GUIDELINE

on Prevention and Resolution of Disputes Between Employees and Employers

The Hague Institute for Innovation of Law - HiiL
Tunisia 2022-2023

HiiL user friendly justice

Ministry of Foreign Affairs

Guideline Development Team

The development of this guideline is funded by the Ministry of Foreign Affairs of the Netherlands and supervised by the Committee of Experts, consisting of experienced Tunisian experts in the justice sector and in labour law.

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Background

A survey on needs and satisfaction of Tunisians in the field of justice, conducted by the Hague Institute for Innovation in Law (HiiL) in 2023[1], showed that the most common justice problems in Tunisia are related to employment. The study also shows that 31% of Tunisians faced at least one legal problem during the past year. Employment-related problems represented the most prominent issues. The survey showed that about 70% of Tunisians having legal problems take some measures to solve their most serious problem, and that people resort to resolving their legal disputes outside formal justice institutions. According to the survey employees, employers, and parties interested in legal affairs often lack necessary tools that help them to solve problems.

HiiL developed this guideline to help legal professionals, who directly engage with employees and employers, in their efforts of preventing and solving employment disputes. The guideline remains a living document that can be updated continuously.

1 The Hague Institute for Innovation of Law, *Justice Needs and Satisfaction in Tunisia 2023: Legal problems in daily life*, can be accessed here: www.hiil.org/research/justice-needs-and-satisfaction-in-tunisia/

Introduction to the Guideline

National organisations and governments have developed a range of clinical guidelines containing recommendations that support medical professionals in their daily work. This approach is applied and modified for the justice sector. Justice guidelines are sets of recommended interventions to apply by practitioners, to prevent and/or resolve people's justice issues.

This guideline is designed for employees, employers and stakeholders interested in the subject of individual employment relations.

The guideline provides recommendations for parties interested in resolving employment disputes in Tunisia in formal and informal justice systems. This guideline combines experiences of practitioners across Tunisia (practice-based evidence) with interventions recommended from internationally conducted studies (evidence-based practice).

The main objective of this guideline is to strengthen the capacity of practitioners and justice providers to resolve labour disputes. This guideline is divided into three main sections covering labour-related disputes: the first section relates to employment contracts; the second concerns the rights and duties of the parties to the employment contract; the third section is about strengthening relationships between employees and employers.

HiiL worked closely with eight high-level experts and three highly skilled researchers to develop the recommendations. Over the course of eight work sessions, researchers met with the Committee of Experts and shared local and international legal provisions related to employment disputes. In the second phase, members of the Committee of Experts shared their experiences about the matter, mainly by transposing recommendations in a Tunisian and local context. In the third phase, best practices were collected from experienced local service providers, based on their own experience. We then detailed the effective interventions by local experts and tested them against each other using the PICO / GRADE method (this is further explained in the Methodology chapter).

How to use the guideline

The Tunisian Labour Code is characterised by being a law of public order, with peremptory rules providing protection for employees in terms of working conditions, wages and benefits, as well as to structures defending their interests. All professionals should act in accordance with the Tunisian Labour Code. Professionals should always rely on their own expertise and experience and act according to the circumstances of each individual case. All recommendations in the guideline are generalised and do not consider specific situations that require exceptions. Therefore, your professional assessment on a case-by-case basis is essential to make the best decisions possible.

The recommendations in this guideline can support professionals in preventing and/or solving employment disputes. They are categorised into three categories:

Highly recommended 	Intervention is desirable and the quality of evidence is high. Apply the recommendation and advice to the parties accordingly.
Recommended 	Intervention is desirable and the quality of evidence is moderate or low. Apply the recommendation and advice to the parties accordingly.
Context-specific recommendation 	Intervention is desirable in a specific context and the quality of evidence is high, medium or low. Apply the recommendation only in appropriate circumstances and inform the parties accordingly.

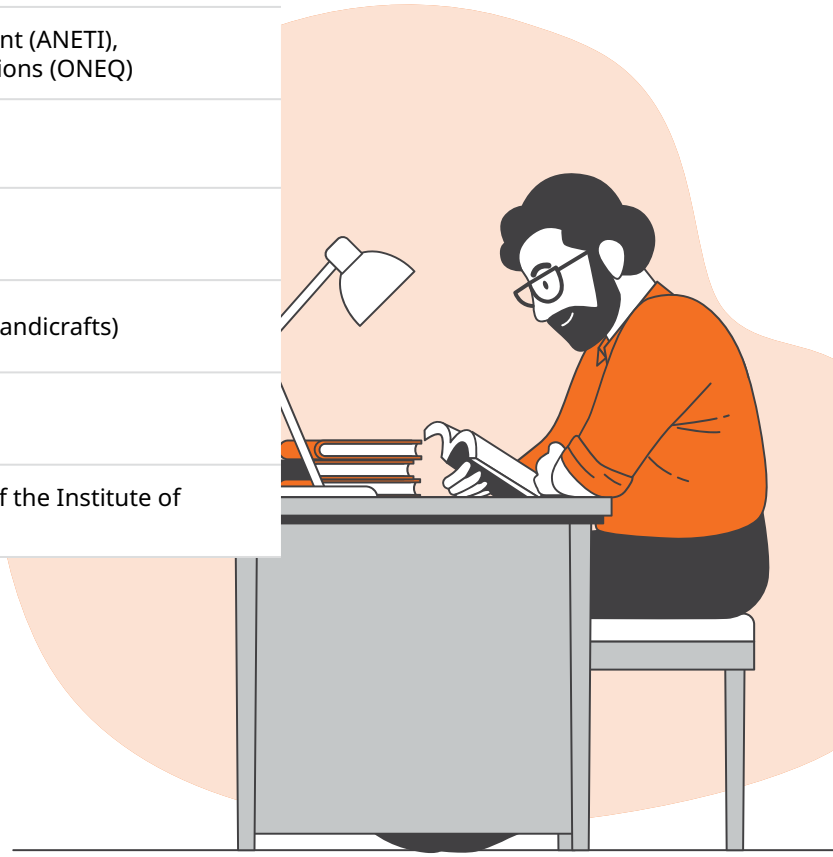
Summary of all recommendations

Recommendations	To prevent / to resolve	Classification	Page
Employment contract			
1. Conclude a written employment contract to guarantee the rights of its parties.	Conflict prevention	*Highly recommended* ★★★★★	11
2. Agree on an indefinite employment contract to ensure the continuity of the employment relationship.	Conflict prevention	*Highly recommended* ★★★★★	12
3. Employee and the employer agree on a clear definition on allowances and benefits, and specify minimum protective labour standards in the terms and conditions of the contract.	Conflict prevention	*Context-specific recommendation* ★★★	13
4. Make use of one or two probationary periods.	Dispute resolution	*Recommended* ★★★	14
Rights and Duties of the Parties to the Employment Contract			
5. The employer ensures the possibility of a complaint procedure before and after dismissal.	Dispute resolution	*Recommended* ★★★	20
6. The employee and the employer establish separate criteria to determine the fair conduct of the employer around allowances and benefits.	Dispute resolution	*Highly recommended* ★★★★★	22
7. The employee and the employer set separate criteria to determine the fair conduct of the employer in relation to dismissal.	Conflict prevention	*Highly recommended* ★★★★★	23
8. The employee and the employer create a sense of security and confidence by providing a climate of psychological social safety.	Conflict prevention	*Highly recommended* ★★★★★	25
9. Employee and the employer resort to the labour inspection.	Dispute resolutionn	*Highly recommended* ★★★★★	26
10. The employee and the employer apply the multilateral negotiation process.	Dispute resolution	*Context-specific recommendation* ★★★	27

