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DIAGNOSTIC REPORT ON SOCIAL DIALOGUE AND COLLECTIVE BARGAINING IN TUNISIA

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DIAGNOSTIC REPORT
ON SOCIAL DIALOGUE AND COLLECTIVE
BARGAINING IN TUNISIA

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INTRODUCTION

1. Subject of the mission

The mission consists in carrying out a diagnosis of social dialogue and collective bargaining in Tunisia, through conducting a national survey based on analysing the attitudes and opinions of a sample of employers regarding the practice of social dialogue and collective bargaining within the company (facility). The mission will cover as well, the attitudes of trade unions' representatives at the level of the employers, assessing the challenges and suggesting possible solutions in a report to be carried out to this effect.

Accordingly, this report will define social dialogue with regard to its components, different aspects and levels and will highlight its importance and advantages in dealing with the problems raised at all levels. Besides, the report will be focusing on the challenges as seen by a specific category of employers affiliated to the Tunisian Union of Industry, Commerce and Handicrafts (UTICA) (30 companies) and suggest ways to overcome these challenges.

The report attempts to answer a number of key questions relevant to the subject of the survey, which emerge at the actual practice of the social dialogue and collective bargaining within the company, as well as suggesting the suitable solutions with the aim to achieve the following objectives:

a. Encourage social dialogue between the production parties within the company and, through them, between the Tunisian Union of Industry, Commerce and Handicrafts and the Tunisian General Labor Union (UGTT), being respectively the professional organizations of employers and workers in Tunisia, for the following reasons:

- ▶ The significant role of the dialogue as a perfect tool to resolve the problems which might affect the integrity of the professional relationships between the production parties and one of the finest aspects of social democracy, both inside and outside the company.
- ▶ The social dialogue strives to maintain sustainable social peace that helps enhancing the productivity within the company to improve its potentials in terms of competitiveness and enhances the purchasing power of its employees.
- ▶ The Tunisian Union of Industry, Commerce and Handicrafts and the Tunisian General Labor Union have served as social partners thanks to the social dialogue not only at the national level but also at the international level, which, (under the Tunisian National Dialogue Quartet) managed to win the Nobel Peace Prize, for their effective role in protecting Tunisia, this moderate Mediterranean country, from social upheavals and helping the nation, together with other civil society components, to achieve the democratic transition process.
- ▶ To meet the challenges and overcome the obstacles at all levels, which makes the Tunisian Union of Industry, Commerce and Handicrafts and the Tunisian General Labor Union enshoulder further responsibilities to keep up this position and maintain the stability of the social climate at all levels, including the companies.

b. Backing up the collective bargaining for the following considerations:

- ▶ Thanks to the positive results of collective bargaining at all levels not only the economic and social ones, but also in terms of development of work legislations the sense of relief it creates for the parties involved in the production process within the company.

▶ Given that collective bargaining is considered as the backbone of social dialogue and the optimal framework for dialogue and consensus between the professional organizations of employers and employees on issues of common interest, i.e. the parties involved in the production process within the company.

▶ Considering the collective bargaining as one of the basic factors of healthy social climate, which, thanks to it the social actors in Tunisia have assumed a high degree of responsibility, which helped them in developing occupational relationships inside and outside the company.

C. In order that to ensure the credibility, accuracy and effectiveness of this mission, a questionnaire was prepared and distributed to a specific category of economic companies officials (30 companies affiliated to the Tunisian Union of Industry, Commerce and Handicrafts), which were selected based on the following criteria:

▶ Distribution of companies by geographical location: (30 companies spread over 44 geographical locations taking into account branches)

▶ 20 companies in the Grand-Tunis region

▶ 4 companies in the governorates of Sousse, Monastir and Mahdia

▶ 3 companies in the governorate of Bizerte and Beja

▶ 6 companies in the governorate of Nabeul , Zaghouane and Kairouan

▶ 1 companies in the governorate of Sfax, Mednine , Tataouine and Gafsa

▶ Distribution of companies by activity sector

| Sector | Number of companies |
|-------------------------------------|---------------------|
| Electricity and electronics | 4 |
| Metals | 3 |
| Food Industry | 7 |
| Textiles & Clothing | 3 |
| Hotels and tourism | 1 |
| Building materials and Public Works | 2 |
| Chemical industries | 3 |
| Transport | 5 |
| Environmental services | 2 |
| Total | 30 |

► Distribution of companies by size (according to number of employees) *

- Les than 50 employees: 3 companies
- Between 50 and 100 employees: 2 companies
- Between 101 and 200 employees : 6 companies
- Between 201 and 500 employees : 14 companies
- More than 500 employees : 5 companies

The total number of employees who answered the questionnaire was 11756 divided by gender almost as follows: 60% and 40%.

Regarding the topics dealt with in the questionnaire (please find attached a copy thereof), are considered a significant source of information relevant to the purpose of the mission and focus on the following themes:

- Necessary details about the company, the responsible person and the staff.
- The legal framework governing occupational relationships (regulation applicable to the company...)
- Trade union and non trade union dialogue structures in the company (conditions of its establishment, activities, functioning and role in the development of social dialogue through consultation and negotiation and their role in enhancing the competitiveness of the company and improving the purchasing power of its employees).
- Collective and individual work conflicts (to know whether a work dispute has taken place in the company during the three last years .. the reasons and ways to settle them either through structures of dialogue or any other conciliatory administrative structures) which give an idea about the position and enforcement of dialogue in the company
- The role of human resources management in the promotion of social dialogue in the company through through provision of the appropriate conditions for practicing thereof.
- The role of the Tunisian Union of Industry, Commerce and Handicrafts in sponsoring social dialogue in the company , supporting the relevant parties and helping them to overcome difficulties including economic challenges.
- Different issues: most important observations of respondents about the mission related issues.

2. Overview on the Report's Structure

Through the answers obtained from the employers and the objectives planned for the task, the report has been structured into two parts as follows:

After a brief historical background about the different forms of social dialogue including collective bargaining since its emergence in Tunisia until the present date, its definition and the national and international standards that govern it and its importance, exposes the report in detail to the three levels of social dialogue i.e. the national, the sectoral and the basic i.e. in the company.

The second part of the report focused on the mechanisms of social dialogue including mainly consultation and exchange of views and collective bargaining at the three levels, the national, the sectoral and the company. It also highlighted the problems of a specific category of

employers involved in the questionnaire that were diagnosed while actually practicing social dialogue through consultation and collective bargaining at the company level and it worked on suggesting proposals and recommendations that make these two mechanisms keep pace with the changes taking place in Tunisia during this difficult and sensitive period at all levels including the economic, the social and the political (democratic transition) and its effects on the company and the staff's yield.

3. General Context of the Mission

Review the difficulties currently taking place in Tunisia at several levels including:

- ▶ Economical (decline in production and productivity almost at all levels , devaluation of work, Absence of procedures related to development mainly in regions, decline in growth rate, increasing phenomenon of smuggling of goods and products, predominance of the informal sector and the rise of parallel economy, closure of a significant number of companies and the migration of others to other countries)
- ▶ Social (out-burst of social dialogues, emergence of the phenomena of sit-ins where people have been greatly involved, emergence of trade union pluralism, disruption of business for many periods since January 14th, 2011, especially in production units of the strategic sectors of the country such as phosphate and oil sectors, prevalence of unemployment mainly among university graduates..)
- ▶ Political ((instability of the political situation due to the fact that several transitional governments took over the rule of the country since the revolution of January 14th , 2011,politics no longer has played the role of driving dialogue between social partners, especially in times of crisis),
- ▶ Security (knowing that development always pays the price of counterterrorism).
All these factors, among many others, if it lasts, will threaten the existence of economic company, as well as the future of its employees in particular, and will deteriorate the situation in the country. Accordingly, social partners could not but resort to social dialogue as the only way the nature of Tunisian society and the serious conditions that take place in the country at this critical stage of its history requires and the only path that has already been proved to be effective and enabled this country to face the challenges and overcome the obstacles whatsoever.

4. Overview on the economic situation

The economic situation in Tunisia has deteriorated at all levels as shown by the most important economic indicators as a result of a number of conditions most importantly:

- ▶ Long transition period from 2011 and political instability
- ▶ Increasing social protests and its impact on the investment climate and the disruption of production
- ▶ Effects of the fragile security situation as a result of terrorist threats , terrorist events as well as the repercussions of the situation in Libya
- ▶ Work devaluation and decline at the level of production and productivity
- ▶ Unexpected increase of smuggling and parallel economy
- ▶ The emergence of corruption and impunity indicators

These conditions led to impossibility of economic take-off and achievement of the required growth rates for employment promotion and ensuring social progress in the country. Inflation rates were almost zero during some years but it has recently increases, the Dinar value has been dropped, aggravation of budget deficit, the trade balance and the balance of payments. Then, Pension funds entered in a stage of crisis, failure of payment, decline of sovereign credit rating. Indebtedness reached record levels; the investment climate lost its attractiveness to the extent that foreign direct investments left Tunisian territory to better cost-effective and more stable countries.

The following is an explanation of the decline of most important economic indicators:

| Year | 2011 | 2012 | 2013 | 2014 | 2015 |
|-------------|------|------|------|------|------|
| Growth % | -1,9 | 3,9 | 2,4 | 2,3 | 0,5 |
| Inflation % | 3,5 | 5,1 | 5,8 | 4,9 | 4,8 |

Source: National Institute of Statistics

If we review the most important indicators of the economic situation during the first semester of 2016, we note that indicators continue to decline and the disruption of public balances in several fields.

Trade exchanges in the first semester of 2016:

The trade exchange during the first semester of the year 2016 declined at the level of imports and exports to reach 1.2% and 1.6%. Trade deficit remained persistent at 6019 million dinars.

Exports to the European Union dropped to 3.6 % to reach 10384 Million Dinars for the first six months during the year 2016 against 10769 Million Dinars in the same period of the year 2015. This is the same case for imports which fell by 5.9% for the same period of the year 2015 and 2016.

Foreign trade statistics with Maghreb countries, maily Lybia, also dropped to 17.7% for exports.

Development of trade exchange (MTD)

| 1st semester | 2013 | 2014 | 2015 | 2016 |
|-----------------|---------|---------|---------|---------|
| Exports | 14317.2 | 13963.2 | 14437.8 | 14257.7 |
| Imports | 19870.8 | 20690.2 | 20606.9 | 20277.1 |
| Balance | 5553.6- | 6227- | 6169.1- | 6019.4- |
| Coverage rate % | 72.1 | 67.5 | 70.1 | 70.3 |

Source: Ministry of Commerce

Foreign investment:

Foreign investments reached 915.1 MTD during the first semester of the year 2016 against 1238.8 MTD during the same period of the year 2015, recording a decline of 25.9% mainly due to the dropping of direct foreign investments in services for 45% and in industry for 6.1%.

Development of foreign investments (MTD)

| First semester | 2015 | 2016 | Development % |
|---------------------------|--------|-------|---------------|
| Direct investments | 992.8 | 882.9 | -11.1 |
| Portfolio investment | 242 | 32.2 | -86.7 |
| Total foreign investments | 1234.8 | 915.1 | -25.9 |
| Industry | 315.6 | 296.5 | -6.1 |
| Agriculture | 2 | 2.53 | 26.5 |
| Services | 145.4 | 78.9 | -45.7 |
| Energy | 490.1 | 505 | 3.0 |

Source: Foreign Investment Promotion Agency

Authorized foreign investments

Unauthorized investments in the industrial sector knew an increase of 22.9% during the first semester of 2016 due to the growing investments in the sectors of mechanics, electricity and food industries compared to falling investment in the textile, clothing, leather and footwear sectors.

Growing of the authorized industrial investments (MTD))

| First term | 2015 | 2016 | Development % |
|--------------------------------------|--------|--------|---------------|
| Food industry | 408.3 | 607.1 | 48.7 |
| Building materials industry | 240.6 | 216.1 | -10.2 |
| Electricity and electronics industry | 175.5 | 375.2 | 113.8 |
| Chemical industries | 146.2 | 125.8 | -14 |
| Textile and clothing industry | 109.1 | 59.6 | -45.4 |
| Leather and footwear industry | 13.4 | 6 | -55.2 |
| Other | 221.5 | 225.6 | 1.9 |
| Total | 1314.6 | 1615.4 | |

Source: Industrial Promotion Agency

Tourism

Tourism revenues diminished to 38% as it reached 772.7 MTD during the first semester of the year 2016 against 1246.4 during the same period of 2015. This persisting decline is due to the phenomenon of terrorism namely the National Bardo Museum attack after which all cruises were cancelled in addition to Sousse hotel attack created the recession on the most traditional European markets.

Growing of tourism revenues and spent nights

| 6 months | 2014 | 2015 | 2016 | 16/14% | 16/15% |
|-----------------|--------|--------|-------|--------|--------|
| Revenues (MTD) | 1445.3 | 1246.4 | 772.7 | -38% | -46.5% |
| Nights spent(M) | 11.053 | 8.505 | 5.331 | -37.3% | -51% |

Source: Ministry of Tourism

Public finances:

Provisional results (according to the Ministry of Finance) of the implementation of the state budget for the year 2016 at the end of the month of June indicate an increase of 0.3% of tax revenues to reach 9304.9 MTD against 9275.4 MTD for the same period in the year 2015. Whereas, the public debt ratios have increased for 25.5 % against the first semester of the year 2015 and external debt ration reached 64.6% of against 63.7% during the first semester of 2015.

Part One: Diagnosis of Social Dialogue in Tunisia

INTRODUCTION

Current economic and social situation is still unstable which provides favorable conditions for serious repercussions to occur not only at the national economy level but also at the economic enterprise level. In this context, Social dialogue can play an important role within the Company to push the two parties to contribute effectively to maintain professional relationships stability and ensure the sustainability of the company and the jobs it provides.

Launching of all forms of social dialogue within the company may enhance decent work and support company competitiveness considering dialogue as the fundamental basis to improve the social climate between production related parties and deal with all relevant social and economic matters for the sake of the company and its staff.

Accordingly, social dialogue is an integral part of the economic, political and historical context of the country. This is why; we will highlight all data relevant to social dialogue in Tunisia since its emergence until the present date.

1. Emergence of Social Dialogue in Tunisia: Historical Background

► In the beginning of the twentieth century, the Tunisian economy was mainly based on agriculture and traditional handicrafts and to a lesser extent on internal trade and liberal professions. Work relationships between the employer and the employee were based on customs and traditions.

▶ On December 15th, 1906, the Tunisian Code of Obligations and Obligations was published in the official gazette. Since then, the concern in adjusting and clarifying the relationship between the employer and the employee was raised by developing provisions related to hiring human services or their job on the second chapter of this code. This concern has been continued to the 4th of August 1936 when social dialogue began to see the light in Tunisia.

▶ On this basis, the stages of the social dialogue were formally divided in this country on five stages as follows: period 1936-1966 , period 1966-1973 , period 1973-1989 , period 1990-2010 and period 2011-2016.

▶ First, the period of 1936- 1966 =

On the 4th of August 1936, the decree on joint working conventions was promulgated , which paved the way to the conclusion of several joint conventions which played an important role at that time not only in the development of social dialogue but also in adjusting the relationship between employees and employers in the field of industrial and commercial activities. It also provided for the employee's rights and obligations including the right to salary and relevant remunerations which provided appropriate conditions for promulgating several ordinal texts including mainly the decree of the 7th of February 1940 regulating the payment of wages of workers and employees, the decree dated on November 14th of the same year controlling firing in industrial and commercial establishments , followed by the decree of September 4th , 1943 fixing the minimum wages in the fields of trade, industry and liberal professions and the decree of November the 5th , 1949 on joint working contracts...

