to collaborate in the work of the Office and be more effective in their countries;

(c) enhance the role of tripartism and social dialogue in the Organization, both as one of its four strategic objectives and as a tool to make operational all strategic objectives, as well as the cross-cutting issues of gender and development;

(d) promote the ratification and application of ILO standards specifically addressing social dialogue, as set out in the preamble above and continue to promote the ILO Declaration on Fundamental Principles and Rights at Work;

(e) promote the involvement of the social partners in a meaningful consultative process in labour reforms, including dealing with the core Conventions and other work-related legislation;

- (f) carry out in-depth studies of social dialogue in collaboration with the Organization's constituents with a view to enhancing the capacity of labour administrations and workers' and employers' organizations to participate in social dialogue;
- (g) reinforce the role and all the functions of the Social Dialogue Sector within the Office and in particular its capacity to promote social dialogue in all the strategic objectives of the Organization, and recognize the unique functions and roles of the Bureaux for Employers' and Workers' Activities within the Office and strengthen their abilities to provide services to employers' and workers' organizations worldwide in order to enable them to maximize the outcome of the Office's work;
- (h) promote and reinforce the tripartite activities of the Organization to determine its policies and work priorities, and further develop technical cooperation programmes and other mechanisms with the social partners and governments to help strengthen their capacities, services and representation;
- (i) reiterate in headquarters and in the field the importance of strengthening the tripartite structure of the International Labour Organization and to ensure that the Office works with and for the constituents of the Organization;
- (j) ensure that the tripartite constituents will be consulted as appropriate in the selection of and relationships with other civil society organizations with which the International Labour Organization might work.

Annex VI

Hybrid processes²¹

Parties in some countries have experimented with processes that mix the best of both the interest-based and rights-based processes of mediation and arbitration.

Med-Arb or Con-Arb

Med-arb or con-arb is a process in which the parties to a dispute go to a single third party who first mediates and, failing agreement, then determines the dispute by final and binding arbitration. This process poses some challenging questions for the third party who may not rely on confidential information gathered from one party during the mediation when acting as an arbitrator. Mediators working in this format therefore usually decide not to meet the parties separately at the mediation stage. This limits the potential for dispute settlement through mediation.

Conciliation-then-arbitration

Conciliation-then-arbitration is a combination of processes by which parties to a dispute go first to a single third party for conciliation and, failing resolution of the dispute through conciliation, go immediately to another third party who determines the dispute by final and binding arbitration. The essence of this process is for one third party to conduct the conciliation and another third party to perform the arbitration function. The two processes are conducted back to back, sometimes on the same day. This process needs to be contrasted with med-arb where a single third party mediates and arbitrates.

Arb-Med

Arb-med is a process in which the parties to a dispute agree to go to a single third party who first arbitrates, but does not disclose his or her award to the parties. With the award sealed in an envelope and not subject to modification, the third party then mediates the dispute. Failing settlement through mediation,

²¹ From Steadman, F. (2008), *Handbook on Alternative Labour Dispute Resolution* ITC-ILO SRO Bangkok.

the arbitrator's award is disclosed to the parties and it becomes binding upon them.

Both the med-arb and arb-med processes encourage parties to reach their own best settlement in the knowledge that an arbitrator will, otherwise, impose a decision. These processes are usually entered into voluntarily under the terms of a modified arbitration agreement, and the parties pay for them.

Annex VII

Creation of a tripartite consultation body²²

Creation of the Board

1. A tripartite body is established to be known as the ... (e.g. Labour Advisory Board, or similar), referred to in this law as the "Board".

Role and mandate

2. The Board shall act as an independent consultative body. Its role is to give advice to the Government, through the Ministry of Labour, on the matters outlined in the sections below.
3. The mandate of the Board shall comprise the following tasks:
 - a. to consider and advise upon any proposed legislation affecting labour, employment, industrial relations or working conditions, before it is introduced in Parliament;
 - b. to consider and advise on any policy measures that fall within the ambit of the Ministry of Labour;
 - c. to advise the Minister on any other matters connected with the employment of workers, industrial relations or organizations of employers or workers as is referred to them by the Minister;
 - d. to consider and advise on the ratification and implementation in the country of any relevant international labour standards, including Conventions and Recommendations of the International Labour Organization;
 - e. to consider and advice on proposals or matters to be discussed at the International Labour Conference of the International Labour Organization, matters which may be raised in reports to be made to the International Labour Office, or issues addressed by other tripartite regional or international conferences.
4. The Board may also, on its own initiative, undertake studies on socio-economic issues, discuss the formulation and implementation of national policy related to

²² Lecuyer, N, "Guide for Secretariats of National Tripartite Consultation Bodies in English-speaking African Countries", ILO.

labour, economic and social affairs, and report to the Minister of Labour and other relevant ministers upon such discussion.