Recommendations	To prevent / to resolve	Classification	Page
Enhancing the Relationship Between Employer and Employee			
11. The employee and employer use the practical thinking technique called 'evaporating cloud' to solve their disputes.	Dispute resolution	*Context-specific recommendation* ★★★	32
12. The employer adopts an open-door policy.	Dispute resolution	*Highly recommended* ★★★★★	34
13.The employee and the employer build an employment relationship based on an integrative negotiation approach.	Dispute resolution	*Recommended* ★★★	35
14. Employee and the employer carry out an early impartial assessment process in disputes.	Dispute resolution	*Recommended* ★★★	36
15. Involve a neutral, third-party mediator in the arbitration and mediation process.	Dispute resolution	*Highly recommended* ★★★★★	37
16. The employee and employer apply Med-Arb procedures.	Dispute resolution	*Recommended* ★★★	38
17. Apply the tripartite social dialogue.	Dispute resolution	*Recommended* ★★★	40
18. The employee and the employer adopt and apply alternative dispute resolution mechanisms (ADR).	Dispute resolution	*Recommended* ★★★	41

To whom is the Guideline directed?

Stakeholders	Specified stakeholder parties
Ministry of Justice	Ministry of Justice
Ministry of Social Affairs	Ministry of Social Affairs
Ministry of Employment and Vocational Training	National Agency for Employment and Self-Employment (ANETI), National Observatory for Employment and Qualifications (ONEQ)
National Bar Association	Lawyers
Regulatory bodies	Labour Inspection, Regulatory Authority
Professional organizations	UTICA (Tunisian Union of Industry, Commerce and Handicrafts)
Academics	UGTT (Tunisian General Labour Union)
Private Sector	Professors, researchers, law students and students of the Institute of Labour and Professional Promotion



Recommendations

The Employment Contract

A significant number of Tunisian employees encounter issues related to their employment contracts and entitlements. These problems arise due to the following factors:

- Many employees are engaged in fixed-term or indefinite contracts that often lack clear details regarding benefits, focusing only on personal information, assigned tasks, duration, and wage.

- A considerable percentage of employees work under verbal contracts, which complicate the negotiation process and fail to adequately protect the rights of both the affected employee and employer.

To ensure a fair and balanced working relationship between employees and employers, it is crucial that employment contracts include explicit provisions regarding allowances and benefits. Clear guidelines regarding these aspects facilitate the employees' ability to obtain their rights and resolve disputes in a smooth manner. Failure to address these provisions in the contract can lead to an unhealthy work environment and an imbalanced employment relationship. Consequently, this situation may result in unstable physical or psychological working conditions for the employee and, in certain cases, arbitrary dismissals due to perceived failure in performing assigned duties effectively.

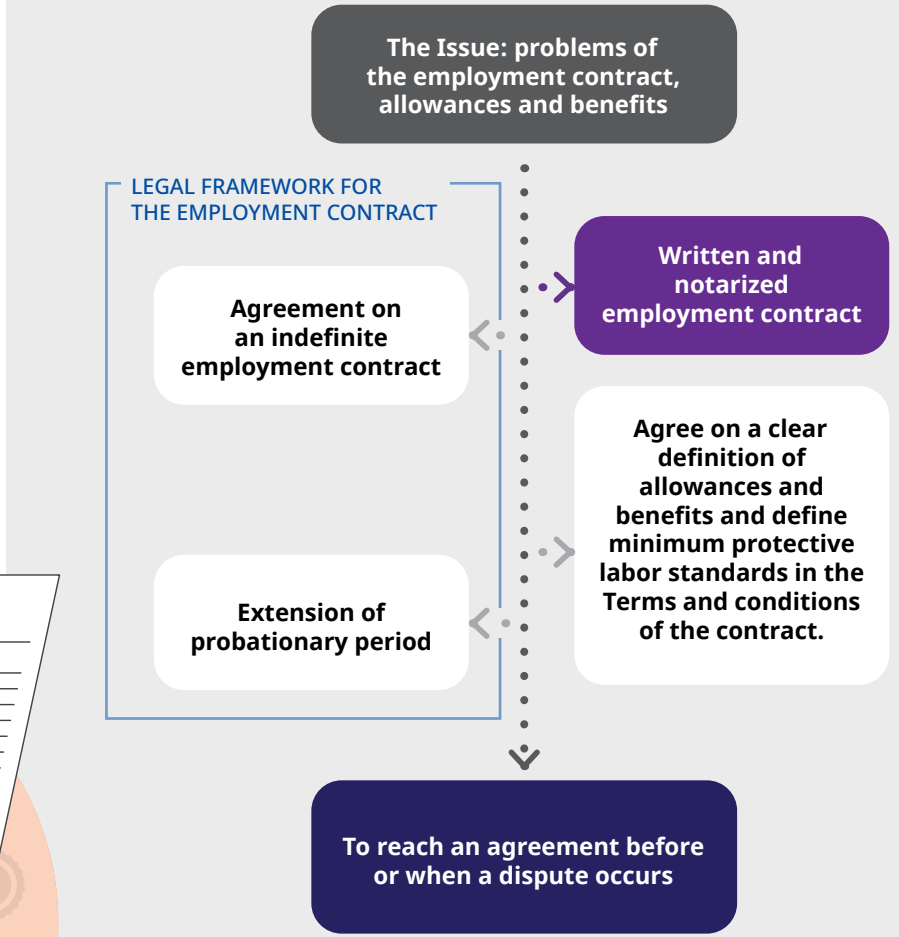
A. Recommendations on the Employment Contract

RECOMMENDATION 1:
Conclude a written employment contract to guarantee the rights of its parties.

★★★★★ *Highly recommended*

The employment contract serves as a crucial document for verifying the employment relationship between employees and employers. In a professional context, the contract acts as the sole means of proof and should be written and comprehensible to both parties. Its purpose is to ensure the continuity of the employment relationship, regardless of whether the contract is for a fixed or indefinite duration.