▶ However, the revival of social dialogue was short-lived for several reasons, including:

▶ Climatic reasons (mainly lack of rainfall)

▶ For security reasons (World War II expansion during the forties to include some areas of Tunisia),

▶ Economic reasons (to direct all the economic potential to serve the war), as a result, the order dated on November the 5th , 1949 was promulgated to modify the decree promulgated on August 4th , 1936 and freeze in its article 28 bargaining over wages, bonuses and occupational classification. This procedure in its turn led to the freezing of social dialogue for a long time. Whereas, article 29 of the decree 1949 stipulated keeping the wage payment system, established by the decree dated on September 4th , 1943 , effective during the freezing period.

▶ Second : the period of 1966-1973=

In 1966, was issued for the first time in Tunisia, the Labor Code by virtue of Law 27 dated on April 30th, 1966. This Code contained 446 article including articles on joint working agreements and joint company agreement (article 31 et. Seq.).

This code also maintained on the principle of freezing (i.e. prevent negotiations on matters relating to wages, grants and professional classification) as provided in article 51 therefrom stipulating as follows: "As a forwarder, and to a date to be fixed by virtue of an order, the joint conventions concluded shall not include any provision on wages or bonuses and shall not contain any provisions on professional classifications' ranking or individual ranking of labor in every professional class".

According to this position of principle, collective bargaining which is a form of social dialogue entered again a recession that lasted until the year 1973.

▶ Third : period 1973-1989=

Having promulgated the decree No.247 in May 26th, 1973 on the wage setting process, it has become possible for joint working agreements signed pursuant to provisions of article 31 et.Seq. In the Labor Code, to include in the future articles on wages, bonuses and professional classification.

▶ Article two of the decree No.247 also provided that wages specified in the joint convention shall be fixed based on minimum guaranteed wage for all occupations.

▶ On this basis, having promulgated this decree, the provisions of article 51 and 52 of the labor code has become invalid since that date.

▶ On the other hand, and to enhance this trend, on the 29th of May 1973, the ministerial decree of the minister of social affairs approving the joint framework convention to regulate work relationships between employers and permanent employees working in non agricultural activities which are subject to the Labor Code provisions in the entire territory of the Republic of Tunisia was promulgated.

▶ This ministerial decree has opened the door wide to activating social dialogue through collective bargaining and thereby Tunisia officially entered the era of the contractual policy from the beginning of the year 1973.

▶ In the same context, social signatory parties on this joint framework agreement (the Tunisian Union of Industry, Commerce and Handicrafts and and the Tunisian General Labor Union) have agreed upon the following

▶ Practise dialogue to resolve conflicts that may arise between them and enhancing social peace.

▶ Fix the wages of workers subject to sectoral joint conventions based on the minimum guaranteed wage for all professions which was fixed for the first time by virtue of the decree No.63 of January the 31st, 1974 to be the starting point, at least to fix wages to their schedules i.e. wages networks attached to the joint sectoral convention.

▶ Consequently, and thanks to these appropriate conditions, social dialoguen in Tunisia started to revive at that period thanks to collective bargaining.

▶ In culmination of this dynamism and in addition to the creation of different statutes mainly for agents of the government offices and public institutions , four sectoral joint conventions were signed in 1974 , then twenty three agreement in 1975 , six agreements in 1976, five sectoral joint conventions in 1977 and only one agreement in 1983 (currently 54 sectoral joint convention).

▶ Nevertheless, social dialogue had been unfortunately blocked between 1977 and 1983 to the extent that a general strike was launched on January the 26th , 1978 resulting in a recession at the level of professional relationships lasted until late 1982.

▶ Starting from the year 1983, the first modification of the sectoral joint conventions that were signed earlier to this date had taken place. In parallel , some bonuses were granted including provisional additional bonuses 81/82, transport bonus on March 16th , 1982 by virtue of decree No. 82/503 which (transport bonus) was modified for the first time in the year 1986 by the decree No.691 dated on 19th /7/1986 in addition to increasing ,from time to time, minimum wage in agricultural and non-agricultural activities.

▶ Yet, the country's economic and social situation in the eighties had been deteriorated whose implications have come to light mainly in the middle of this decade and it has exacerbated by the trade union crisis due to the political decision stopping corporation with one of the most important social partners namely the Tunisian General Labor Union and creating instead another Company (the Tunisian National Labor Union) to replace it as a negotiating party with employers.

▶ However, this new Company could conclude only one joint convention, the collective sectoral convention of glass and glazing process. On July 16th, 1985 out of 54 joint conventions

▶ On this pattern, the economic and social situation was on the verge of total collapse and social dialogue entered in political mazes. In return, it abandoned its retrofitting role of social and economic crises until the year 1988 and 1989. Indeed, new collective bargainings had been launched at that time with the participation of the Tunisian General Labor Union representatives which focused on revising the sectoral joint conventions while continuing to create some other (for example guarding of institutions...). Thus, social dialogue regains the lead to play its role of restoration from within through the process of trade union normalization with the government party by vindicating trade union leaders belonging to the trade union.

▶ Fourth: period from 1990-2010=

During this period, social dialogue had been remarkably developed in light of the general policy of the country, aiming at deepening this dialogue to develop collective bargaining, so that the number of joint conventions has increased at the sectoral level and it somewhat increased at the company level.

This was thanks to the fact that the Tunisian Union of Industry, Commerce and Handicrafts and the Tunisian General Labor Union arranged, starting from the year 1990, for successive modifications of the sectoral joint conventions resulted in the modification of the regulatory issues of these agreements in addition to successive increase in wages and related benefits including bonuses and advantages (material and in kind) once per three years instead of once per year as was applicable in 1990.

▶ Also, in addition to social dialogue, increase of salaries also included employees working in sectors that are not subject to joint conventions or special statutes as well as employees receiving minimum guaranteed wage in the agricultural and non-agricultural field. This increase continued from time to time on a regular basis during the nineties and during the first decade of this century.

▶ It is noteworthy that the process of fixing these wages requires from the government to make an earlier consultation with the professional Companies in accordance with the second paragraph of article 130 (new) of the labor code. This consultation, in the concept of professional relationships, is considered as a form of social dialogue on that period thanks to which the following actions have taken place:

First: Three Amendments of the labor code.

▶ First modification: was in 1993 by adding article 5 bis (by virtue of article No.66 of July 5th, 1993) which provided for non-discrimination between men and women in the application of the provisions of the Labor Code,

▶ Second modification: in 1994 on representation of company employees by three advisory bodies to represent employees in one body (advisory committee of the company), the labor courts, settlement of work collective disputes and regulation of the labor inspectorate body and other relevant issues.

▶ Third modification: it took place in 1966 and addressed matters relating to recruitment, temporary job, part-time job and occupational health and safety. Moreover, several articles have been added to the labor code including article 134-3 which included the possibility of fixing part of the wage based on productivity by virtue of agreements signed inside the company between the employer and the employees representatives.

Second: modification of the general statutes agents of the government offices and public institutions in 1999 by Law No. 28 of 3rd of April 1999 followed by a comprehensive amendment of statutes of public institutions and government offices.

Third: modification of the employment system of public service personnel in the year 1997 which entered into force at the beginning of the month of January 1998 seeking to open the prospects for the personnel and give him the potential to continue progressing, abandon index numbers to determine the basic salary and use new basic salary networks for temporary employees, staff and workers.

Fourth: publication of several applicable texts of these amendments mainly at the level of the Labor Code including the following:

- ▶ Decree No.95/ 30 of January 9th, 1995 on the composition and functioning of the company advisory Committee and the procedures for the election of employees' representatives and performance of their missions.
- ▶ The decree No.96/269 of February 14th, 1996 organizing the Ministry of Social Affairs which included, for the first time, establishment of department for promotion of social dialogue within the labor inspectorate which aims, as one of its missions, at helping production related parties to establish dialogue entities in the company and follow-up its activities through its subordinate units across the regions.
- ▶ Decree No.2000/2895 dated on December 12th, 2000 creating advisory committees in the companies and employees representatives which contribute in promoting professional relationships in the enterprise mainly through enhancing social dialogue and consultation and enhancing the prevention of occupational risks and developing social activities for the benefit of workers and their families...

These positive indicators contributed in strengthening professional relationships and establishing contractual policy which was adopted since the year 1973. It also contributed to the stability of the social dialogue at its highest grades.

Fifth: the period between 2011-2016=

Contrary to the above, this period that coincided with the beginning of the revolution of January the 14th, 2011 is considered one of the most difficult periods in the history of Tunisia. It was characterized by instability at all levels so that social dialogue entered in a new and dangerous turning point that made the world of production enter in turmoil that has nothing to do with the previous situation during the previous period, which was enhanced by the following facts:

At the political level :

instability of the political situation due to the fact that several transitional governments took over the rule of the country since the revolution of January 14th , 2011, politics no longer has played the role of driving dialogue between social partners, especially in times of crisis

At the security level :

security chaos unparalleled security chaos in some regions in addition to terrorism and the required material resources to fight it.

At the social level :

the situation at this level has been characterized by the following:

- ▶ Prevalence of unemployment mainly among university graduates as a result of decline of economic growth rate of the country which reached during the first semester of the year 2016 (as per the National Institute of Statistics) 1.2 % , the closure of a significant number of economic institutions and the migration of others abroad, which contributed to the deepening of the crisis of unemployment in the country.
- ▶ Emergence of a huge amount of social demands at once
- ▶ Emergence of the phenomena of sit ins inside and outside work place
- ▶ Emergence of trade union pluralism in some company and the main sectors (transport and oil..) which brought together the phenomena of increasing social demands that led in many occasions to launching strikes and deterioration of social situation in many sectors and companies..
- ▶ Disruption of business for many periods since January 14th, 2011, especially in production units of the strategic sectors of the country such as phosphate and oil sectors despite of the lack of resources and potentials in the country.

At the economic level :

all events that took place previously have had direct implications on the economy and economic Companies which in its turn witnessed several problems for many reasons including the following:

- ▶ Decline in production and productivity at almost all levels,
- ▶ Absence of work culture in production areas
- ▶ Recession in tourism sector due to terrorism and the decline in its income of hard currency in addition to the fact that sector related companies suffered from severe economic difficulties,
- ▶ Prevalence of the phenomenon of smuggling of goods and products
- ▶ Predominance of the informal sector and the rise of parallel economy
- ▶ Absence of procedures related to development in regions which restricted the economic enterprise's chances in performing its economic and social role
- ▶ Decline of foreign investment in addition to migration of foreign companies abroad
- ▶ Export decrease due to lower profitability and the repercussions of the economic crisis in Europe.

All these factors, among many others, if they persist, will threaten the existence of the entire economic company including the potential of its staff and will confuse the situation of the country in general. Accordingly, social partners, namely the Tunisian Union of Industry, Commerce and Handicrafts and the Tunisian General Labor Union could only but resort to social dialogue as the only way the nature of Tunisian society and the serious conditions that take place in the country at this critical stage of its history requires and the only path that has already been proved to be effective and enabled this country to face the challenges and overcome the obstacles whatsoever.

Under these difficult circumstances and this delicate stage of the Tunisian history, the social dialogue scope has expanded to include the political sphere under the support of the democratic process. Hence, social dialogue has for the first time had a new form under the name "the national dialogue" which was adopted by a group of civil society components under the name of «Tunisian National Dialogue Quartet,» which are the following work and national Companies:

- ▶ The Tunisian General Labor Union
- ▶ The Tunisian Union of Industry, Commerce and Handicrafts
- ▶ The Tunisian Human Rights League
- ▶ The Tunisian Order of Lawyers



These Companies have played a significant role in redirecting the political compass to its original place without thinking of creating a new political system or becoming engaged in any one of the existing political parties at that time. This effort has continued until these Companies made the political transition phase successful through sponsoring and supporting presidential and parliamentary elections of the year 2014 that were held in an atmosphere of understanding and harmony. Therefore, the National Dialogue Quartet was very much appreciated both at the national and the international level and won Nobel Peace Prize knowing that it was the first time for Tunisia to win that award.

Also, in parallel with the democratic transition process, social partners (the Tunisian Union of Industry, Commerce and Handicrafts and the Tunisian General Labor Union) continued to adopt social dialogue in order to overcome the problems that took place in sectors and production sites through the following actions:

- ▶ Signing a framework called “ the social contract” with the government in its capacity as third party of social dialogue aiming at developing a mechanism to ensure the democratic transition and achieve social and economic stability in the country , make it a frame of reference for the Company of tripartite dialogue and make it focus on issues related to social and economic development until filling the gap that was the result of getting rid of many supreme advisory bodies after the revolution of January 14th at the national level including the Consultative Council (the second chamber of parliament) and the Economic and Social Council.

- ▶ Launching social bargaining (collective bargaining) year by year since 2011 on wage increases in order to improve the purchasing power of the work force category in sectors subject to sectoral joint conventions.

These bargaining sessions led to increasing wages and the amount of some bonuses (transport and attendance bonus) for the sake of employees working in this sector, last of which was in the year 2015.

The joint conventions amendments that were published in the Oficial Gazette of the Tunisian Republic during the year 2016 also included private provisions that declare for the first time in the history of collective bargaining launching new collective bargaining prior to amendment of sectoral joint conventions in terms of its regulatory and financial aspects for the year 2016-2017 illustrating the minutes of agreement signed between central unions on January 19th, 2016.

This agreement could be a positive sign so that social dialogue restores its effective role aiming at meeting the challenges imposed on the production related parties within the company and social partners outside it and resolving it through collective bargaining.

2. Definition of Social Dialogue

- ▶ According to the International Labor Company, social dialogue is any negotiation or consultation or exchange of information between representatives of governments, employers and workers on issues of common interest and related to social and economic policies.

- ▶ Social dialogue inside the company (the facility) is the meeting of production related parties i.e. the employer or his representative with the representatives of the company’s employees (or their representatives including employers and employees ’ representative Companies) to discuss issues related to collective and individual work relationships and exchange opinions in a sound and responsible social climate that provides the right condition for finding the appropriate solutions for these matters taking into consideration the interests of parties involved in the dialogue.

3. Sources of Social Dialogue in Tunisia

International sources

- ▶ International Labor Convention No. 87 on trade union freedom and the protection of the right to trade union (year 1948) ratified by Tunisia on 18th /6/1957
- ▶ International Labor Convention No. 98 on the right to organize and collective bargaining (year 1949) ratified on 15th /5/1957,
- ▶ International Labor Convention No.154 on collective bargaining (year 1981) as ratified on 11th /2/2014 and entered into force on 11th /2/2015.
- ▶ International Labor Convention No.135 on workers' representatives as ratified on 12th /3/2007 (by virtue of Law No.15 of the year 2007).

International Recommendations:

▶ The international recommendations of International Labor Conventions issued by the International Labor Company which although it includes non binding guidances for states that have ratified these conventions and they are not subject to ratification, are considered among the components of the system of international labor standards. Among the recommendations adopted by Tunisia, which are related to the subject of social dialogue and collective bargaining , we mention in particular:

- ▶ Recommendation No.91 on joint conventions
- ▶ Recommendation No.91 on joint conventions
- ▶ Recommendation No.163 on collective bargaining

National Sources (for the private sector):

- ▶ The constitution (the Constitution of the Tunisian Republic)
 - ▶ The Labor Code (article 31 et. Seq. and article 157 et. Seq...) and its texts of application mainly the decree No.95/30 dated on January 9th, 1995 on the composition and functioning of the advisory committee of the company and the procedures for the election of employees' representatives and performance of their missions.
- ▶ The joint conventions (related to trade union and non-trade union representation within the economic companies) as follows:
 - ▶ The joint framework conventions
 - ▶ The sectoral joint conventions
 - ▶ The company joint conventions

4. Importance of Social Dialogue

Social dialogue is important thanks to the fact that it addresses all matters and levels related to the economic and social situations and even the political one as follows:

- ▶ At the social level: the importance of social dialogue lies in its results of concluding agreements that prevent collective work disputes which help to improve productivity and promote it within the company and raise its competitiveness while improving the purchasing power of workers.