Composition

5. The Board shall consist of:
- a. the Minister of Labour or a person designated by him or her, who shall be the chairperson of the Board;
 - b. x members nominated by the Ministry of Labour, the Ministry of Finance, the Ministry of Trade and Development, the Ministry of Justice, the Ministry of Agriculture, etc;
 - c. x members nominated by the most representative organizations of employers;
 - d. x members nominated by the most representative organizations of workers.

(Note: The representatives of workers' and employers' organizations shall be equal in number.)

6. In nominating the representatives, care should be taken to have an appropriate percentage of female members on the Board:
7. The Board shall have a workers' vice-chairperson and an employers' vice-chairperson nominated respectively from among the workers' members and the employers' members of the Board.
8. Each member of the Board shall have an alternate member, who shall, in the absence of the regular member, replace the regular member and have the same rights and functions as the regular member.
9. The members and alternate members shall be appointed by the Minister of Labour and their names and terms of office published in the Gazette.

Term of office

10. Members appointed shall serve for a term of three years. They shall remain in office until they resign or are either reappointed or replaced. Any vacancy arising in the course of the member's term in office shall be filled in accordance with the procedures prescribed for such appointment.

Advisors, experts

11. The chairperson may, after consultation with the Board, invite experts and advisors to a Board meeting to give their expert views and opinions on specific matters. Such expert shall not be entitled to vote.

Meetings and agenda

12. The Board shall meet regularly and at least once every three months. It may meet in an extraordinary session upon a request submitted to the chairperson by half of the members of the Board.

13. The secretary shall convene the meetings of the Board at the request of the chairperson or one of the vice-chairpersons. The members of the Board shall be notified at least 15 days in advance of the meeting.
14. The agenda of the meeting shall be prepared by the secretary following consultations with the chairperson and the vice-chairpersons.

Quorum

15. The quorum shall consist of x members, of which there should be an equal number of employers' and workers' members. If these conditions are not met, the meeting shall be postponed by at least x calendar days.

Decision making

16. The Board's decisions shall normally be taken on the basis of consensus. Where this is not possible, decisions shall be taken by a simple majority of the members present and voting.

Committees

17. The Board may, as it considers appropriate, establish specialised committees as standing committees or ad-hoc committees. These committees shall comprise an equal number of members representing employers' and workers' interests. The opinions and decisions of such committees shall be presented to the Board for final decision.

Secretariat

18. The Board shall have a permanent secretariat responsible for preparing the meetings (date and venue, agenda) of the Board and its committees, organising them, drafting the minutes and other records of decisions taken and undertaking follow up, managing the secretariat itself, running the documentation and filing services, and for furnishing information about this tripartite body and ensuring a certain relationship amongst the members of the Board.
19. The permanent secretariat shall be headed by a secretary appointed by the Minister from among senior labour administration officers. The secretary shall assist the chairperson in his/her duties, but shall not have voting rights. Subject to the laws governing the public service, the Government shall provide the Board with a sufficient number of staff for the performance the Board's mandate.

Executive office

20. The Board may establish an executive office which shall consist of the chairperson, the vice-chairpersons and the secretary.
21. The role of the executive office is:

- a. to prepare the yearly programme of work for approval of the Board;
- b. to monitor the implementation of the Board's yearly programme of work, including the financial and staffing resources;
- c. to act in urgent cases and report in writing on such actions to the Board as a whole.

Spokesperson

22. The Board may consider appointing an official spokesperson.

Rules of Procedure

23. The Board shall regulate its proceedings in such manner as it thinks fit.

Training

24. Arrangements shall be made between the public service and the representative employers' and workers' organizations to secure the necessary training for members of the Board, as well as for the secretariat.

Budget and finances

25. The operating costs of the Board and its secretariat shall be borne by the Government.
26. The members of the Board and advisors and experts may be paid such fees and allowances as may be determined by the Minister from time to time, with the concurrence of the Minister of Finance.

Annual report

27. The Board shall, not later than three months after the end of the financial year, furnish to the Government, including the office of the President and the Parliament, the annual report and audited accounts of the Board.

Commencement

28. This Act shall come into operation on a date to be fixed by Proclamation.