In Tunisia, employment contracts can be either oral or written. However, it is highly advisable to have employment contracts in writing. This is because, in the event of a dispute, a written contract provides clear evidence and a solid foundation to establish the employment relationship. Having a written contract helps prevent misunderstandings and provides a framework for the rights and obligations of both employees and employers.



RECOMMENDATION 2:
Agree on an indefinite employment contract to ensure the continuity of the employment relationship.

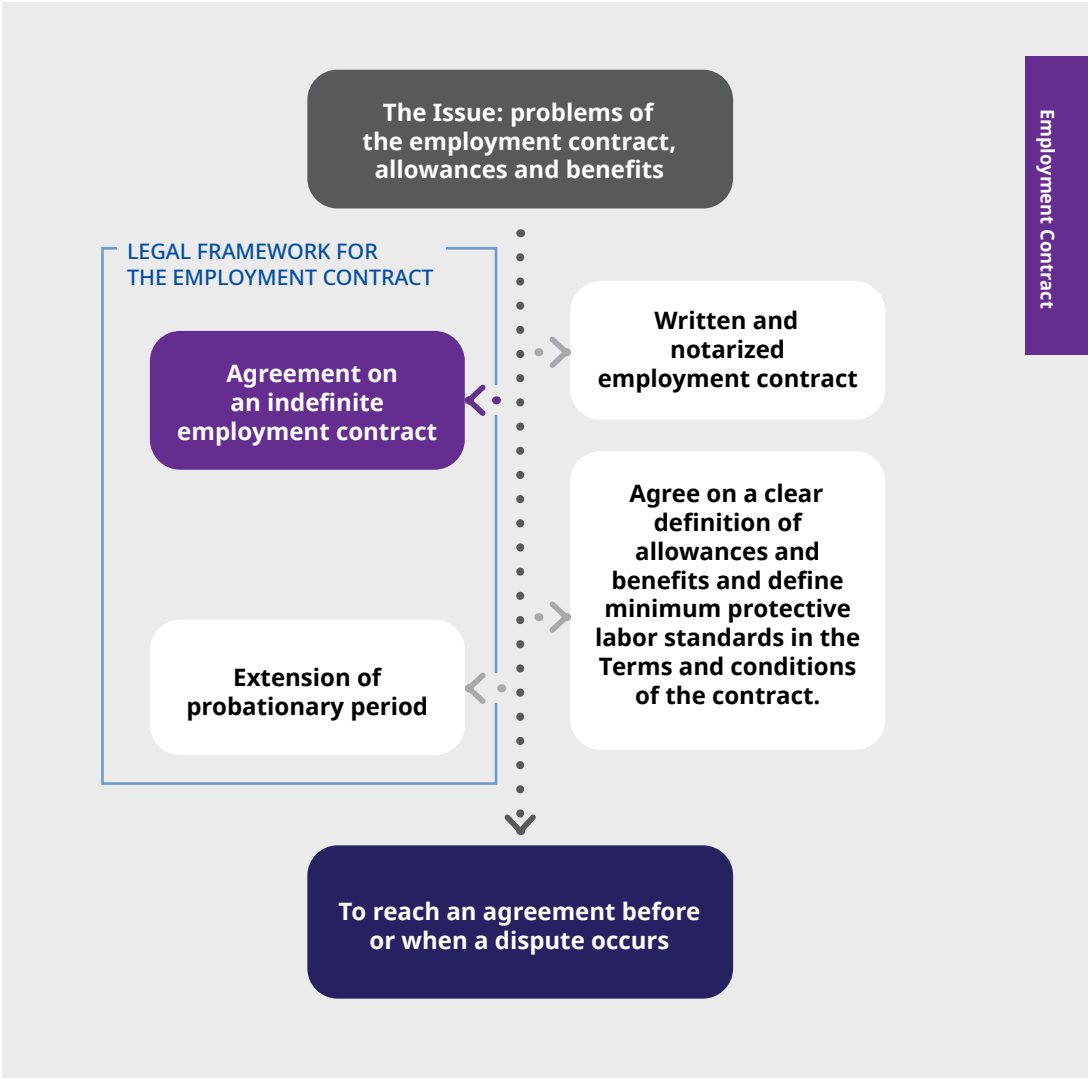
★★★★★ *Highly recommended*

When determining the types of employment contracts, the parties involved (the employee and the employer) define its nature, specificities, conditions of conclusion, and types in accordance with their preferences and the prevailing laws. Broadly speaking, employment contracts can be classified into two main categories: fixed-term contracts and indefinite contracts.

Indefinite employment contracts offer the highest level of protection for employees. This type of contract is open-ended, without a specified duration. During the initial stages, employees may undergo a probationary period, which allows for the assessment of their performance and skills. The length of the probation period is determined by intersectoral agreements. It's important to note that the probation period can only be renewed once. Unlike termination in fixed-term contracts, an indefinite employment contract can be terminated through unilateral decisions made by either the employer (due to personal or economic reasons, retirement) or the employee (resignation, retirement), or by mutual agreement between the parties.

On the other hand, fixed-term contracts are specifically linked to a particular task or have a predetermined duration. Employees typically enter into these contracts for one-time services, project-based assignments, temporary or urgent tasks, additional workload periods, temporary replacements for absent permanent employees, or seasonal work. Fixed-term contracts are signed when a permanent contract is not feasible.

The working conditions for both fixed-term and indefinite employment contracts generally do not differ. However, the conclusion of an indefinite employment contract establishes a secure and stable working environment for both the employee and the employer, providing long-term stability and continuity.