Social dialogue plays an important role, mainly through collective bargaining, in the development of labor legislation to keep pace with economic and social developments and meet the expectations of the production related parties in the company and the parties involved in this legislation in practice.

▶ At the economic level: its results directly affect the economic situation. In case of reaching agreement with the parties of dialogue, this will positively reflect the economy by pushing and revitalizing the economic cycle mainly when signing agreement on wage increases.

▶ At the political level: it can expand and relate to the political sphere as a way to help finding solutions for the implications of conflicts between the political parties which would prevent the general social climate of the country's stability, as happened in Tunisia after the revolution of January 14th , 2011. The Tunisian Union of Industry, Commerce and Handicrafts and the Tunisian General Labor Union together with two Companies of the civil society (The Tunisian Human Rights League and the Tunisian Order of Lawyers) under the name of the National Dialogue Quartet made a unique initiative that helped the country to achieve the first stage of democratic transition.

Now, the political actors in the country shall push social dialogue in order to ensure economic and social transition like the democratic transition knowing that social dialogue constantly needs to be pushed by politicians mainly in the event of social and economic crises.

5. Types of Social Dialogue

In general, social dialogue can be bilateral, trilateral or quadrilateral or even multilateral. As such the type of social dialogue can be determined depending on the participation of its parties.

▶ The bilateral social dialogue is the one that brings together the employees with the employees' organization or the employers' organization with the government or the employees' Organization with the government.

▶ The trilateral social dialogue where employers, workers and government organization are involved.

▶ The quadrilateral social dialogue brings together the employers' organization, the employees' organization, the government and the civil society representatives.

▶ Multilateral social dialogue: it brings together the employers' organization, the employees' organization, the government and the civil society representatives. In addition to other parties directly concerned with the issue of dialogue as representatives of sectors or groups

However in Tunisia and in light of absent legal framework to regulate social dialogue, at the level of practise the latter is usually tripartite (as devotion of tripartite principle, adopted by the International Labor Company bringing together governments , employer's and employees ' Companies).

Accordingly, it brings together the most representative of the following parties:

▶ Employers represented by the Tunisia Union of Industry , Commerce and Handicrafts

▶ Labor force represented by the Tunisian General Labor Union

▶ The government usually represented by the ministry of Social Affairs as the ministry in charge of work

On the other hand social dialogue rarely becomes bilateral in Tunisia. This type of dialogue has emerged especially after the revolution of January 14th, 2011 through a few bilateral meetings that took place both between government representatives and representatives of one of work Companies (the Tunisia Union of Industry, Commerce and Handicrafts and the Tunisian General Labor Union) or through direct meetings that took place between the forementioned employers Companies' representatives and employees Companies' representatives without the presence of government representatives.

6. Levels of Social Dialogue

In practice, social dialogue takes place both through consultation and exchange of views or collective bargaining on three levels, namely national, sectoral and company.

For example, consultation takes place at these levels in the framework of a national advisory structures or sectoral (or regional) or basic (if dialogue takes place at the company level).

6.1. Social Dialogue at the National Level

Dialogue at the national level includes all known forms as it deals with collective bargaining. With regard to joint conventions, consultation and reconciliation to resolve the disputes that go beyond the governorate as well as advisory participation either in the boards of directors of public institutions or at the level of a number of councils and national bodies. We hereby review the most important national dialogue structures and bodies which were founded by virtue of legislations or established by practice.

6.1.1. Entities and Supreme Advisory Councils:

Due to the dispense with some of the important supreme advisory councils, like the economic and social council, national social dialogue has been limited to other advisory councils and Companies like The company Supreme Council provided by order number 851 of 2008 dated 1/4/2008, The Supreme Council for Education and Training provided by order 3779 of 2009 dated 21/12/2009, The Supreme Council for Occupational Safety and Health provided by order 286 of 2010 dated 15/02/2010 and the supreme council of magistracy, etc.

However, these advisory councils are no longer playing their roles with the same efficiency they used to before 2011, despite the importance of some of them, like company supreme council who has the role of studying and advising in topics before them which are especially related to:

- ▶ Competitiveness boost and development of business environment.
- ▶ Spreading initiative and promote investment and company creation.
- ▶ Advancement of company and support its productivity and operational capacity.
- ▶ Support company engagement in digital economy, promising activities and innovative sectors.

Note that this council, previously headed by the prime minister (head of the government now) is composed of representatives from various ministries and professional Companies, including employers and employees' trade unions.

6.1.2. The Central Bargaining Committee:

It is a temporary body of social dialogue formed on the occasion of opening a new round of collective bargaining like reviewing the joint conventions, but it is the most important periodic social dialogue body of bargaining in both discussing the points displayed for central bargaining (centralized bargaining or joint framework convention, or a framework agreement to organize collective bargaining) or concerning organizing sectoral bargaining and intervene to overcome difficulties and to consider discrepancies and differences.

The Central Bargaining committee has ensured the last four revisions of joint sectoral conventions, which were limited to wages and bonuses entitled for years 2011 - 2012 - 2014 -2015.

6.1.3. Minimum Wage Consultation Committee:

It is a committee of exceptional dialogue hold to consult on the occasion of government decision to increase the minimum guaranteed wage. This committee combines representatives of the Tunisian Union of Industry, Commerce and Handicrafts and the Tunisian Union of Agriculture and Fisheries and the Tunisian General Labor Union and the ministries of social affairs and finance. This combination is not set according to a government law, but joint by an invitation from the minister in charge of social affairs during the last four years. While consultation before was held between the prime minister and trade union leaders with the presence of a number of ministers concerned.

6.1.4. Economic and Social Council:

It is internationally recognized as the council of social dialogue. It exists in many countries. Its economic and social councils and similar companies are organized within the International Association of Economic and Social Councils and AICES. These councils are similar in two key points. First, the composition of social partners (representative employers and employees 'trade unions). The second point is related to their functions, concerning the consideration of draft laws and trends in the economic, social and environmental fields.



The Tunisian Economic and Social Council was established by virtue of the publication of the first constitution of the Tunisian Republic in 1959. Its composition reflected the composition of the parties active in the National Constituent Assembly that drafted the constitution. The Constitutional Commission attribute has granted corporation status to the council despite its advisory role.

The diversity and richness of its composition and its value and expertise of its members has reflected on the level of opinions and reports issued in the fields of draft texts or plan orientations or self-commitment in issues that were not suggested by the legislative or the executive branch. The Tunisian Council is considered as one of the oldest economic and social councils in the Euro-Mediterranean region. It has been dissolved due to the cancellation of the Tunisian Constitution and all its official and advisory bodies in January 2011.

6.1.5. The National Commission for Social Dialogue:

As for the National Commission for Social Dialogue, since its publication in 1996 in Labor Code (article335) provided by law No. 62 of 1996, dated 15 July 1996, Its performance did not outstand as predicted, despite its importance in expressing an opinion on issues related to labor like labor law, international labor standards, wages, professional classification, collective bargaining and the social climate in general.

Note that, according to the order No. 1990 of 2000 dated 12 September 2000, the National Commission for Social Dialogue headed by the Minister of Social Affairs is made of representatives of many ministries and representatives of the following professional Companies: the Tunisian Union of Industry, Commerce and Handicrafts, Tunisian General Labor Union and the Tunisian Union of Agriculture and Fisheries as national Companies. However, the social partners had some reservations on its composition in which the numerical balance between the three social partners was not met. The presence of ministries and administration's representatives has been expanded at the expense of employers and employees' trade union very weak representativeness. The agreement is heading towards the cancellation of the article responsible of establishing this Commission when issuing the Law concerning the National Council of Social Dialogue.

6.1.6 The National Council for Social Dialogue:

A specific chapter has been included in the social contract signed on 14 January 2013 (between the government and the Tunisian Union of Industry, Commerce and Handicrafts and the Tunisian General Labor Union). This chapter dictates the establishing of a National Council for Social Dialogue that possesses administrative and financial autonomy and a tripartite agreement. Its composition and the mechanisms for appointing its members are set by agreement between the parties that signed the Social Contract. It is assigned the role of obligatorily consider economic and social draft legislations, in addition to considering topics concerning trade union representative, as well as self-commitment mechanism.

The social contract explicitly stipulates the commissioning of the National Council for Social Dialogue the following tasks:

- ▶ Ensure the continuity of dialogue and its coverage of the issues of concern to the three parties.
- ▶ Monitor the general social climate and the extent to which social law is respected.
- ▶ Conceder all matters related to employees and employers' trade unions and the extent of its representation according to national legislation, international labor standards and principles adopted by the controlling bodies of the International Labor Company.
- ▶ Mandatory consideration of all law drafts with a direct or indirect relationship with the social domain.
- ▶ The possibility of automatically undertake economic and social issues related to labor and professional relationships in which there is benefit in raising them, and make proposals concerning them to the competent authorities.

However, with the ratification of the new Constitution of the Republic of Tunisia on 27 January 2014, a constitutional body has been created according to article 129 of chapter 6. This body has been called the sustainable development and the right of future generations' body. It has been given the same validity of obligatory considering draft laws relating to economic, social and environmental issues. And, it has been approved by the social contract of the National Council for Social Dialogue.

A number of experts believe that the jurisdictions of a constitutional body cannot be granted to any other body, which can disrupt the publication of the National Council for Social Dialogue law. This council has filed its project to the Assembly of the Representatives of the People, from the government in 2015.

If one examines the jurisdictions granted to the constitutional body and the National Council, one would clearly see that the social dialogue body has the same structure and functions of economic and social councils. As a result, we are awaiting the return of the Tunisian Economic and Social Council under a different name. This will be a big enrichment and a true activation of social dialogue at the national level, and an extra devoting to the dialogue approach in the development process on the economic, social and environmental levels.

6.1.7. Social Contract:

The concluding of the social contract seeks to establish a mechanism that ensures democratic transition and achieves social stability and economic growth, make it a reference to organize and manage tripartite dialogue and to fill the vacuum (even temporarily) created by dispensing with some of the top advisory bodies at the national level, after the revolution of 14 January 2011.

On this basis, the three social partners have committed, under this Contract, to respect its contents and achieve its objectives that have been developed within the following topics:

- ▶ Economic growth and regional development
- ▶ Employment policies and vocational training
- ▶ Professional relationships and decent work
- ▶ Social security



In addition to these topics, the social contract has also included two articles concerning tripartite social dialogue companies and a mechanism to follow up its implementation. The tripartite working group, who has supervised its preparation, has been assigned to monitor the implementation of the contract until the creation of the National Council for Social Dialogue (see details on the articles and topics of the social contract in the extension accompanying this report).

6.2. Social Dialogue at the Sectoral Level (Professional Sector)

Social dialogue at sectoral level is exercised through consultation and collective bargaining. Consultation occurs within bilateral committees for consultation (between the government representatives and representatives of one of the professional Companies) or tripartite committees (between the government representatives and employee and employers' trade union representatives).

Among the matters subject to consultation with professional Companies, especially the Tunisian Union of Industry, Commerce and Handicrafts and the Tunisian General Labor Union, we take the example of reviewing labor code in 1994, 1996 and 2007 related to employee' representation within companies and other topics (employment, leasing , collective labor disputes and occupational health and safety ...).

collective bargaining mechanism, which was founded in Tunis since 1936 under the order dated 4 August 1936, has contributed to the strengthening of the contract policy adopted by Tunisia since 1973, the date of concluding the joint framework convention which served as a general framework to enact joint sectoral convention, which reached 54 joint conventions with about 2800 articles related to its coordination and financial matters.

These agreements included many negotiating rounds, that resulted in increases in wages and bonuses and improvement of employees' working conditions in companies under its effect (see paragraphs on collective bargaining).

6.3. Social Dialogue at the Company's Level :

Social dialogue at company level whether through consultation and exchange of information (exchange of views) within the framework of the company Advisory Committee or through collective bargaining between the employer and the company trade union, is an extension of social dialogue at the national and sectoral levels. Before talking about social dialogue at company level through the mechanisms of consultation and collective bargaining, it is useful to remind that company employee' representative bodies, whether trade union or non trade union, always remain desperate for continuous briefing, not only by the employer but also by the trade union bodies assigned to manage, at the central and regional levels, and administrative bodies surrounding the company.

In this context, in order to promote social dialogue to achieve its goal in promoting the company and its employees by providing permanent social peace, provisions have been introduced to the legislative system to regulate the intervention of some of the trade union and administrative bodies active outside the company, to play a supporting role for the company dialogue bodies, whether trade or non-trade unions.

In order to promote dialogue to find solutions to the difficulties within the company and engage both its parties, provisions have been set out in the joint framework convention followed by all joined sectoral agreements through article 6 (new) on the acceptance of trade unionists to allow employer, during working sessions with trade union representatives within the company, to make use of a representative of a central trade union, in which he is a member.

These provisions have also allowed trade unionists to bring a representative of their trade union.

On the other hand, the legislator has assigned the inspectorate of labor and reconciliation, through article 170 of labor code, a preventive role by advising production parties to ensure the proper application of law, to preserve a healthy social climate.

The legislative body, according to article 157 and subsequent of the Labor Code and Order No. 30 of 1995 dated 30 January 1995 concerning the consultative committee of company and employees' representatives , and Order No. 269 of 1996 dated 14 February 1996 on the Company of the Ministry of Social Affairs (The ministry assigned the job), has also assigned the role of supervision to the company consultative committee and employees' representatives by the public administration of the inspectorate of labor and reconciliation , public administration of labor, and the department of occupational safety and health (concerning issues related to occupational safety and health committee).

In this respect, Order No. 269 of 1996 dated February 14, 1996 has ordered to establish the department for the promotion of social dialogue within the restructuring of the public administration of the inspectorate of labor and reconciliation. It has been assigned the mission of monitoring social climate, by encouraging the establishment of non-trade union employees' representative bodies within the company, monitor its activities, contribute in preventing labor disputes by doing all kinds of related studies and research and avoid tensions in professional relations within the company.

In 2008, units for the promotion of social dialogue and company supervision have been established within the inspectorate of labor and reconciliation, in all Tunisian regions, to facilitate this mission. They constitute the third inspectorate along with labor and reconciliation inspectorates. This new inspectorate has been assigned to:

- ▶ Help establish the consultative committee of company and employees' representatives.
- ▶ Interfere in the establishment or the renewal of consultative committee of company or employees' representatives, in case of negligence (obstruction).
- ▶ Monitor the activity of these bodies and encourage them to respect the format of periodic sessions (once every 3 months for the company consultative committee and once every 2 months for employees' representative and occupational safety and health committees), and supervise them according to legislation.
- ▶ Help the parties involved in the production process to control production standards and improve productivity at work.
- ▶ Monitor the social climate within the company, supervise them and prepare reports on the matter to send to the central administration.
- ▶ Prepare files related to the application form to run for the presidential awards, assigned every year on the occasion of Labor Day. These rewards include the consultative committee of company and employees' representatives' award updated by order No. 2895 of 2000 dated December 12, 2000. This award is given to company consultative committees for their effective contribution to the promotion of professional relations within the company, especially by supporting dialogue and consultation, developing human resources, strengthening the prevention from occupational risks, and developing social activities for the benefit of the employees and their families.

It is worth noting that there is another presidential award, which is the social progress award, updated by order Number 2016 of 1993 dated September 27, 1993. It is also concerned with promoting dialogue through consultation between production parties within the company.