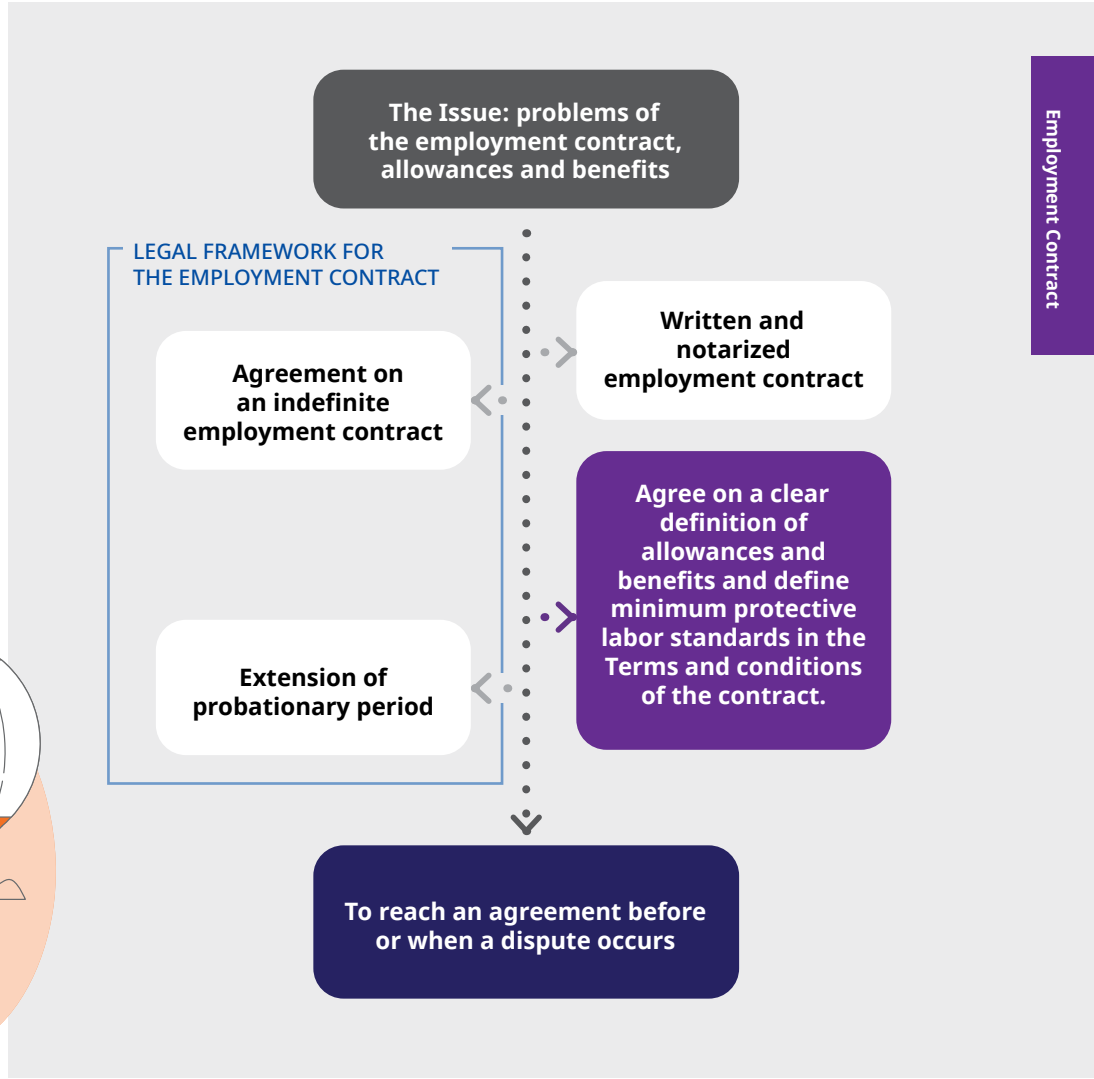
RECOMMENDATION 3:
Employee and the employer agree on a clear definition on allowances and benefits, and specify minimum protective labour standards in the terms and conditions of the contract.

★ ★ ★ *Context-specific recommendation*

Within the employment contract, the employee is entitled to receive benefits that are considered a set of rights. It is important to distinguish these rights from “interest-based” allowances and benefits. To ensure clarity and awareness of their rights, these benefits can be explicitly mentioned and specified in the employment contract. This facilitates more efficient dispute resolution if conflicts arise.

Unfair labor practices refer to unjust actions or omissions by employers that involve unfair conduct related to employee promotion, probationary periods, training, or the provision of allowances and benefits. In such cases, the employee has the right to challenge and address this behavior.

Defining minimum protection standards in the contract terms and conditions can also be beneficial, as it allows the employee to be better informed about the contractual terms. It is important to note that the definition of allowances and benefits is not solely based on employment contracts or laws. Instead, they can be mutually agreed upon by the parties involved and are legally binding once agreed upon. Their inclusion should be determined by objective criteria and should align with the quality of work and tasks agreed upon. By understanding and clearly defining allowances and benefits, certain instances of unfair and arbitrary dismissals may be prevented.



RECOMMENDATION 4:
Make use of one or two probationary periods.

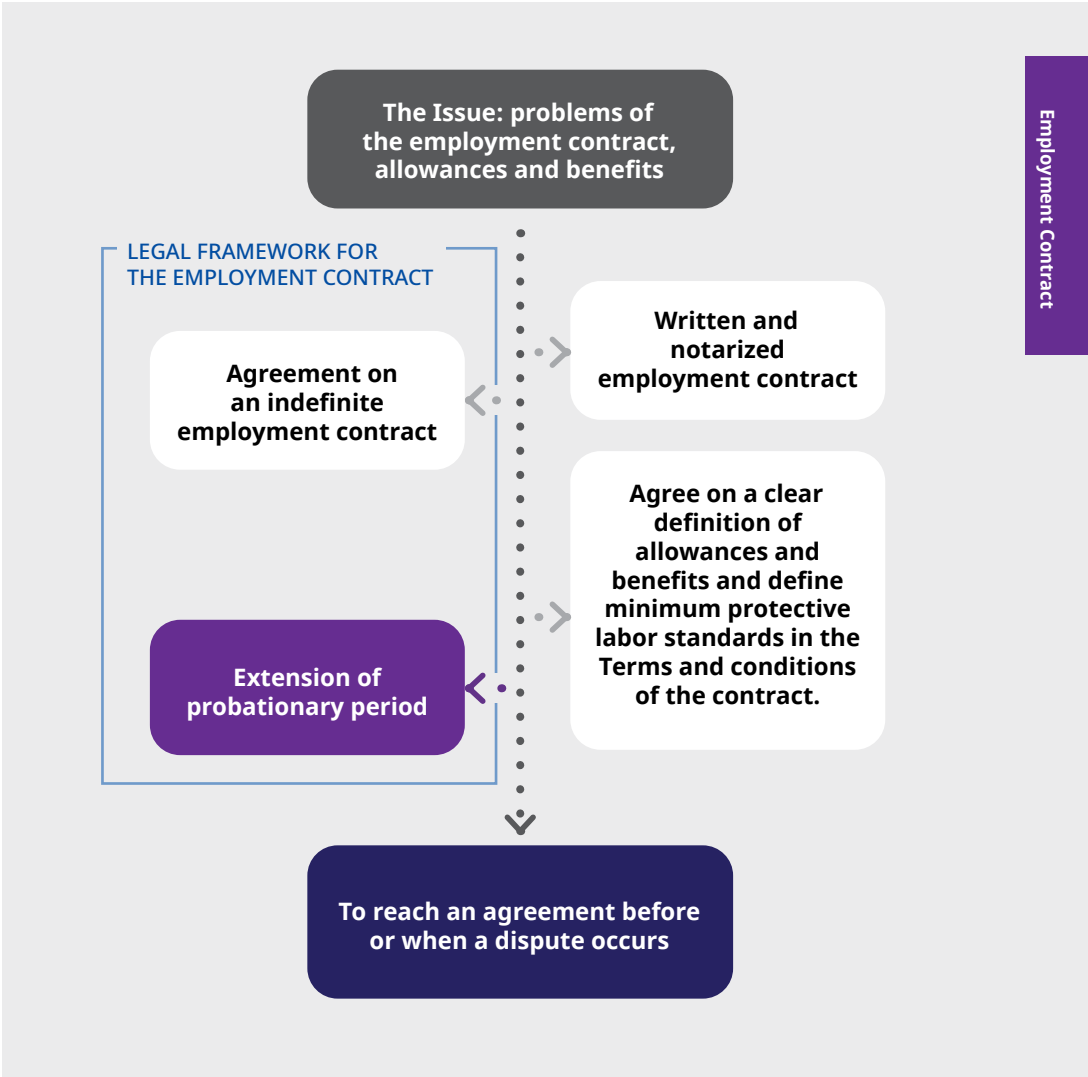
★ ★ ★ *Recommended*

The probationary period in an employment contract is a mutually agreed-upon timeframe during which either the employee or the employer can terminate the employment relationship without requiring formal procedures for termination or contract extension.