It is given annually to private and public sectors companies that stand by their efforts to improve the social conditions of its employees, support consultation between production parties within the company and the promotion of employees' professional qualifications. Despite all this support, how is social dialogue within the company exercised? We will discuss this in the following chapters.

Part two : Diagnosis of social dialogue practice within the company through consultation and collective bargaining

Social dialogue, either through consultation or social bargaining, is one of the highest forms of social democracy and the best way to resolve problems that affect the safety of the professional relationships between the production parties. In fact, it ensures the production's development and the increase of the company's competitiveness and aims at improving the purchasing power of the employees. However, several problems and "obstacles" arise when practicing dialogue whether within or outside the company.

On this basis, some questions are asked regarding the way of practicing social dialogue within the company either through consultation (first section) or social bargaining (second section) and also a research of the problems arising from time to time that can only be discovered through field practices of this mechanism. The second part of this report will reply on them by a direct diagnosis of the practice of both forms of dialogue, consultation and bargaining through some employers' opinions.

Section one: the practise of social dialogue within the company through consultation

Social dialogue takes place within the company between the employer (or his representative) on one hand and the employees' representatives on the other hand

1) Parties involved in social and consultative dialogue

Initially, the social dialogue is regulated in its consultative form between the employer and non-union body to represent the employees within the company

1.1 The employer

An employer is a person or a legal entity who hires one or more persons to work with a salary. He is called the employer or the boss but the term "employer" is used in the Tunisian Labor Code promulgated by law.

1.2 Workers' representatives at the company Advisory Committee

Unlike the management representatives who are appointed by the chairman of the company, the employees' representatives are elected by the employees.

2) Enterprise advisory committee and employees' representative

Although the foundation of a trade union body within the company is subject to the employees will, the establishment of a non-union body consisting of the company's advisory committee or the labor representation is mandatory and subject to some conditions

2.1 Terms for establishing the company advisory committee (or employees representative)

On review of the Tunisian Labor Code of the year 1994 by virtue of the law 94-29 of February 21st, 1994, all the diverse elected bodies were assembled to represent the employees before the year 1994. These bodies include the company committee, the advisory committee, the health and safety committee involved in an advisory dialogue structure called the company

advisory committee which shall be established within all the companies employing forty permanent employees according to Article No 157 (new) of the labor Code

The provision of this article have also allowed the establishment of a labor representation within the companies whose permanent employees' number is equal to or exceeding twenty and less than forty employees.

2.2 Procedures for establishing the company advisory committee

The company advisory committee is established through elections that require special procedures prescribed by the order No 30 dated on January 9th, 1995 we mention the procedures that shall be taken by the employer in this regard:

- ▶ Notify the employees about the elections aiming to establish or to renew the company advisory committee (or notifying the employees' representative) and call them to submit their candidacies to participate in this elections. This notification shall be in writing through an announcement or an administrative memorandum posted in a visible place and accessible to all the employees at least 35 days before the voting day. In case of the presence of a trade union within the company, it shall be notified and call it to submit the names of its candidates with the other employees.

- ▶ The notification shall contain the day and time of the ballot, the candidacy requirements and the number of seats allocated for each electoral department

The candidacies shall be submitted by the employee who are willing to do so within fifteen days from the call for candidacy. The candidates list shall be posted in the work places at least within fifteen days before the voting date

Secret ballot shall be cast in secret through envelopes or through correspondence provided that it is sent before the day of vote counting.

- ▶ After the vote counting, the election office shall prepare minutes containing the election results. The employer shall post a copy of the minutes within the following twenty-four hours as well as send a copy, in an envelope, to labor incpection and the locally competent employment medical advisory

In this context, it is necessary to take into account the following:

- ▶ To ensure the validity of the procedures that are taken before the election process in order to avoid any objection, regarding the deadlines and the right to vote and to stand as a candidate on the specified dates, that shall be submitted by the concerned person to the Regional Directorate for Social Affairs 10 days before the elections date

- ▶ Any objections regarding the validity of the election process shall be sent to the same directorate but within 15 days after the election date

- ▶ The general director of social affairs shall make its decision regarding the objections within seven days from the date at which objection was raised

- ▶ The labor inspector is not legally committed to be present at the election office but the experience proved that his presence is a guarantee to the election process as he helps the election office, which is headed by the employer or his representative, in the process of ballot, the vote counting and the preparation of the minutes of the election results

2-3 Composition of the company advisory committee (and employees' representation)

- ▶ According to order No 95-30 of January 9th, 1995 the company advisory committee consist of:
 - ▶ Representatives of the company's management including the employer who is the chairman of the committee (or his legal representative)
 - ▶ Employees representatives elected by these latter according to the following conditions:
 - ▶ Three official members and three representatives in the company employing between 40 and 150 permanent employees
 - ▶ Five official members and five representatives in the company employing between 151 and 500 permanent employees
 - ▶ Seven official members and seven representatives in the company employing more than 500 hundred permanent employees
 - ▶ Regarding the employees's representation, it consists of one official member and his representative in the company employing between 20 and 39 permanent employees

The employees' representatives in the advisory committee shall be distributed on all the employees' categories within the company (implementation, management and the managerial staff).

2-4 Term of the company advisory committee members (and employees' representative)

The specified term of the company advisory committee members (and employees representative) is three years, not subject to renewal, only on an exceptional basis for a period of one year through a written agreement between the employer and the employees' representatives in the committee

The tasks of advisory committee members in the company shall end when the representation term expires, death, resignation from the committee membership, rearrangement in other category of elections department, employment contract termination or in case of failure to meet one of the required conditions for candidacy as specified in Article No 5 of order No 30 of the year 1995 which prevents the election of the employees who are entitled to a long sick leave, the employees who have undergone a second degree disciplinary penalty that hasn't been abrogated and the employer's spouse, ascendants, descendants, brothers and sisters and brothers in-laws

On the other hand, in order to ensure the continuity of the employees' representation, Article No 21 of order No 30 stipulates that the vacancy caused by the termination of the tasks of an elected official member is filled by the nomination of a representative member belonging to the same election department and who receives more voices.

In case of failure to fill vacancies as per the above mentioned procedures, the elections shall be organized in order to appoint new members for the remaining period of representation in case of a partial vacancy or for a new representation term in case all the seats of the compant advisory committee are vacant.

When any official member fails to perform the tasks, he shall be replaced by another representative who belongs to the same elections department until the period of impossibility to perform duties

2-5 Functions of the company advisory committee (and employees' representation).

According to article 160 (new) of Labor Code, the company advisory committee shall be consulted in the following cases:

2-5-1 Expressing opinions on subjects of mutual interest

These subjects include the following:

- ▶ Regulating work within the company in order to improve production and productivity.
- ▶ The issues related to social projects available in the company for the benefit of the employees and their families
- ▶ Promotion and reclassification of professional staff.
- ▶ Vocational training
- ▶ Disciplinary actions: The company advisory committee represents a disciplinary committee, so its structure shall be modified to comprise only the representative members of the elections department to which the concerned employee belong, and an equivalent number of the company management representative members (Article No 28 of Order 95-30 of January 9th, 1995)
- ▶ On the other hand, the company advisory committee has other tasks including the following:

2-5-2 Giving advice on issues related to the prevention of occupational hazards through

the Commission for Occupational Health and Safety

In this context, and according to Article No 161 (new) of Labor Code if the company advisory committee is dealing with issues regarding the occupational health and safety, a technical committee called «occupational health and safety» shall be formed within it. This committee gives its opinions regarding the matters under concern and submits them to the company advisory committee.

▶ Composition of the Occupational Health and Safety committee

This committee which is headed by the employer or his representative consists of the following members:

Two members representing the employees chosen by the employees' representatives in the company advisory committee including:

- ▶ Occupational doctor belonging to the company or a supervisor (a member)
- ▶ A responsible for safety in the company or a supervisor if any, (a member)
 - ▶ Functions of the Occupational Health and Safety committee
Functions of the Occupational Health and Safety committee are as the following:
 - ▶ Preparation of the regulations and instructions drafts related to occupational health and safety within the company.
 - ▶ Performing the tasks related to awareness and training about occupational health and safety

- ▶ Proposal of occupational hazards prevention programs within the company and the follow up of the adopted programs implementation
- ▶ In the event of occurrence of serious occupational accident or decease, the investigation procedures shall be conducted with proposal of the necessary measures in order to prevent the causes.

▶ Workflow of the Occupational Health and Safety committee

The Occupational Health and Safety committee holds a meeting at least once per two months and whenever requested by the company advisory committee (Article 33 and the subsequent provisions of Order No 95-30 of January 9th 1995) it also meets in case of serious work accident

To expand the scope of consultation, the occupational health and safety community may be assisted by every person or competent body in the Occupational Health and Safety field. In addition, it may request the presence of a labor inspector or employment medical advisor (or safety engineer) in order to study the proposals aiming to provide the appropriate work conditions within the company.

Minutes shall be written after each meeting and signed by occupational health and safety committee. Then, these minutes shall be recorded in the register of Workflow of the Occupational Health and Safety committee.

Kowing that the employer shall submit a copy of the minutes of Occupational Health and Safety Committee meetings and of the investigation done after the occurrence of any serious work accident as well as an annual activity report (after submitting it to Occupational Health and Safety Committee) to the labor inspectorate and the locally competent employment medical advisory

Because of the tasks of the company advisory committee which are “regulating work within the company in order to improve productivity” most of the employers, who where subject to a questionnaire, expressed their willingness to decrease the increasing unemployment rate and the decreasing productivity, and that the company advisory committee will play an effective role in supporting the recruitment capacity of the company by increasing its competitiveness

2-5-3 Prevention of occupational disputes

Article 376 (new) of the labor Code stipulates, that all the difficulties arising between the employer and the employees, that may result in a collective labor disputes shall be referred to the company advisory committee in order to find a satisfactory solution for all the parties involved in this dispute

If the dispute hasn't been settled within the company it shall be referred, by the keenest party, to the Regional Reconciliation Office and in case of failure of reaching a solution, it shall be referred to the local competent labor inspectorate

2-5-4 Prevention of company's economic or technical difficulties

The labor code has not assigned this task to the company advisory committee but rather than to the dismissal control commission (whether the regional or the central one) under article 21 (new) and its Chapter 21 (new) and the subsequent modifications. This commission expresses its opinion in respect of the dismissal of the permanent employees for economic and technical reasons under the chairmanship of the labor inspectorate in the presence of representatives of both the company or the employers and most representative employees

But thanks to the collective bargaining, the sectoral joint convention such as the joint convention of electrical and electronic sector have included requirements for preventing economic or technical difficulties faced by the company. It is stipulated in the last Article No 21 that in case of the employer's intention to reduce the company's activities due to economic difficulties, he shall first review the company advisory committee to know his opinion regarding the procedures that he intends to take, which includes changing the duty stations for a limited period, reducing work hours for a temporary period, collective dismissal or even the company closure.

2-6 Facilities granted to the company's employees representatives

In order to develop and promote social dialogue within the company, the legislation in force granted (article 165 of Labor code and article 22 of Order No 95-30) to the employees' representatives in the company advisory committee the following facilities

- ▶ Allocate boards located in accessible places to the employees, generally used to publish information related to the activities of the company advisory committee
- ▶ Enable the employees' representatives within the company advisory committee to make the necessary calls within or outside the company during the normal working hours provided that the employer is notified before their absence in the working station and that this absence doesn't disrupt the normal workflow within the company
- ▶ A defined number of hours was fixed to enable them to perform their functions jointly as per the company size and the permanent employees number as follows:
 - ▶ Eight hours per month for the total employees' representatives within the companies employing between 40 and 150 permanent employees
 - ▶ Twelve hours per month for the total employees' representatives within the companies employing between 151 and 500 permanent employees
 - ▶ Fifteen hours per month for the total employees' representatives within the companies employing more than 500 permanent employees

These hours are considered as real working hours (if there is no exceptional circumstances) by agreement between the employer and the employees' representatives within the company. In the event of failure to reach agreement, the issue shall be referred to local labor inspectorate in order to overcome this situation.

3) Consultative dialogue challenges and ways to overcome them

Although social dialogue is active at both the national and sectoral level (the occupational sector) it appears through the survey, carried out on a sample of employers that the social dialogue is still limited at the company's level and that it doesn't meet the expectations of the critical period that resulted in several challenges at all levels.

Consequently, most of the respondents agreed that there are some difficulties faced when practicing dialogue within the company due to many reasons including the legal and the objective ones which are as follows:

- ▶ Trade Union Bodies take possession of most of the issues that shall be addressed through dialogue within the company advisory committee such as promotion and social projects through the reached agreements during the reconciliation meetings
- ▶ Some respondents are not familiar with the procedures of the employees' representative's election within the company advisory committee (or the employees' representation) and with the role and the importance of this committee in the development of social dialogue within the company

- ▶ In order to overcome this problem it's better to make workshops for the benefit of the employers (if they want to do so) or for the benefit of their representatives to give them trainings about the issues related to the establishment and the activation of the company advisory committee by focusing on its functions.
- ▶ According to the point of view of some trade union bodies and some employees (respondents), the company advisory committee is founded in order to address only the disciplinary issue. However, the reports of the departments of social affairs have proved the contrary as these issues are the last priorities of the committee's activities
- ▶ Unavailability of human resources officials in some companies, having legal and field training that helps the employers (or their representatives) to prepare the elections related to the company advisory committees (or the employees' representations), to pursue its activities and to solve the faced problems
- ▶ Binding the company to employ at least 40 permanent employees in order to establish the company advisory committee or to employ between 20 and 30 permanent employees to set up the employees' representation, has hampered the development of social dialogue by these bodies within the company that does not meet these requirements
- ▶ Accordingly, this union body hasn't been set up in all the companies, however, the matter was limited (as per the labor inspectorate reports of the years 2014 and 2015) to the establishment of 2945 bodies including 2061 company advisory committees and 884 employees' representations of a total of 2996 companies that meet the establishment requirements including the existence of a specified number of permanent employees since the amendment of the labor code on February 21st , 1994 and the issue of the applied order No 95-30 of January 30th , 1995
- ▶ It is obvious through the high percentage of these bodies establishment, which is about 98%, that their set up within the company that meets the requirements has reached its climax and that they are not only established within some companies even though they meet the legal conditions

Therefore, the scope of the social dialogue should be expanded by reviewing the committee establishment requirements provided in Article 157 (new) and subsequent articles of the labor code by restricting the condition of being permanent employee only to the employees who apply for the company advisory committee membership or to the employees' representation and to abandon the generalization of permanent work condition to all the employees

Some employers and even the employees representatives within the company (according to their superiors) to whom the survey is carried out, cannot understand some of the functions of the advisory committee mainly those related to "regulating work within the company in order to improve productivity" as stipulated by Article 160 (new) of the labor code as they see that the issue of productivity and setting of the productivity standards haven't been yet activated in spite of the consecutive sectoral joint conventions revisions and this is due to the following reasons:

- ▶ Difficulty to apply the Labor Code provisions regarding productivity such as Article 3-134 of Labor Code which was added to this Code during the amendments made in 1996 in order to improve work productivity. It provides for determination of a percentage of the salary on the basis of productivity by virtue of conventions made within the company between the employer and the employee's representatives
- ▶ Development of "complicated" procedures within the sectoral joint conventions requirements regarding the production standards according to Article No 9 (new) of joint convention

which provides for determination of production standards in terms of quantity and quality and the productivity bonus at the company's level by the technical committee consisting of two technicians who represent the company and two others appointed by the employees' representatives within the company advisory committee. In case of their absence they shall be appointed by the company's trade union

In the event of failure to agree on setting the production standards and productivity bonus at the company's level, the disagreement shall be referred to another technical committee to make the final decision

This committee consists of an expert appointed by the employers in the company and an expert appointed by the labor trade union with the help of a specialized expert appointed by Ministry of Social Affairs for reconciliation between them.