The duration of the probationary period may vary based on the agreement reached. Many sectoral joint agreements have established specific durations for the probationary period based on the occupational category of the workers, as follows:

- Execution agents: Six months, with the possibility of renewal for the same duration.
- Management agents: Nine months, with the possibility of renewal for the same duration.
- Supervisors: One year, with the possibility of renewal for the same duration.

However, it is important to note that the probationary period may not always accurately reflect the quality of the employee's work. Therefore, the law allows employers to establish a second probationary period if the initial period results in an unsatisfactory outcome. In such cases, the employer may grant the employee a second and final probationary period of the same duration or a shorter period, providing an opportunity for the employee to address any deficiencies.



B. Concepts around the employment contract

This section aims to provide the parties to the employment contract with a set of ideas and legal rules that enable them to identify the importance of the employment contract and to act responsibly. When the contract is concluded or completed by its parties, be aware of the following principles:

i. If the employment contract is concluded in a correct manner, it binds the parties and produces its effects, including their compliance with what was agreed upon, so one party cannot modify it except with the consent of the other party.

ii. The regulations of the employment contract and the statement of its controls and scope are related to public order and may not be agreed otherwise.

iii. The employment contract derives its strength from the free will of its parties to be the binding force for them immediately after they sign it.

DEFINITION OF THE EMPLOYMENT CONTRACT

An employment contract is an agreement whereby the employee undertakes to provide his services to the employer for a fee and under the management and control of the employer (Reference: Article 6 of the Labour Code[2]). Law n° 1966-27 dated 30 April 1966 on the promulgation of the Labour Code (1)

The employment contract is the basis for the establishment of the individual employment relationship between the employee and the employer as the parties to this contract, and the relationship is confirmed when the employee completes his work under the management and supervision of the employer in his capacity as the employer.

An employment contract is a contract for a fee.

2 Law n° 1966-27 dated 30 April 1966 related to the publication of the Labor Code (1)

C. Legal framework

In this section, answers are given to a set of problems and questions that usually arise in relation to the employment contract. All answers in this section are based on legal frameworks and foundations provided by the Committee of Experts.

The main factors that lead to changing the employment contract are:

- When the employment contract is executed by its parties (the employee and the employer), changes may occur, usually at the following levels:
- The employment contract is converted from a fixed term (*contrat à durée déterminée* CDD) to an indefinite term (*contrat à durée indéterminée* CDI) in the following cases:
  - If the employee persists in providing his services to the employer despite expiry of the period agreed upon in the employment contract concluded for a certain period without opposition from the employer (Article 17 of the Labour Code).
  - If the employee who is recruited by a fixed employment contract exceeds the four-year period, the contract automatically shifts from a fixed period to an indefinite period without subjecting the employee to a probationary period; in this case, the contract is concluded in writing in two copies, one of which goes to the employee (Chapter 6-4 of the Labour Code).

The change of the main clauses of the contract (wages, acquired rights...) can be made only in the framework of the legislation in force and with the consent of the employee.

Change of the employment contract at the level of the legal status of the employer: The employment contract is not affected by change in the legal status of the employer (inheritance, sale, transfer of business, formation of a company...) (Article 15 of the Labour Code).

Civil Cassation Decision issued by Assembled Chambers under n. 5216, January 26, 2006

Principle: The legislator distinguishes between two types of fixed-term employment contracts; the first relates to the completion of works of a circumstantial nature without specifying a time limit for their duration, and the second relates to works that are not of a circumstantial nature, for which the legislator set a time limit of four years that should not be exceeded.

The legislator does not invalidate fixed-term contracts exceeding their legally permissible time limit, but rather sets another penalty for clear social purposes: the employee becomes a permanent worker and is recruited for an indefinite period as soon as he reaches that period (four years) and he remains employed or re-hired with the same employer.

Civil Cassation Decision issued by Assembled Chambers under No. 26572 dated October 27, 2011

... Once the legal conditions for the application of Article 15 of the Labour Code are met, their effects are produced automatically and by force of law so that the employment relationship continues with all rights and obligations between the employee and the new employer, without the need to conclude a new contract, request the consent of the employee or obtain the obligation of the new employer to employ.

LEGAL REFERENCES:

Tunisian Labour Code

Q: Is it allowed to conclude an employment contract for a specific period without resorting to an employment contract for an indefinite period?
Based on Article 6 (paragraph 1) of the Labour Code:

A: Yes, it is permissible to have a fixed-term employment contract by agreement and law in these cases:

- Inception works for new institution or projects
- Handling increased workload
- Temporarily replacing absent permanent worker
- Performing tasks to prevent accidents or repair equipment
- Seasonal or specific activities without indefinite contracts

Q: Is the employer who decides to dismiss a worker required to state the reasons for this dismissal in the notice letter of termination of work?
Based on Article 14 III of the Labour Code:

A: YES:

- Dismissal without stated reasons = arbitrary
- Termination letter must explain dismissal reasons

Q: Is the notification period of the work termination one month for all sectors?
Based on Article 14 second of the Labour Code:

A: Indefinite contract termination notice needs a certified letter one month before contract end.

Termination notice period can be exceed one month for special provisions in contract/agreement or a joint agreement of institution or practice in specific activities.

Q: When is the dismissal of an employee considered arbitrary?
Based on Article 14 third of the Labour Code:

A: Arbitrary dismissal defined:

- No valid reason
- Non-compliance with procedures

Reasons must be real and serious

Q: Can the judge order the return of the dismissed employee to his previous work?
Based on Article 14 fifth of the Labour Code:

A: Judge's authority after dismissal:

- No work reinstatement
- Determine compensation
- Consider parties' data
- Evaluate dismissal reasons
- Award financial compensation

D. Best practices of experts and legal practitioners who have a direct professional relationship with employment contract disputes

Employment Contract Forms

- Inform the employee about joint agreements; the employer shall publish and share details about allowances and joint agreements. The employee must look for joint agreements related to the sector or ask the employer about allowances and benefits that he will enjoy.