Unavailability of a sectoral or national technical body which sets the production standards or helps the production parties within the company to put it into course specially as the Ministry of Social Affairs doesn't have the specialized experts in this field

- ▶ Lack of independent experts specialized in the field of quality and production standards in most specialties and sectors
- ▶ Due to the effect of external factors on employees such as transportation in addition to the emergence of new behaviors in 2011, aimed to ignore the culture of working (most of the respondent employers have agreed on this matter), productivity has become the last priority within the company
- ▶ Several problems may arise during the social dialogue through consultation
- ▶ The following suggestions are presented to avoid these difficulties and to promote productivity within the company:
 - ▶ Development of a trilateral national center in order to promote productivity and quality within the company and to assist it in order to improve its competitiveness at the local or the international level
 - ▶ Assisting the companies facing economic difficulties
 - ▶ Linking the vocational training system with the company's needs
 - ▶ Provide assistance in the development of the position of productivity, improving the quality within the company and determining its duties to be a basic position
 - ▶ Training the specialists in the field of companies work, promoting productivity and improving quality at the university level (engineers and senior technicians) and vocational training level (development of specialties in this field) in the vocational training centers
 - ▶ Assisting Tunisian Union of Industry, Commerce and Handicrafts and the Tunisian General Labor Union at the national and sectoral levels, in sensitizing the concerned ones in order give them training in the field of company's work, promoting productivity, improving quality and the spread of the culture of productivity and quality.
 - ▶ Development of a national program that aims to help the employers and the employees' representatives to become familiar with the foreign successful experiences in the field of promotion of productivity and quality

- ▶ Review the article No 376 (new) of the Labor Code, amended by the law No 76-84 of August 11th 1976 then by the Law No 94-29 of February 21st, 1994 stipulating that “Any difficulty arising between the employer and the employees that may result in a collective labor dispute shall be presented to the company advisory committee in order to find a satisfactory resolution for all the parties involved in this dispute. In case of failing to resolve the issue within the company it shall be referred, by the keenest party, to the “Regional Reconciliation Office” and if it fails, it shall be referred to the local competent labor inspectorate”
- ▶ Undoubtedly, the legislator intention on drafting these article provisions is to pave the way for the development of social dialogue within the company in order to control the disputes within the company advisory committee and to find satisfactory solutions for all the production parties before the collective labor dispute arise.
- ▶ But this article hasn’t been actually put into force (Article No 376) and this is due, according to the statements of some respondent employer, to the misunderstanding of the provisions of the mentioned article. While others believe that its content is inapplicable given that the party involved in the dispute is the Trade Union party and not the company advisory committee. In order to save time and to prevent any potential troubles, consultation and collective bargaining should be conducted directly with the trade union instead of resorting to the company advisory committee to settle the dispute as specified in Article No 376
- ▶ In order to find prompt and effective solutions that help the company to promote its competitiveness, it’s better to expand the company advisory committee role to include an important field which consists in the prevention from economic difficulties that may be faced by the company. This can be done, by explicitly stipulating, within the sectoral or company’s joint convention, articles that help to resolve the economic difficulties within this committee before resorting the dismissal control commission. It was the case of the joint convention of electrical and electronic sector (article 21) on the consultation of the company advisory committee about the economic difficulties issue before resorting to the dismissal control commission which met in the labor inspectorate
- ▶ Review the article No 241 (new) of the Labor Code by omitting the imprisonment sentence. According to the opinion of some respondents the social dialogue shall be practiced out of conviction, therefore it shall not be imposed in this way as well as it does not line up with the noble targets of the social dialogue
- ▶ Article No 241 stipulates the following “A fine ranging from 30 to 300 Tunisian Dinar with an imprisonment sentence raging from six days to one year or imposing only one of the two penalties on everyone who intentionally disrupted the selection of the employees’ representatives within the company advisory committee or the employees’ representatives; or the normal activity of this committee or of the representatives. In case of repetition of the same offence he shall be sentenced to imprisonment.»

Review the article No 335 (new) of the Labor Law on the establishment of a national committee for social dialogue on the basis of several reasons, mainly as this committee hasn't been activated since 20 years (it has been created by virtue of Law No 96-62 of July 15th ,1996). On this basis, some of the respondents suggest whether its activation in order to be the best support of social dialogue within the company given as it has a direct effect on the production parties or its removal and replacement with another national advisory body such as a social dialogue that will be developed in the future.

4) Examples of success of the company advisory committee

We will mention examples of some companies' advisory committees which have succeeded in encouraging social dialogue within the company and were chosen at the regional level as the best candidacies in some governorates to win the Presidential Award for the best company's advisory committee. They were honored by being granted the Presidential Award in the labor day (first May) of each year during a prestigious official ceremony held to honor the best employees (the ideal employee award) or the excellent companies (3 awards: the company's advisory committee/ occupational health and safety / social progress)



| Company/Region/sector | Employees' N° | Committee meetings N° | Health and Safety studies | Job Organization |
|---|---------------|-----------------------|---------------------------|------------------|
| SARSOT Tunis Transport and services | 184 | 12 | 5 | yes |
| STMICRO ELECTRONICS Ariana Electronics | 205 | 26 | no | yes |
| STEIFF Sidi Bouzid Toys manufacture | 892 | 37 | 1 | yes |
| COTUSAL ZARZIS Mednine Salt | 210 | 18 | 6 | yes |
| TRITEX INTERNATIONAL Gafsa | 189 | 14 | no | yes |
| ETAI TUNISIE Ariana | 289 | no | no | yes |
| SLAMA FRERES Manouba Food industry | 333 | 123 | no | yes |
| SAGEM SOFT Ben Arous Electronics | 273 | 168 | no | yes |
| STE REG TRANSPORT BIZERT Bizerte Transport | 808 | 88 | no | yes |
| STE KAWAFAL Gafsa Transport | 447 | 119 | 6 | yes |

| Social projects | Promotion and classification | Disciplinary sanctions | Disputes | production measures |
|-----------------|------------------------------|------------------------|----------|---------------------|
| yes | yes | yes | yes | no |
| yes | yes | no | no | yes |
| yes | yes | yes | no | yes |
| yes | yes | yes | no | yes |
| yes | yes | yes | no | yes |
| yes | yes | Yes | no | yes |
| yes | yes | no | no | yes |
| yes | yes | no | no | yes |
| yes | yes | yes | No | yes |
| yes | yes | yes | no | yes |

| Company/Region/sector | Employees' N° | Committee meetings N° | Health and Safety studies | Job Organization |
|--|---------------|-----------------------|---------------------------|------------------|
| SOMAF Ben Arous Electrical Industry | 254 | 30 | 9 | yes |
| STIR Bizerte Petroleum Refining | 696 | 106 | no | yes |
| LEONI WIRING SYSTEM TUNISIA Sousse Electronics | 7786 | 82 | Yes | yes |
| FIP LOGISTICS Monastir | 147 | 7 | No | yes |
| DAMCOR ANTAR Monastir Textile | 402 | 77 | 15 | yes |
| STE NEJMA Manouba Food Industry | 6 | yes | yes | yes |
| DERMACO WEAR Textile | 31 | yes | yes | yes |
| SOTEMU Chemicals | no | yes | yes | yes |

What can be essentially noticed from this table is that the companies nominated at the regional level for the national prize have a working capacity over 150 employees. They have a good economic position and they are known by their economic efficiency. In other words, they are public companies with great potentials.

| Social projects | Promotion and classification | Disciplinary sanctions | Disputes | production measures |
|-----------------|------------------------------|------------------------|----------|---------------------|
| yes | yes | yes | no | No |
| yes | yes | yes | no | yes |
| yes | yes | yes | no | yes |
| yes | no | yes | no | no |
| yes | yes | yes | no | no |
| yes | yes | yes | yes | yes |
| yes | no | no | no | No |
| yes | no | yes | no | yes |

It can be further noticed that the advisory committees of these companies are not only limited to disciplinary sanctions and considering promotions, safety and occupational health, but they further deal with issues concerning the working discipline, productivity, occupational classification and social benefits, while considering how to develop the company. These tissues are considered as necessities for internal social dialogue, aiming at developing the company economically, and support its social progress, along with providing a climate for a stimulating dialogue, that ensures stability.

5) Actual occupational disputes and the way to deal with them:

During the first six months of the year 2016, almost 122 strikes were launched including illegal strikes and strikes that respect the legal proceedings as provided in article 376 et. Seq. in the Labor Code.

| | 6 months of 2014 | 6 months of 2015 | 6 months of 2016 |
|----------------|------------------|------------------|------------------|
| Legal Strike | 51% | 66% | 54% |
| Illegal strike | 49% | 34% | 46% |
| Total | 220 | 143 | 122 |

Number of strikes in the private sector

Source: Ministry of Social Affairs

Although the total number of strikes decreased, if we look into the percentage of illegal strikes, we find that it increased comparing to the same period of last year from 34% to 46%. This emphasizes on the stagnation of anticipatory dialogue inside the company and the decrease in unions' guidance.

Through the data mentioned in the table and the questioning of some of the trade unions organizers in the Tunisian Organization of Industry, Commerce and Handicrafts and a number of company's owners and human resources managers, we can conclude the following:

- ▶ The percentage of illegal strikes has increased: (disrespecting prior notice procedures and the ratification of the central union).
 - ▶ Some trade unions feel immune.
 - ▶ Difficulty of imposing disciplinary decisions on the employee in case of committing serious infractions mainly in case of dismissal from work.
 - ▶ The impact of union elections disputes on the collective labor conflicts.
 - ▶ Frequent failure of maintaining peace and disrespect of freedom to work.
 - ▶ The mechanisms of legal inspections of illegal strikes have not been entered into force (refusal of inspection by job inspectors)
 - ▶ Some regional authorities failed to guarantee the freedom to work during strikes.
- It is also noticed through the study of many disputes that the company's management did not take proactive procedures to prevent labor conflicts, especially by:
- ▶ Anticipating conflicts and opening a dialogue with trade unions (company's advisory committee, company's union), especially when economic difficulties are predicted.
 - ▶ Not signing agreements or make undertakings that could not be implemented later.
 - ▶ Maintain as much as possible, objective, fair and motivational standards, in determining workers' entitlement.
 - ▶ Not being subject to any blackmail of employee's representatives (for some companies)
 - ▶ Strengthening the management of human resources' role and developing the potentials of social dialogue. Training workers in all company's departments (administration, production managers, chiefs of staff...)

Section two: practicing social dialogue at the company through collective bargaining

In addition to consultation and exchange of views, social dialogue can be practiced within the company through collective bargaining between the employer and trade unions representing employees (basic trade union or trade union representatives).

This section of the second part will focus on this type of social dialogue, which is collective bargaining.

1) Definition of collective bargaining:

To define collective bargaining, we should refer to the second article of the International Labor Convention number 154, concerning collective bargaining which was approved by Tunisia on February 11th, 2014 and put into effect after a year from the date of its ratification exactly on February 11th, 2015.

According to this article “collective bargaining includes all negotiations between the employer(s) or group of employers or one or many employers’ organization on one side, and one or many trade unions, on the other side in order to regulate conditions of work, usage rules and/or relationships between the employers and employees, and/or relationships between the employers or their companies and trade union(s).

On this basis, it is understood that company’s collective bargaining is a meeting between employer and employee representatives around the negotiation table to reach a deal concerning conditions of work and other important issues concerning the company and its employees.

2) The importance of collective bargaining:

Collective bargaining plays an important role in the following matters:

- ▶ Development of social dialogue at all levels including the company level that is considered necessary to achieve social peace which ensures the sustainability of the company and the future of its employees.
- ▶ Development of work legislation (labor legislation), considering that the conclusion of the collective labor agreements or its revision (adjustment), through collective bargaining, enrich labor legislation, viewing that these collective bargains are one of the legal means in the social field.
- ▶ Improvement of work conditions for the employees and the promotion and improvement of productivity as the key of survival, not only for the company but also its production related parties.
- ▶ The settlement of collective labor disputes related to the company, under preventive bargaining considering that collective bargaining is an aspect of social dialogue, which is able to include all issues related to labor relations within the company.
- ▶ Finding solutions to problems faced by the company as well as its employees or even their representatives, known that bargaining is one of the necessary social dialogue mechanisms, not only in times of crisis and intensified social tension, but also to find solutions for all issues related to labor’s collective and individual relations.
- ▶ Contribution in building a culture of dialogue and insurance of its continuance between production related parties within the company and around it (outside) including trade unions and advisory bodies ...

3) Levels of collective bargaining:

Given that international labor standards do not favor any level of collective bargaining, as a result, collective bargaining takes place in Tunisia on three levels which are: Company level (enterprise), sectoral level and National level. Although bargaining at the company level is desirable for some people, bargaining at the industrial level prevails in all bargaining rounds in Tunisia for several reasons confirmed by some of the respondent employers, including in particular:

- ▶ Being conducted at the sectoral level, sectoral collective bargaining allows both central unions to control it and guide its supervising representatives, in addition to accepting its results which are often balanced between all parties,
- ▶ All negotiated matters at the sectoral level are applied by the relevant economic company without discrimination, despite knowing that collective bargaining results at the company level reflect its characteristics and its potentials, especially earning potentials.
- ▶ Given that collective bargaining in Tunisia requires the presence of a trade union body within the company to negotiate with the employer. And, for some of the respondents, disputes can occur, within the company, between the employer and union members during the negotiation on certain issues. This causes a collective labor dispute; thus it will be a reason for disturbance of the business. Based on these considerations, negotiation at the industrial level is safer for them.

4) Parties involved in collective bargaining

Collective bargaining parties differ from one level to another depending on which level it took place. If it took place at the company level, these parties will include the employer, on one hand and the union representatives, on the other hand.

4.1. The employer:

He is the first responsible for the company and the main party in collective bargaining. The second party is the trade union body within the company which is either a trade union or a trade union representation.

4.2. Basic trade union and trade union representative:

The basic trade union and trade union representative are considered as the base structure in structuring every company's trade union. According to the provisions of the Labor Code (Chapter 243), trade unions role is limited to studying and defending its members' economic and social interests.

4.2.1. Conditions and procedures for establishing the basic trade union

Based on the experience and the internal bibliographies (internal regulations, basic law) of the trade union, one of these unions is established in each company with a certain number of members of this union. For example, the 30th act of the internal regulations of The General Union of Tunisian workers stipulates that a trade union is set in each work place or company with a minimum of 50 union members. The trade union office is made of 7 members whose responsibilities are set according to internal regulations.

As for union representation, it is established according to article 31 of the basic law mentioned above when the following conditions are met:

- ▶ 10 trade union members: 1 delegate
- ▶ From 11 to 20 trade union members: 3 delegates
- ▶ From 21 to 49 members: 5 delegates

Once the basic trade union structure (primary union and union representation) is founded, its founder is required to hand (with acknowledgment of receipt) in 5 duplicates to the headquarters of the governorate (district) or the delegation including the union center, a file that contains its basic law and the full list (called civil status in practice), to the people in charge, in any address, to manage or run it. This list contains, for the concerned ones, name, nationality, ancestry, date and place of birth, job and residence...

Each change in the basic law or in the names on the list immediately requires submitting these documents again, in accordance with the conditions mentioned above.

On the other side, the governorate (district) or the delegation deposited with basic law keeps a duplicate of this law. The governor sends a duplicate to the Ministry of Interior affairs, another duplicate to the ministry of social affairs and a third one to the public prosecutor at the Court of First Instance, geographically related to the trade union. As for the fourth duplicate, it should be handed immediately to the person who made the deposit, after setting the date of deposit and the administrative seal (article 250 of labor code).

4.2.2. Basic trade union term (or trade union representative)

Trade union or trade union representative (The General Union of Tunisian Workers for example) term is set to 3 years renewable only through elections and not appointment.

4.2.3. Basic trade union functions (or trade union representative)

If the functions of the company advisory committee and workers' representatives are organized according to the current legislation, the roles of the primary union seems through general practice broader, unlike what has been stated in article 243 of labor code which limited it to considering and defending their members' social and economic interests.

The trade union scope of intervention almost includes all areas due to its expansion through daily practice of union work within the company, especially through bargaining.

The Union also plays a fundamental role in the following:

- ▶ Matters related to expulsion for economic or technical reasons for some or all employees, in accordance with the dismissal control committee within labor inspectorate.
- ▶ Matters related to collective Labor disputes as a party of the dispute. Its role is highlighted in the practice of social dialogue, especially when it reaches through bargaining with the employer, an agreement that leads to overcome their differences to achieve professional demands.

4.2.4. the Expansion of tasks of trade union companies due to double representation of the company employees

This occurs when employees' representative within the company are member of a trade union and, at the same time, a member of the company advisory committee or an employee representative. So, this dual representation that is not illegal according to the Tunisian law, the role of the primary union within the company is wider to include also areas that are consulted by the company advisory committee according to the new article 160 of labor code.

Based on the above, this union member and employee representative, practices social dialogue through collective bargaining with the employer or his representative, and through consultation within the company advisory committee. However, the negative side of this kind of dual representation is the possibility to cause a blockage of social dialogue within the company, not only at the level of collective bargaining, but also at the level of consultation, particularly when the relationship between the employer and union is turbulent and unstable.

5. Collective bargaining centralization and its impacts on the enterprise

Most of the time, the collective bargaining is organized at the level of the company in accordance with the following data:

- ▶ Either directly after the signature of the framework convention on the revision of the regulatory and financial matters (salaries and allowances increases) in the areas subject to the sectoral joint convention between the Tunisian Union of Commerce, Industry and Handicrafts and the Tunisian General Labor Union.
- ▶ or after completing the review of the regulatory and financial matters of the joint convention, which the company's sector is subject to, in order to know the results of the sectoral collective bargaining and make them as a reference for negotiation at the company's level.

In this context, the result of the collective bargaining, which takes place at the sectoral (or national) level, is in fact an extension of the collective bargaining organized at the company's level and has a direct impact on it and its employees.

For these reasons and many others, the sectoral collective bargaining is well prepared in order to ensure its success at all levels. In addition, the bargaining parties, including representatives from the Workers' Company (Tunisian General Labor Union) and representatives from the Employers' Organization (Tunisian Union of Industry, Commerce and Handicrafts), are distributed on various bargaining committees. These committees are divided sectorally, centrally and nationally as follows:

5.1. Sectoral bargaining committee:

The role of the sectoral bargaining committees consists in the collective bargaining in the regulatory and financial matters of the sectoral joint convention presented for negotiation by the bargaining parties or by one of them.

The total number of these sectoral bargaining committees is equal to the number of the sectoral joint conventions to be reviewed. This means that each committee assigns a joint convention to each covered sector.

Moreover, each committee is composed of four negotiators from the Tunisian Union of Industry, Commerce and Handicrafts and the Tunisian General Labor Union, in addition to a representative from the Ministry of Social Affairs (as it is the ministry in charge of the labor matters in Tunisia), who chairs the sectoral bargaining committee.

5.2. Central bargaining committee:

The central bargaining committee supports the sectoral bargaining committees and follows up their works. It also helps them to reach agreements during the bargaining sessions. This committee is also responsible for bargaining on general matters, in which the sectoral bargaining committees failed to reach agreements.



The central bargaining committee is composed of three members from each of the two central unions which are the Tunisian Union of Industry, Commerce and Handicrafts and the Tunisian General Labor Union in addition to representatives (no more than three) from the the Ministry of Social Affairs.

5.3. The Supreme committee:

This committee ensures the proper functioning of the bargaining at the sectoral and central levels. It also works to overcome the difficulties encountered by the sectoral bargaining committees when they don't reach a solution at the level of the central bargaining committee.

The supreme bargaining committee includes the Minister of Social Affairs, responsible of labor matters in Tunisia, the president of the Tunisian Union of Industry, Commerce and Handicrafts and the Secretary General of the Tunisian General Labor Union.

Based on the foregoing, and despite the temporary aspect of these committees, as they are not defined by the law but only by an agreement between the two unionist companies for employers and workers, it is clear that the collective bargaining in Tunisia has witnessed a remarkable development at the sectoral level since 1973. In fact, it was since the beginning of the contractual politics aiming to organize the working relations between the production parties, within the joint framework convention between the Tunisian Union of Industry, Commerce and Handicrafts and the Tunisian General Labor Union, which generated sectoral joint conventions. However, the collective bargaining did not witness this targeted development at the level of the company which is particularly due to the dominance of the central bargaining approach as already mentioned, despite the absence, so far, of a legal framework for the collective bargaining which regulates, for example, the general conditions to start and end the bargaining process and also identifies its subjects, its parties and all the issues that are relevant to bargaining such as creating permanent bodies focusing on collective bargaining. To fill this gap, as customary since 1990 and before starting a new session of collective bargaining to review the sectoral joint convention, a framework convention was concluded between the Tunisian Union of Industry, Commerce and Handicrafts and the Tunisian General Labor Union to determine the following issues:

- ▶ the principles to be adopted by the bargaining parties,
- ▶ the issues to focus on during the bargaining,
- ▶ the starting date of bargaining within the sectoral committees,
- ▶ Setting the ethics of bargaining between the negotiators at the level of sectoral committees

by respecting the different opinion, accepting the debate and trying to convince the opposite party (in case of disagreement on a certain point). In addition to set down the positions, discuss the points consecutively and to discuss only the issues having review requests during the bargaining session and to study the issues as listed in the clauses of the concerned joint convention,

► To set the composition of the sectoral committees and both the central and supreme bargaining committees whose role is to negotiate in both regulatory and financial matters of the sectoral joint convention that are subject to bargaining by the two bargaining parties or by one of them.

6. Role of labor department in encouraging collective bargaining

The collective bargaining at the sectoral level represents a distinctive event in Tunisia. On this basis, the attention of all concerned parties, including the government, imposes itself.

During this occasion, the government has, through the Ministry of Social Affairs (as the ministry in charge of the labor file and professional relations), an important role as it provides the necessary facilities for the success of the collective bargaining such as providing human and material resources and the appropriate conditions for the proper functioning of the bargaining.

In addition, it undertakes the necessary procedures for the materialisation of the agreements taking place between the bargaining parties in the form of revisionism annexes published in the Official Journal of the Republic of Tunisia.

Note that this role is completely in line with the content of the clause (8/1) of the recommendation No. (158) on the work management which enjoined the governments to develop programs through a work management aiming to strengthen the collective bargaining and to establish permanent working relations encouraging to provide a better working conditions and professional life...

7. Collective bargaining results

The conclusion of bilateral agreements between the employer and the unionist party within the framework of bilateral meetings in the company or reconciliation sessions, whether inside or outside of it (at the labor inspectorate or the governorate headquarters -- the district) or the conclusion of joint labor conventions (joint working agreements) or revising them (any revision), represent one of the most important results of the collective bargaining in the company. In fact, it contributes to strengthen confidence and understanding between the two bargaining parties. It also highlights the importance of dialogue as a civilized and effective way to maintain the professional relationships and this leads to support the contractual policy between the professional companies and to develop the social legislation in force ...

7.1. Signing agreements during bilateral meetings at the company or reconciliation sessions

The daily life of the company is dynamic at all levels, including the professional relationships that require a kind of awareness and care to avoid, as much as possible, the tensions that are not good for the interests of the company, not even its employees.

On this basis, minutes of agreements are concluded between the employer and the representatives of the employees in the company, whether in the context of the advisory committee of the company (in some cases) if the subject of the meeting falls within its competences or with the unionist party if the subject of negotiation deals with professional demands of the employees in the company.

This legislation in force enabled the job inspector (labor inspector) to intervene at both parties of dialogue in the company (the employer and the basic union) through his reparatory role to strengthen the social dialogue between them particularly in case of a collective conflict in the company. He also facilitates the roles of the conflicting parties and try to make them agree on certain points of view and help them to conclude an agreement...

7.1.1. Importance of bilateral or reconciliation meetings' minutes

The minutes of meetings concluded, whether inside or outside the company between the employer and the unionist structure within the framework of the reconciliation committees (regional or central), keeps the signatory parties under obligation and requires their activation in accordance with what was agreed upon in details.

In addition, these agreements sometimes gradually become as joint conventions having the same requirements applicable to the agents and employees of the company such as the agreement between the employer and the unionist structure to increase in a certain allowance (i.e. concerning all employees of the company). It can also be an agreement on some agreements that are applicable until the revision of the company's agreement or the sectoral joint conventions so that it can be later included in the revision annex of the agreement and then become a structural text considering that this annex is issued with the government decision from the Minister of Social Affairs.

According to the interviewed sample, an unusual case was noted which is the non-consideration of the bilateral agreement by the labor tribunal, although the minutes of this bilateral agreement is concluded between the two parties of the production and the central unions of employers and employees, under the auspices of the Ministry of Social Affairs and the supervision of the sectoral authority (Ministry of Transport). In fact, it concerns an agreement on social assignment in the file of the privatization of a public institution and in accordance with the provisions of the labor legislation and the procedures applicable in such files. This represents a violation from the labor tribunal which threatens the mechanism of social dialogue and the credibility of its results.

7.2. Signature of the joint labor conventions

In addition to the joint framework convention, there is also the sectoral joint convention concluded between the representatives of the unionist companies of employers and employees, and that cannot include requirements that are less useful for the employees than those of the joint framework convention. There is also the joint convention of the company which is concluded between the employer and the unionist structure in the company and which cannot also include requirements that are less useful for the employees than those of the sectoral joint convention applicable in the sector to which the company belongs or less useful than the legislative provisions in force (labor code and the joint framework convention) in case the activity of the convention is not subject to a sectoral joint convention.

7.2.1. Definition of the joint labor conventions

According to the provisions of Chapter 31 of the Tunisian Labor Code, the joint labor convention is a convention on the working conditions concluded between the employer and the organizers of a block or those who personally represent themselves from one side and a company or many labor union companies from other side.

This definition is not inconsistent with the stated requirements in the second clause of the recommendation No. 91 on the joint conventions of the international labor company which consider the collective labor convention as an agreement concerning the working conditions and the terms of employment. This convention is concluded between an employer or group of employers or one or more employer's company on one hand, and one or more companies representing the workers, or in the absence of such companies, with the elected and authorized workers' representatives, in accordance with the national laws and regulations, on the other hand.

But the difference lies in the fact that the Tunisian legislation has made the trade union party (including the trade union Enterprise), the only party entitled to bargain with the employer (or the employers and their companies) while the Recommendation No. 91 granted this role to the elected and authorized workers' representatives. This procedure takes place in the absence of a unionist party in the company...

7.2.2. The conditions of the joint labor conventions

The legislator set, through the article 31 of the labor code, a number of legal requirements to ensure the correctness of the joint conventions which include the following:

- ▶ To be in writing or it becomes void,
- ▶ Impose its provisions on the relations generated from the individual or joint contracts to work in every company within the area of application (unless the terms of the contract are more useful to the workers than the terms of the joint convention).

In contrast, the legislator stated the possibility to do the following:

- ▶ Conclude the joint convention for a non-specific or specific period not exceeding five years. And if there is no contradictory condition, the convention concluded for a certain period, which then expires, remains in force as a joint convention for a non-specific period (Chapter 32 of the Labor Code).
- ▶ Put an end to the joint convention with a non-specific period as required by one of the parties who, in this case, has to inform before at least one month at least all the parties of the convention about that (Chapter 33 of the Labor Code).

7.2.3. Legal nature of the joint labor convention

In order to be formalized, the joint convention must be approved by a decision from the Minister of Social Affairs issued in the Official Journal of the Republic of Tunisia immediately after being concluded by the social parties. When this decision is issued, the joint convention is considered as a structural text including requirements having a general nature. The concerned parties must conform to this convention mainly at the signature of the individual employment contract...

In addition, as soon as the joint convention is issued in the Official Journal, it becomes imposed not only to the parties who signed it but also to employers and workers who did not sign it and whose company's activity enters within the scope of application of the approved sectoral joint convention.

As for the joint convention of the company, it cannot be concluded between the employer and the unionist party in the company only if a sectoral joint convention already exists. But in case this latter (this joint convention) does not exist, it is incumbent upon both parties (the employer and the basic trade union company) to submit a written request to the Minister of Social Affairs to obtain an exceptional authorization, which is called the ratification of the joint convention.

7.2.4. The content of the joint labor convention

In accordance with Chapter 42 of the Labor Code the joint convention should include the following issues:

- ▶ Freedom of the labor unions and freedom of opinion,
- ▶ Conformity of salaries to each industrial class and procedures to register the workers in each category of the mentioned categories,
- ▶ Terms of workers' recruitment and exempting them from work,
- ▶ Notice period for termination.
- ▶ Requirements concerning the creation of temporary bilateral committee responsible of separating the difficulties that arise from the application of the joint convention.
- ▶ Issues related to individual and collective working relationships

The following is an idea of the majority of issues composing the joint labor convention (collective labor agreement) in Tunisia. Generally, it is an agreement between the two bargaining parties and is divided into two parts (i.e. two sides), the first is structural and the second is financial as follows:

A. Formalities aspect

The structural side of the joint convention includes the following elements:

- ▶ The scope of application of the convention,
- ▶ Its duration (i.e. the duration of the joint convention),
- ▶ The procedures of its revision and retraction
- ▶ The representation of the workers in the companies
- ▶ The trade union rights and the freedom opinion
- ▶ Accept the trade union representative,
- ▶ Representation of the workers «the advisory committee of the company and the workers' representatives»
- ▶ Recruitment and the employment conditions,
- ▶ Set the probationary period,
- ▶ Progress and upgrade
- ▶ assign grades and upgrade gradually,
- ▶ The conditions of assigning tasks to workers that are not conform to their categories when they were recruited,
- ▶ Work system (i.e. the duration of work),
- ▶ Weekly rest,
- ▶ extra hours,
- ▶ The following holidays, authorizations and leaves:
 - ▶ Paid holidays
 - ▶ Paid annual leave
 - ▶ Special authorization for family reasons
 - ▶ Exceptional authorizations
 - ▶ Authorization to perform the national service
 - ▶ Birth authorization
 - ▶ Not paid authorizations
 - ▶ Illness authorisation
 - ▶ Maintain necessary things to do the job,

- ▶ Health and safety conditions in the workplace,
- ▶ Work and protective clothes,
- ▶ Security and safety at work,
- ▶ Vocational training and formation to improve the professional information,
- ▶ Protection of agents at work,
- ▶ Non-discrimination between the sexes in the workplace,
- ▶ The protection agents while doing their functions,
- ▶ Changing the place of residence or displacement,
- ▶ Absenteeism and cessation of work,
- ▶ Resignation,
- ▶ Notice period for termination,
- ▶ Termination of work after the deletion of the work centres or the reduction of the number of agents,
- ▶ Severance pay,
- ▶ Employment certificate,
- ▶ Discipline: covered by the Disciplinary Board and disciplinary procedures and the scale of sanctions,
- ▶ Transitional provisions and others applicable to the joint convention,
- ▶ The date when the Agreement (or the special basic statute) enters into force.