Innovative Technology Solutions

- Create digital platforms to raise awareness of rights and duties in the workplace or in case of an employment dispute.
- Establish specialized legal databases to answer questions related to labour disputes.
- Adopt AI-based technologies to resolve simple operational conflicts such as Chatbot.

Simplify procedures

- Establish a rapid legal aid cell to avoid overburdening the judicial system. This cell includes a job inspector, a lawyer, and a representative of the National Social Security Fund.

Reduce disputes related to allowances and benefits

- Reactivate advisory committees in institutions, which serve the interests of both the employee and the employer.

Rights and Duties of the Parties to the Employment Contract

Precarious working conditions primarily arise from issues related to the violation of employment rights. However, a lack of understanding of responsibilities on the part of both employees and employers can also be a significant contributing factor.

Insufficient knowledge about the legal foundations for ensuring healthy and safe working conditions leads to a lack of awareness among employees and employers about their rights and obligations. This knowledge gap creates fertile ground for the emergence of precarious working conditions. Such conditions have adverse effects on both individual and societal economic security, living standards, and equality. Consequently, employees are more inclined to resign when faced with fragile and unstable conditions. Jobs characterized by precarious and insecure work often result in arbitrary dismissals, sometimes due to perceived incompetence of the employee. This, in turn, contributes to an increase in the unemployment rate.

A. Recommendations on the Rights and Duties of the Parties to the Employment Contract

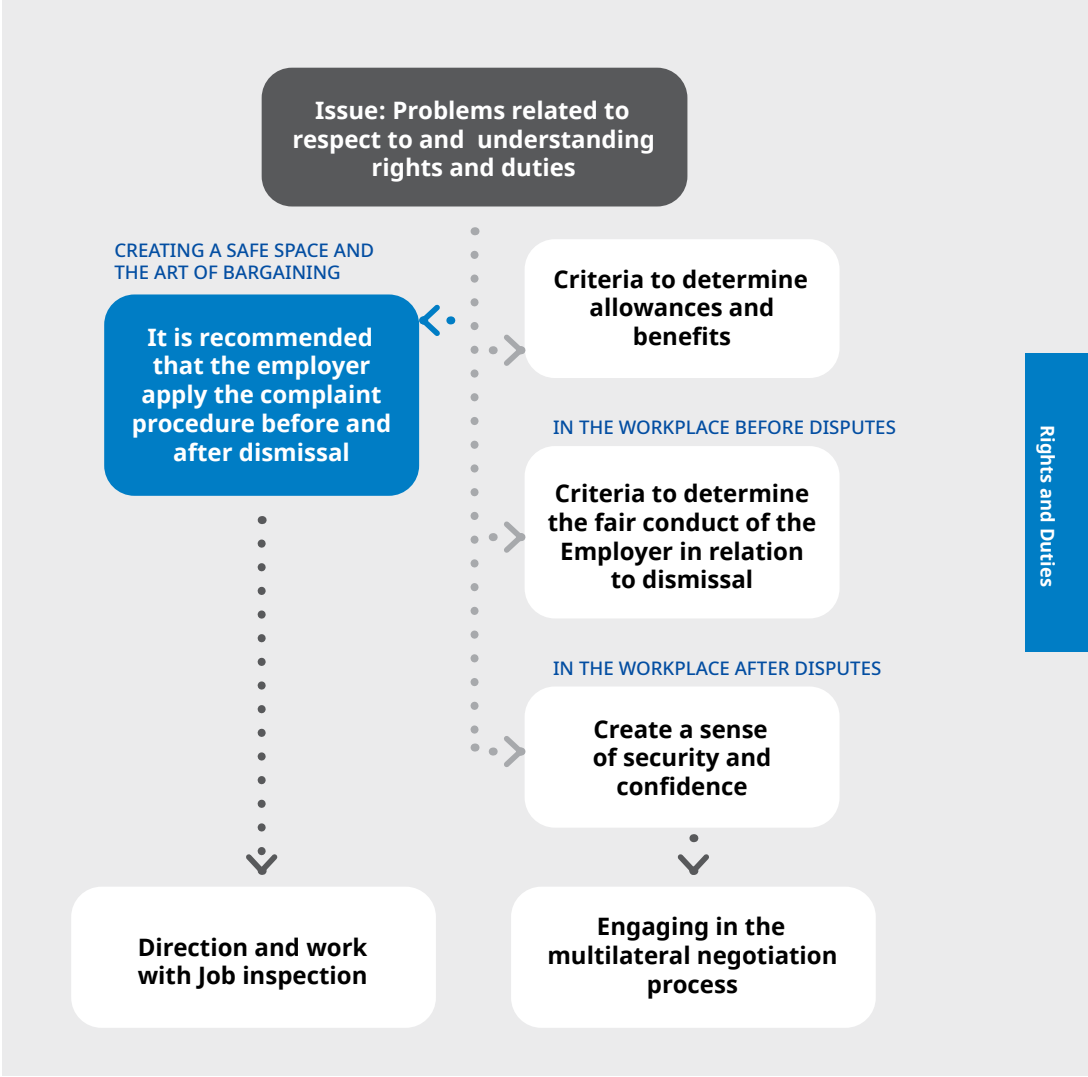
RECOMMENDATION 5:
The employer ensures the possibility of a complaint procedure before and after dismissal.

★★★ *Recommended*

A complaint procedure is typically initiated by an employee against their employer in employment-related cases. Unless the employee is freelancing or self-employed, they have the right to submit a complaint to address issues concerning their work or the relationship with their employer. It is the employer's responsibility to respond to the complaint and ensure fair and lawful complaint procedures are followed. In cases of dismissal, the employer must initiate work-related complaint proceedings either before or after the formal decision to terminate employment. The employee has a 90-day period to commence this procedure following the contract's termination.

Throughout the employment cycle, employees' rights can be categorized into three stages: at the beginning of the employment relationship, during its implementation, and upon its termination.