B. Financial aspect

1) Allowances and salaries: the major allowances varying from one sector to another (according to the sectoral joint convention) or from one company to another (if it is about the company's convention),

- ▶ Salary payment card,
- ▶ Allowances (General allowances and others specific) and privileges, if any, (material privileges and of other kind),
- ▶ Allowances to cover the worker's expenses such as transport and attendance allowances or to recover expenses such as mobility allowance etc.
- ▶ Special allowances: such as allowance of working in dirty places or milk allowance, and other social allowances such as school start allowance and retirement allowance without forgetting social privileges in some joint conventions.

2) The job classification, which usually includes the professional categories of the workers, on the one hand and their administrative and technical jobs, on the other hand.

3) Finally salaries networks which differ in terms of form and content from one sectoral joint convention to another.

7.2.5. Interpretation of the joint convention's provisions

Pursuant to article 6 of recommendation No. 91 on joint convention: «Special Chapters must be followed to resolve the disagreements arising from the interpretation of the joint convention. These clauses are defined either through an agreement between the parties or through legislation in accordance with the national circumstances.»

On this basis, the Chapter 4 of the joint framework convention included the requirements stipulating that «disagreement that may arise due to the interpretation of sectoral joint convention or the interpretation of the collective joint convention of the company must be referred to a committee having an equal structure in terms of members. This committee must be specially

appointed for this purpose by the signatories to the joint convention».

According to the mentioned Chapter 4, if the members of this equal-party committee do not reach an agreement, the two parties can (upon agreement between them) resort to arbitration by the government.

What is finally decided by the equal parties' committee or by the arbitration regarding the interpretation (of the agreement) will have the same effect as the joint convention in force.

All the sectoral joint conventions followed, approximately, the way of the joint framework conventions regarding the interpretation of their requirements.

For example, the Chapter 4 of the joint convention in the electricity and electronic sector stipulates that: «the disagreements that may arise from the interpretation of these joint conventions must be referred to the reconciliation committee stipulated in Chapter 60 of this convention (i.e. the joint convention for the electricity and electronic sector). If the members of this committee do not reach an agreement, the disagreement is then referred to arbitration of the Ministry of Social Affairs.»

What is finally decided by the commission or required by the arbitration will have the same effect in this convention.

It is worth to note, that the reconciliation committee aforesaid is composed of two representatives from the concerned employer or employers appointed by the national league of electricity and electronics which belongs to the Tunisian Union of Industry, Commerce and Handicrafts and the same number of representatives from the workers appointed by the general league of metals which belongs to the Tunisian General Labor Union.

In this context, when an agreement is reached before the reconciliation committee, a minutes of meeting is immediately written and then signed by the present members of the committee or the concerned parties or their representatives. If the agreement cannot be partially or fully reached a minutes of the meeting is immediately prepared which includes the absence of agreement and is signed by the present members of the committee and the concerned parties or their representatives.»

Note that this committee meets when it knows about the issue, the subject, in a period of time not exceeding eight days starting from the date of reception of the conciliation demand. The committee listens to both parties and issues its position in a period not exceeding fifteen days from the date of its first meeting to examine the issue.

7.2.6. Revision of the joint convention

Finally, regarding the revision and the retraction of the joint convention, the Chapter 3 of the joint framework convention, whose requirements were generalized on all the sectoral joint convention, states that this retraction or the demand of revision -- that is the revision of all the joint convention or a part of it by one of the contractors -- is possible only after the expiry of three years of the entry in force the joint convention. After this period (three years), the retraction or the demand of revision of the convention are possible only after the expiry of two years.

The party asking for retraction, should notify the counterparty which is contracted with through a registered letter with an acknowledgement of receipt, and must receive the letter before the first of October (This means that the demand must be done during the three months before the end of the current year) and must start bargaining during the thirty days following the sending of the letter.

In addition, the party asking for retraction or revision of the joint convention - partly or fully- must attach the draft of revision to the notification letter.

If an agreement is not reached before the expiry of three months from the starting date of bargaining, the two parties can decide - upon agreement- to keep working with the existing joint convention for a new period of three months. If an agreement is not reached after the expiry of the mentioned period, the two parties can -upon agreement- resort to the arbitration of the government.

While waiting for the arbitration, the joint convention remains in force.

7.2.7. Impacts of sectoral collective bargaining on the company

The collective bargaining for the revision of the joint convention, which is called in Tunisia «social bargaining,» represents a national event par excellence as it affects the majority of the workers who are active in the private sector and most of the economic sectors and companies.

The sectoral collective bargaining has also an impact on the company and its employees and this is reflected by the following facts:

First: the sectoral joint convention, even if it is the result of the sectoral collective bargaining, is applicable on both production sides in the company (the worker and the employer).

Second: the joint convention is imposed not only to its signatories, but also to the individuals to whom it was concluded for (workers and employers) and therefore, when a working contract (employment contract) is concluded between the worker and the employer, it is not allowed to include clauses contrary to the requirements of the joint convention applicable in the company.

Third: the results of the sectoral collective bargaining are taken into consideration when the joint convention of the company is revised between the employer and the labor union.

This, and based on the foregoing, and despite the dynamic aspect of the collective bargaining at the sectoral level, as until now 54 sectoral joint conventions covering about 90% of the economic companies were concluded, but these conventions remain limited at the level of the companies and do not exceed 50 joint conventions of the companies. The reason of these disparities is the result of many difficulties arising from the following reasons:

▶ The dominance of the sectoral collective bargaining on the negotiations in the company
In other words, the dominance of the centralization of bargaining over the bargaining in the company. This is due the fact that all the actors in this bargaining (the trade unions and the government) want to organize it sectorally for the reasons previously mentioned. The most important reason is that the sectoral collective bargaining allows the two trade union central bodies to control it by directing its representative' supervisors. In addition, they assume its results, which take into account the interests of the negotiators from both sides: the workers and the employers.

▶ Some of the surveyed employers prefer to make it at the national level to avoid its repercussions if it is within the company and this is due in particular to the following:

First: most of the companies are small business and therefore cannot create a joint convention including requirements which are more useful than those included in the sectoral joint convention,

Two: the lack of expertise among the bargaining parties at the level of the company as they did not receive a special field formation on bargaining techniques...

Third: the lack of formation in the field of social legislation for some of the negotiators at the level of the company, whether they are representatives of the workers or the employers which makes them not qualified for the job,

Fourth: the fear that bargaining within the company deviates from the general context and the union's central orientation aiming to ensure harmony between the content of the sectoral joint conventions and the framework convention concluded between the Tunisian Union of Industry and Commerce and the Tunisian General Labor Union...

Fifth: contrary to the trade union's negotiators, an absence of trade union solidarity is sometimes noticed among some employers during the current bargaining for many reasons, the most important is the competition and the conflicts of interest for those who have the same professional activity.

Sixth: In accordance with the legislation in force (Chapter 31 of the Labor Code and in particular Chapter 44 and its annexes regarding the special conditions of the company's joint convention), a basic trade union must be present in the company, as a prerequisite, in order to be the bargaining party with the employer regarding the company's joint convention.

This requirement represents for some employers an adventure they prefer to avoid, especially in light of trade union pluralism.

On the other hand, it was suggested to review the provisions of the Labor Code in order to enable each company, which does not have any trade union representation, to conclude the joint convention of the company with representatives among the workers that are chosen through elections for a limited period and associated with the period of bargaining.

Those who made this proposal are referring to the International Labor Convention No. 135 on workers' representatives which was ratified by Tunisia in 2007 and allowed the workers to be represented in the bargaining by the representatives they freely elected and according to special rules provided by the national laws or the joint conventions. However, their missions should not include any activities within the jurisdiction of trade unions. In addition, they have to take measures to ensure that these representatives are not exploited to weaken the position and the importance of trade unions representing the sector.

Section Three: results of dialogues and hearings to employers

Survey on trade union members practising social dialogue

As already mentioned, the Tunisian Union of Industry, Commerce and Handicrafts as the employers' organization, is legally represented in the structure of the regional and central committees of reconciliation, which meet to settle the collective labor disputes whether in the form of telegrams notifying for strike or cessation of work.

In addition, this organization is also represented in the regional and central committee to monitor the expulsion and also meets whenever there is a demand from the economic company to decrease the working hours or to put the worker in unemployment situation or to dismiss them for economic or technical reasons.

As one of the parties to the joint conventions, the employers' organization contributes in the collective bargaining to review these contracts in accordance with periodic bargaining sessions determined by the text of the joint convention or the agreement between the two contracting parties. These committees whether specialized in reconciliation regarding disputes or bargaining or controlling the dismissal are the most important for the permanent and periodic social dialogue in the company between employers, workers and the government.

A sample was selected from an experienced group of Union's representatives participating in these committees for the social dialogue (working as such for a period ranging between five years and twenty years). This group of people are known for their long practice of social dialogue reaching sometimes up to two meetings per week.

This sample is composed of 17 members, divided as follows:

Geographical distribution:

- ▶ Tunis: 4
- ▶ Ariana: 1
- ▶ Ben Arous: 3
- ▶ Manouba: 2
- ▶ Nabeul: 2
- ▶ Bizerte: 1
- ▶ Sousse: 2
- ▶ Sfax: 2

Distribution by gender:

- ▶ Female: 3
- ▶ Male: 14

Distribution by specialization:

- ▶ 17 practicing reconciliation
- ▶ 7 practicing collective bargaining
- ▶ 10 practicing consultation

According to the results of this survey most of these members adhere to social dialogue as a method and tool to achieve social peace and stability at the level of production and a tool for cooperation and partnership with government authorities as well as with trade unions. The following is the text of the questionnaire:

Special questionnaire with representatives of the Employers' Organization
In social dialogue sessions

1. What is your assessment of the need for social dialogue in the current situation?

- 1) Needed in the company
- 2) Not really necessary
- 3) Unnecessary

2. What are the forms of social dialogue, which manifest more than others?

- 1) The reconciliation and the control of dismissal committees
- 2) Negotiation
- 3) Consultation

3. What is the role of social dialogue sessions in the achievement of social peace?

1. Major role, good results were achieved thanks to dialogue
2. Medium role, there were some results
3. Poor role, we still cannot reach social peace

What is the level of readiness of the trade unions for social dialogue?

- 1) Well prepared for dialogue
- 2) The effort can be improved
- 3) Do not believe in social dialogue

4. What is your assessment of the role of the departments (the labor inspector, the local authority, the regional authority) to manage the reconciliation process?

- 1) Comply with the law
- 2) Work on finding solutions for both parties
- 3) Favoring the company
- 4) Favoring the union or the workers

5. What is the level of prior cooperation between the Organization and the representative of the Tunisian Union of Industry, Commerce and Handicrafts?

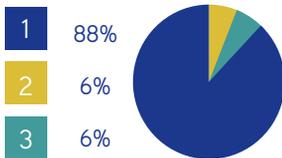
1. Good cooperation for the preparation of the file
2. Basic and inadequate data
3. Not informed about the file only during the reconciliation meeting

The answers of the questioned members regarding the following questions:

1. What is your assessment of the need for social dialogue in the current situation?

- 1) Needed in the company
- 2) Not really necessary
- 3) Unnecessary

Need for social dialogue



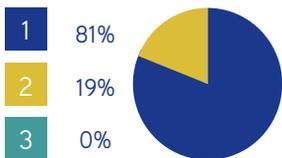
The answer to this question «that social dialogue in the current situation is necessary to the company,» reached 88%, which means that the majority of members believe that the social dialogue is necessary for the company to manage its human resources and support its social peace and stability.

This orientation represents a very positive fact if we consider the status of the negotiator in the company that resort to the Union or is accompanied by the Union and also the involvement of the Organization in this conviction as a result of the mutual trust between the two parties.

As for the answer 6% «that dialogue is not necessary», it could come from the emotional state due to the suspension of dialogue in some cases as a result of lack of competencies, especially the initial readiness to engage in the dialogue and the good treatment of conflicts and disputes.

2. What are the forms of social dialogue, which manifest more than others?

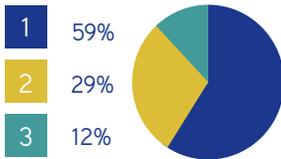
- 1) The reconciliation and the control of dismissal committees
- 2) Negotiation
- 3) Consultation



The answer 81% of the questioned members refers to the activity of reconciliation, which is almost the daily work of the representatives of the Tunisian Union of Industry, Commerce and Handicrafts, whether at the regional or central level. However, the consultation under its official and structured form at the national level interests the national executive office members.

3. What is the role of social dialogue sessions in ensuring social peace?

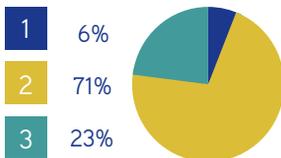
1. Major role, good results were achieved thanks to dialogue
2. Medium role, there were some results
3. Poor role, we still cannot reach social peace



This question is one of the most important points of the field assessment, which highlights the importance of social dialogue as the best mean to reach the agreements and social peace at the regional and central level as the first answer about reaching a solution is almost 60% in addition the percentage of 29% of those who admit that the dialogue plays a medium role and reaching some results.

What is the level of readiness of the trade unions to social dialogue?

- 1) Well prepared for dialogue
- 2) The effort can be improved
- 3) Do not believe in social dialogue

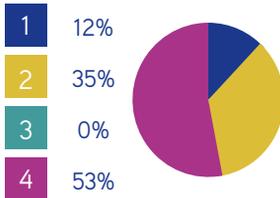


More than 70% believe that there is an effort made by trade unions to find solutions through social dialogue and this effort can be improved.

It is noted that through the constant interaction between the representatives of the two Organizations, whether at the regional or at the central level, a kind of trust and understanding was created between them which can be improved to ensure an efficient and effective social dialogue.

5) What is your assessment of the role of the departments (the labor inspector, the local authority, the regional authority) to manage the reconciliation process?

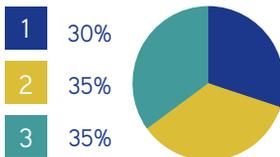
- 1) Comply with the law
- 2) Work on finding solutions for both parties
- 3) Favoring the company
- 4) Favoring the union or the workers



Despite all the will to overcome the conflicts and develop the social dialogue with the representatives of the trade union Organization, the confidence in the role of the reconciliation party is still below the desired result - according to the respondents. This is due to the fact that many reconciliation parties lack of experience. In addition, there is feeling that many labor inspectors are favoring the trade unionist party.

6. What is the level of earlier cooperation between the Organization and the representative of the Tunisian Union of Industry, Commerce and Handicrafts?

1. Good cooperation for the preparation of the file
2. Basic and inadequate data
3. Not informed about the file only during the reconciliation meeting



The answer to this question reveals a division almost between the three hypotheses, but in two-thirds of cases the good coordination is absent between the company and the representative of the Union, whether for lack of experience and knowledge of management, or to the increasing number of files and lack of time for a good coordination.

Results of survey on economic companies

A sample was selected in consultation with the Tunisian Union of Industry, Commerce and Handicrafts made up of 30 economic companies that have witnessed a collective work dispute during the last three years, both to the extent of a strike implementation or which have been settled through dialogue and reconciliation. The questionnaire was designed to diagnose the reality of dialogue within the company through a number of themes related to:

- ▶ Size of the company in terms of the number of workers
- ▶ Sample diversity in terms of both the production sector and geographical belonging.
- ▶ The company and the employment relationship through a collective agreement.
- ▶ Salary levels by sectoral convention.
- ▶ Agreement deficiencies
- ▶ Formation of an Advisory Committee within the company.
- ▶ Basics of the Advisory Committee work within the company
- ▶ Trade union representation.
- ▶ Collective disputes
- ▶ Individual disputes.
- ▶ The role of labor inspection
- ▶ The role of the Tunisian Union of Industry, Commerce and Handicrafts.
- ▶ Labor judicial system

Presentation of the sample:

30 active companies through all their branches on more than 14 governorates (geographical distribution that covers almost all regions of the country)

These companies are active in nine major production sectors, which are distributed as follows:

| The sector | The number of companies |
|-------------------------------|-------------------------|
| Electricity and electronics | 4 |
| Minerals | 3 |
| Food Industry | 7 |
| Textiles & Clothing | 3 |
| Hotels and tourism | 1 |
| Construction and public works | 2 |
| Chemical industries | 3 |
| Transport | 5 |
| Environmental services | 2 |
| Total | 30 |

In terms of employment size, these companies are distributed as follows:

| Employment Size | Number of companies |
|-----------------------------|---------------------|
| Under 50 | 3 |
| From 50 to 100 | 2 |
| From 101 to 200 | 6 |
| From 200 to 500 | 14 |
| More than 500 | 5 |
| The total of 11 756 workers | 30 |

Through companies answers to the elements of the form, the next dominant character can often be drawn, as most of the interviewer' companies:

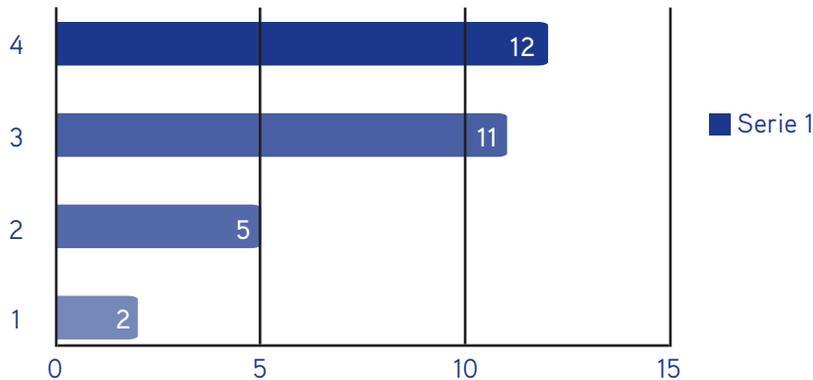
- ▶ Are considered one of the above-average size and therefore companies that have the potential that enables them to establish a policy of dialogue, dialogue internal structures and mechanisms of social dialogue.
- ▶ Believe in the necessity of social dialogue as a mechanism to overcome difficulties and build a climate of stability and social peace.
- ▶ Being active in sectors subject to the collective sectoral conventions (but do not stop at the borders of this agreement in regards to wages and even exceed this limit).
- ▶ Have observations about the lack of provisions of the Conventions or the lack of clarity in some points, especially with regard to occupational classification, productivity, and matters relating to the activity of the company.
- ▶ Respect legal procedures and provisions to the formation and election of the Advisory Committee within the company and provide it with legal facilities, as these committees are engaged in several topics in addition to discipline, promotions and Occupational Safety and Health.
- ▶ The trade union organization seeks to cooperate with them, but the labor demands hasn't create a relation of cooperation but only bargaining about additional demands.
- ▶ The last three years witnessed individual and collective labor disputes arising from the logistical unrest and the addressing of the difficulties and the disciplinary decisions
- ▶ Regarding the measurement of satisfaction degree with the performance of the parties responsible for resolution of work disputes (the collective and the individual) it was obvious that:
- ▶ The degree of satisfaction with the performance of reconciliation authorities and the labor inspectorate is average, with emphasis in many cases on the non-impartiality of some reconciling parties
- ▶ The degree of satisfaction with the performance and the backup services of the Tunisian Union of Industry, Commerce and Handicrafts is medium, in addition to some dissatisfaction cases with the backup level mainly at the regional level

- ▶ Most of the companies trust the judiciary in spite of the existence of some abusive practices by some lawyers as well as the length of the proceedings.
- ▶ Regarding the proposals of the respondent companies aiming to support social dialogue they are as follows:
 - ▶ All the companies request the conduct of trainings for all the dialogue parties (company management, advisory committee members and trade unionists) whether in the legal field or in mechanisms and techniques of social dialogue
 - ▶ Several companies wish that a text preventing the combination of the advisory committee membership and the trade union membership become enacted
 - ▶ Several companies insist that law shall be respected by all the parties in order to prevent the trade union and labor unrest (restriction of the employer freedom, sit-ins, strikes, Random strikes and disruption of production)
 - ▶ Several companies confirm that dismissal succeeded in controlling the lack of discipline and so achieving stability in the work relationships
 - ▶ Most of the companies confirms that educational and training levels of the advisory committee members who represent the employees, is essential for the development of dialogue within the company
 - ▶ Small businesses which don't meet the requirements of establishing a company advisory committee or employees' representative shall establish a similar non-official body to develop dialogue within the company.
 - ▶ Large-size companies had given more importance to the human resources department especially during the recent years

The most important statistical results of the survey

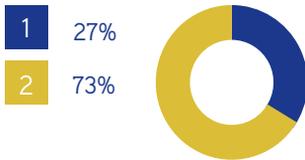
Regarding the subjects related to the work of the company advisory committee presented in the survey (company's work, discipline, training and occupational health and safety), most of the respondent companies are considered as supporters of dialogue within the company given the number of subjects addressed through dialogue within the committee. The answers are divided as the following: all subjects (12 companies), most subjects (11 companies) some subjects (5 companies) non-existence of a committee (2 companies), and so the total percentage of the companies that adopt dialogue in addressing several subjects is 77 %.

Companies' distribution as per work subjects



Regarding the salaries:

22 companies give higher salaries (basic salary and bonuses) than the agreed ones in the sectoral joint convention with a percentage of 73%



Direct meeting with Trade Unions members

The results of the survey conducted with the Trade Union representatives during the social dialogue sessions weren't sufficient for us, as a result, we held meetings with some members who practice social dialogue regarding their field experiences of dialogue and their points of view concerning the diagnosis, the difficulties, the expectations and their proposals to promote social dialogue in Tunisia

It has been noticed during these dialogues that trade union members (Tunisian Union of Industry, Commerce and Handicrafts) have a good follow up of social dialogue at the national level and at the regional level as the regions present important economic poles such as Ben Arous, Nabeul, Sfax and Sousse given the existence of permanent qualified staff recruited and trained in the work relationships field who are performing a daily follow up of the social dialogue issues or through elected members within the national and regional organizations. They are employers but they devote much time to Trade union activities and the participation in national or regional social dialogue

It's also obvious that the trade union has benefited from its international experience in this field through its activities with the International Labor Organization (ILO) or through the cooperation with the Bureau for Employers' Activities (ACTEMP) and The International Organization of Employers (OIE) which has been headed by the trade union) for two terms

Therefore, it appears that they are familiar with the international experiences in the field of social dialogue especially during the last ten years during which there were strong cooperation and partnership with the international organizations which are as follows:

- ▶ Board of director's membership within the international organization (BIT and OIE), chairman of social affairs committee and a deputy member in the board of directors of Bureau for Employers' Activities
- ▶ Permanent participation in the international conferences and seminars regarding social dialogue and work relationships
- ▶ Permanent participation in several conferences and trainings mainly under the International Training Centre programs of the Bureau for Employers' Activities in Turin, Italy
- ▶ Direct cooperation in the field of work relationships and social protection with several European Employers Organizations, experienced in the field of work relationships

National conference within the framework of SOLID about “employers and social dialogue... Capacity building and adaptation to the new reality”

The Tunisian Union of Industry, Commerce and Handicrafts in cooperation with the Union of Mediterranean Confederations of Enterprises (BUSINESSMED) held a conference in its headquarters under the title “employers and social dialogue: Capacity building and adaptation to the new reality” Started by Mr. Hishem Elloumi, Trade Union deputy president and Mr. Mohamed Ali Dyahi, Director of the ILO Office for the Maghreb countries and concluded by Mohamed Trabelsi, Minister of Social Affairs. During the conference there were other interventions regarding social dialogue in Tunisia and within the organization in addition to anticipating disputes and improving the abilities of organization bodies and the organizations by presenting an academic experience of the trade union

On the other hand, the presentation of SOLID project of Southern Mediterranean countries, which is sponsored by the European Union and concerned with social dialogue

Mr. Mohamed Trabelsi, Tunisian Minister of Social Affairs, has otherwise focused on the importance of studying ways for activating and developing Tunisian social dialogue mainly in the situations of Tunisia. He pointed that the work relationships closely linked to social conditions in the various aspects of education, transportation and housing etc that may put the company under pressure, therefore these matters shall be resolved.

He added that we should re-work within the company and apply law in the framework of democratic structures, calling on all parties to assume their responsibilities so that the country regains its original situation.

The minister also highlighted the importance of intensive meetings between the different social partners in order to overcome all conflicts and that such meetings should not be occasional and limited to conflict cases. He also stressed on the importance of multiple dialogue frameworks in order to relieve pressure on companies in addition to the importance of the regional, local and sectoral structures to solve problems and prevention.

He added that without the spirit of solidarity and burden-sharing and sacrifice, we will not be able to get out of this situation that has prevailed in the country, while stressing on the importance of dialogue in order to maintain and promote jobs.



In his speech Mr. Hishem Elloumi pointed out that the fact that the European Union has chosen this project and made it one of its sponsored projects confirms the position of partners sponsoring this project mainly the International Trade Union Confederation and the Union of Mediterranean Confederations of Enterprises and their reputation at the international scale while indicating that this is due to the output of social dialogue in Tunisia and its deep-rootedness into national Organizations that the entire world has recognized as Tunisia was granted the title of the National Dialogue Quartet and won the Nobel Peace Prize for the year 2015.

He added that the status and the importance of the social dialogue in the Mediterranean region in general and in Tunisia in particular goes back to the cultural heritage of the region and the nature of the population characterized by the easy communication with the other, in addition to the quality of the economic landscape which is mostly made up of small businesses where the employer is close to the employee and is daily dealing with them is fundamental for developing a permanent social dialogue . He indicated that dialogue needs to be further organized at the level of structures, companies and guidance of actors and encouragement of their potentials and skills in building responsible dialogue that respects dialogue and ensures company's sustainability, development, strengthening its competitiveness and ensuring the basic rights and prosperity for all its employees and clients in the context of decent and productive and fruitful work systems for all.

He added that given what Tunisia has experienced since 2011 including the increasing and sometimes exaggerating demands, the decline of work culture and productivity, increase of occupational conflicts, disruption of company's activities, it has become urgently necessary to support the plan of human resources management within the companies which has become one of the main tasks in the system of human resources management for the private sector companies.

He explained that through the follow up and intervention to resolve occupational disputes, it has been noticed that companies where the management body concerned with human resources is absent, find big difficulties in supporting social stability and preventing individual and collective disputes. He pointed that this is why it has been decided to create a body in the Tunisian Union of Industry, Commerce and Handicrafts called "Human Resources Managers' Clubs" which assemble the human resource management officials in the companies which are members in the organization. Its functions consist in exchanging experiences and strengthening capacities in terms of work and social dialogue.

Hishem Elloumi has confirmed that restoration of social peace and the focus on work and production is the only way to promote the economy and to overcome the crisis, adding that we need to find an interactive dialogue that is adaptive to the new world requiring the move to a higher productivity and quality levels and the ability to withstand competition... So we shall achieve what has been agreed on in Carthage Declaration which represents a roadmap for economic and social rescue and to overcome deflation and the financial imbalances of the state and the companies.

Mr. Mohamed Ali Aldyahi confirms that Tunisia is facing difficult circumstances and that find investment, create work opportunities, establish new companies, improve productivity and resolve disputes can only be achieved through a substantial responsible dialogue. He adds that the organization is trying to provide an appropriate atmosphere for all the employers' organization in order to identify the prioritized issues in this current period and to find solutions.

The employers' coordinator of "SOLID" project has pointed out that "social dialogue program in the Southern Mediterranean countries" is a pioneering project for the promotion of social dialogue in the region of southern Mediterranean, indicating that its implementation has began since 2016, for three years (2016-2018)

Mr. Farid Algheryani talked about social dialogue in Tunisia, his history and the circumstances that has been experienced since the independence showing that after 2011 social dialogue has a new aspect especially under the new reality of the country as well as the other experienced difficult conditions.

He indicated that the social contract signed in 2013 was a new date in the history of Tunisia as it represented a roadmap or a constitution for the social policies in the country emphasizing that in order to ensure social dialogue safety, Carthage Declaration shall be adopted as a reference as it acknowledges the new reality of Tunisia that is the real severe political, economic and social crisis. Therefore, dialogue shall not be isolated from the actual circumstances.

The expert in labor law, social dialogue and occupational relationships (Mr. Abada Mahjoubi) has given a lecture on the history of social dialogue in Tunisia and the mechanisms of dialogue within the company.

Mr. Sami Essalini, social affairs committee member in the Tunisian Union of Industry, Commerce and Handicrafts, has also made intervention on the subject "prevention and management of collective labor disputes".

Conclusion in form of recommendations:

Given the faced challenges here is a conclusion in form of recommendations by the organization including the employees at all levels and which requires joint efforts to overcome them, all the mechanisms of social dialogue including collective bargaining within the company in order to improve its competitiveness and to promote human resources as being one of the basics of social policy because of its contribution in achievement of concomitance of the social and economic dimensions and as it is a guarantee for social peace stability.

The frame of consultation and dialogue between employers and employees' representatives within the company in order to ensure stability and production continuity to achieve sustainable development at all levels.

Accordingly, and in addition to the observations and solutions contained in the diagnosis results aiming to solve the difficulties that prevent the development of social dialogue within the company under all its forms including collective bargaining and the proposals stated in the report such as review of some labor code provisions regarding social dialogue, we give the following recommendations:

- ▶ Activating the role of social dialogue to present a mechanism of maintenance of occupational relationships stability within the company
- ▶ The adoption of social dialogue as a way to prevent labor disputes arising from the implications of global financial crisis and thus creating a sound social climate that contributes in maintenance of the companies' competitiveness
- ▶ Among the social dialogue objectives is to play a positive role in the development of decent work and strengthening of the company competitiveness. Therefore, it shall be established within an identified body according to the determined procedures to move it from the temporary aspect to the permanent one

- ▶ Activation of social dialogue through consultation at the following levels:
 - ▶ **At the national level:** In the framework of national council for social dialogue that shall be established as soon as possible in addition to other higher advisory councils in all fields as well as involving the social parties and consulting with them when enacting laws regarding occupational disputes
 - ▶ **At the sectoral level:** In the framework of collective bargaining regarding the review of sectoral joint conventions (formalities and financial aspects) and the regulations (concerning the public offices and establishments)
 - ▶ **At the company level:** In the framework of consultations and bargaining between the employers and employees' representatives within the company in order to create a sound social climate and to increase the company's competitiveness
- ▶ Organize training courses for the benefit of employers (wishing to do so), or for the benefit of their representatives in the field of collective bargaining and consultation through the activation of dialogue structures within the company
- ▶ Organize training courses for the benefit of the representatives of the companies' management within the companies' advisory committees that helps to inculcate the culture of social dialogue into the employees' representatives within the company
- ▶ Making of social dialogue a permanent mechanism to get solutions for the economic and social issues such as smuggling and the parallel economy and productivity within the company that shall be developed in order to increase its competitiveness
- ▶ Strengthening collective bargaining within the company, given the positive achieved results at both economic and social level and giving a feeling of satisfaction to the production parties within the company
- ▶ Developing the two active Trade Unions, Tunisian Union of Industry, Commerce and Handicrafts and Tunisian General Labor Union in the country by establishing permanent bodies concerned with social dialogue



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