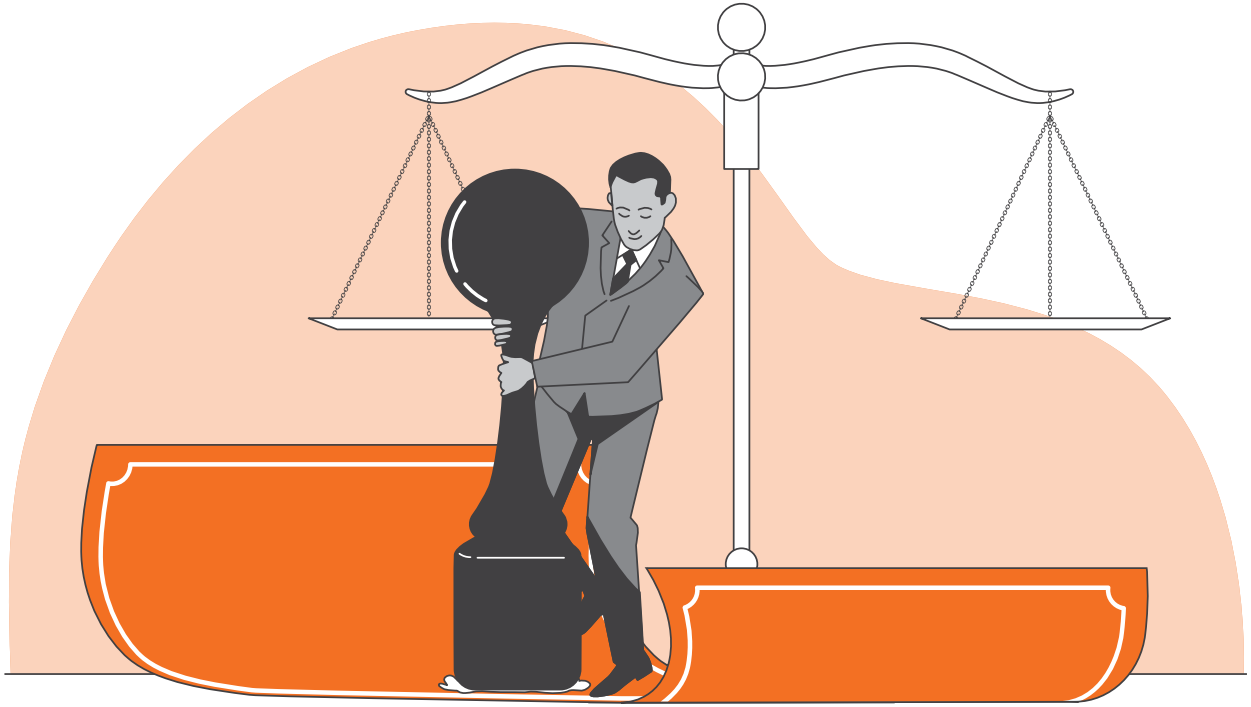
Firstly, during the beginning and implementation of the employment relationship, employees are entitled to certain rights derived from existing legislation. These rights include the right to work under decent conditions, the right to receive wages, the right to equality and non-discrimination, the right to occupational health and safety, the right to rest breaks, leave, holidays, and official events, the right to work specific hours (such as 40 or 48 hours as outlined in Article 79 et seq. of the Labour Code), the right to annual leave with full pay (as per Article 112



of the Labour Code), the right to job stability and continuity, the right to engage in trade unions and exercise the right to strike as permitted by law, protection against unfair dismissal, and the right to employment opportunities.

Secondly, employers have the right to define their recruitment procedures, specify the nature of work, establish evaluation methods for employees, and exercise dismissal when employees fail to fulfil their duties.

Both employees and employers have respective rights and responsibilities within the employment relationship, and understanding and upholding these rights is crucial for maintaining a harmonious and fair working environment.



RECOMMENDATION 6:

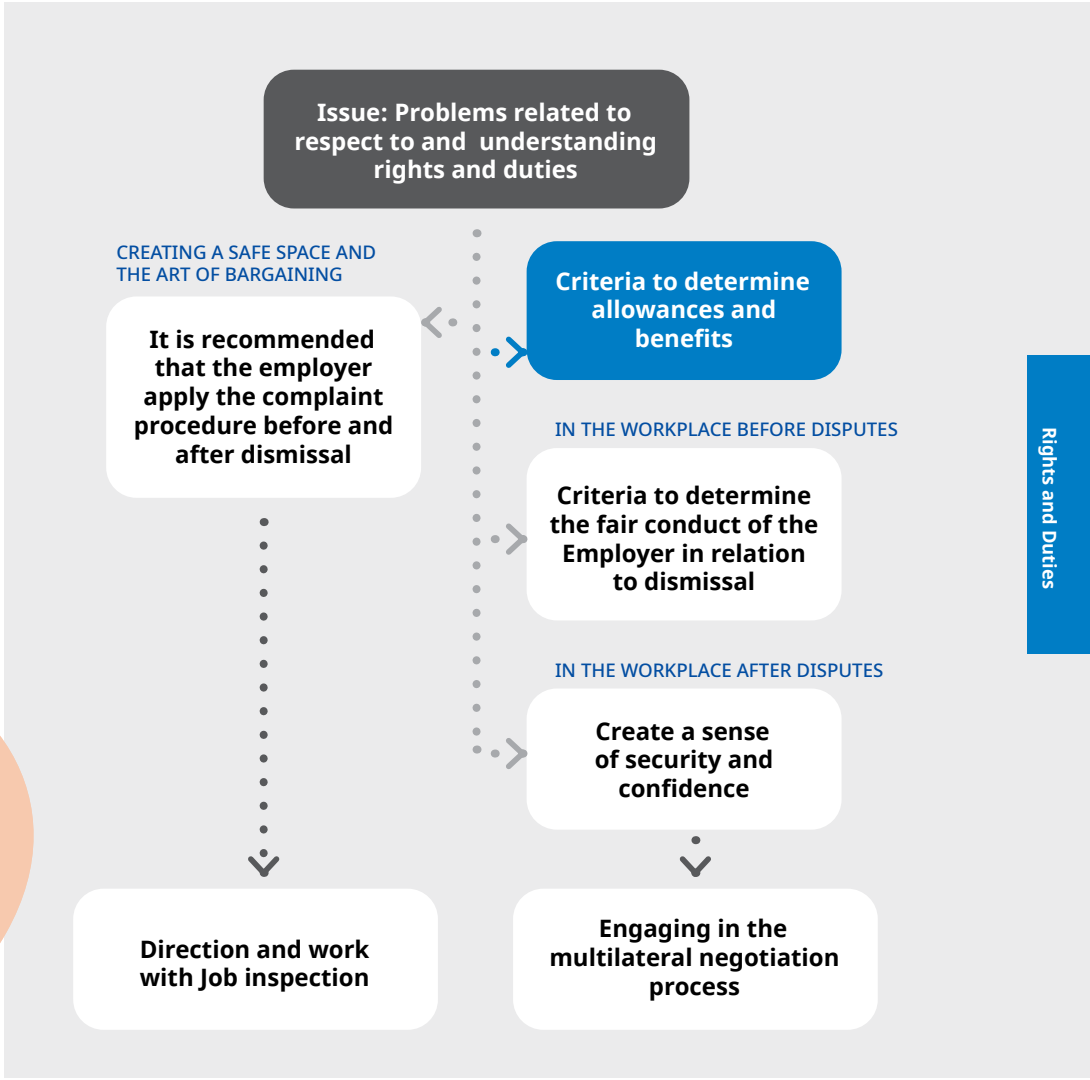
The employee and the employer establish separate criteria to determine the fair conduct of the employer around allowances and benefits.

★★★★★ *Highly recommended*

To ensure justice in the workplace, employers should refer to national and international models that provide standards for establishing fairness. When determining allowances and benefits, employers typically exercise their discretion, which should be clearly outlined in a written contract.

It is important for employers to communicate their final decisions regarding disputes or other matters related to allowances and benefits to employees in writing. In case of disputes concerning allowances and benefits, employers should allow employees to seek the support of a representative during consultative meetings. This promotes a fair and transparent resolution process.

Establishing criteria for fair conduct by the employer in relation to allowances and benefits is crucial in preventing conflicts. The presence of equitable standards regarding the provision of allowances and benefits ensures that employers have an obligation to act fairly and be accountable to their employees. Conversely, the absence of such standards may undermine the employer's responsibility to treat employees fairly and ethically.



RECOMMENDATION 7:

The employee and the employer set separate criteria to determine the fair conduct of the employer in relation to dismissal.

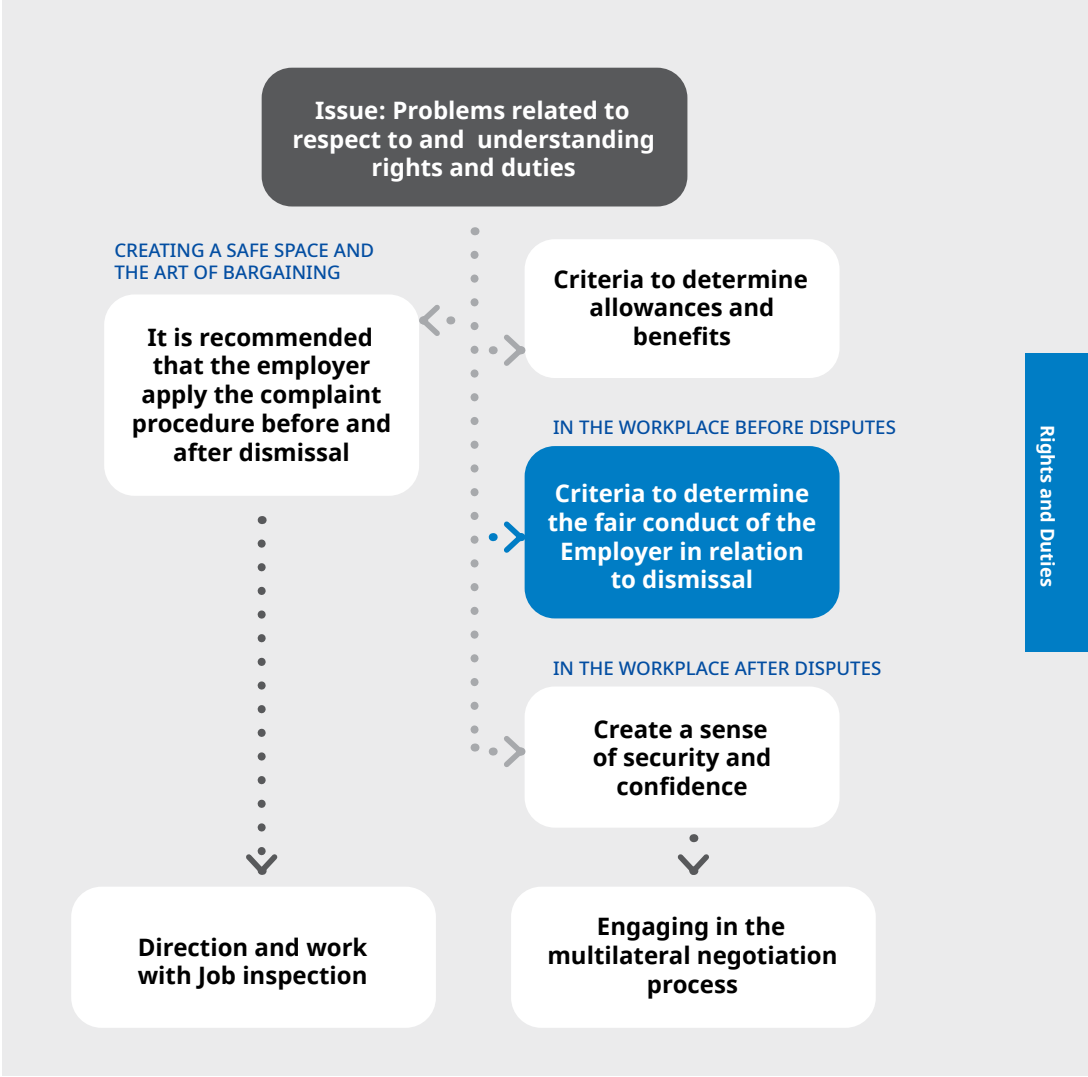
★★★★★ *Highly recommended*

This recommendation suggests that it is advisable for the employee and the employer to establish and agree on criteria to ensure the rights of the employee and the employer in the event of dismissal.

This recommendation aims to ensure that the final decision of the employer is based on documented and proven facts to prevent potential conflicts and protect both parties. The dismissal's subject and procedure must be fair and just.

This recommendation should help the employer to acknowledge the termination of the contract on fair grounds. It should also support the employer to create a fair working environment that guarantees respect, dignity and trust between the employee and the employer.

The employee's rights upon termination of the relationship starts with prior notification. Under provisions of article 14 Sec of the Labour Code, the employer is obliged to inform the person concerned by means of a certified letter with acknowledgement of receipt. The content of this notification is determined by the legislator in provisions of article 14.3, stating that the employer intending to dismiss must state the reasons for dismissal in the notification letter. This is also confirmed by the provisions of chapter 21 of the Labour Code, which states that the notification letter must include the following data: "Name of the institution, its full address, the name of the person legally in charge, the starting date and nature of activities, and the reasons that led to the request for dismissal or suspension from work." The notification must also include all necessary justifications for dismissal or suspension from work, or a list of all employees of the institution with a statement of their civil status, their recruitment date, and their specialties, including the employee subject of the dismissal procedure."



Regarding end-of-service gratuity and in the event of a dispute relating to dismissal, it is advisable for the employee and the employer to reach a fair agreement and to take into account factors decided by the court on end-of-service gratuity in case of dispute relating to dismissal.

Comprehensive and systematic end-of-service gratuity formulas can have a significant impact on both employers and employees following dismissal. These factors are determined by the courts during the resolution of disputes between employers and employees. The following factors should be considered when calculating the end-of-service gratuity: age, length of employment, nature of employment, company size, economic status, availability of new job opportunities, gender, wage, cost of work, and dependency.

Dismissal refers to the unilateral termination of an employment contract by the employer. Since the 1994 revision of the Labour Code, it has been explicitly stated that dismissal must be justified by a valid and substantial reason; otherwise, it would be deemed an arbitrary act, limiting the right to dismiss. Moreover, the legislator introduced several structures through which the decision to dismiss must pass, including pre-dismissal controls such as the Labour Inspection, the Dismissal Control Committee, and the Disciplinary Board.

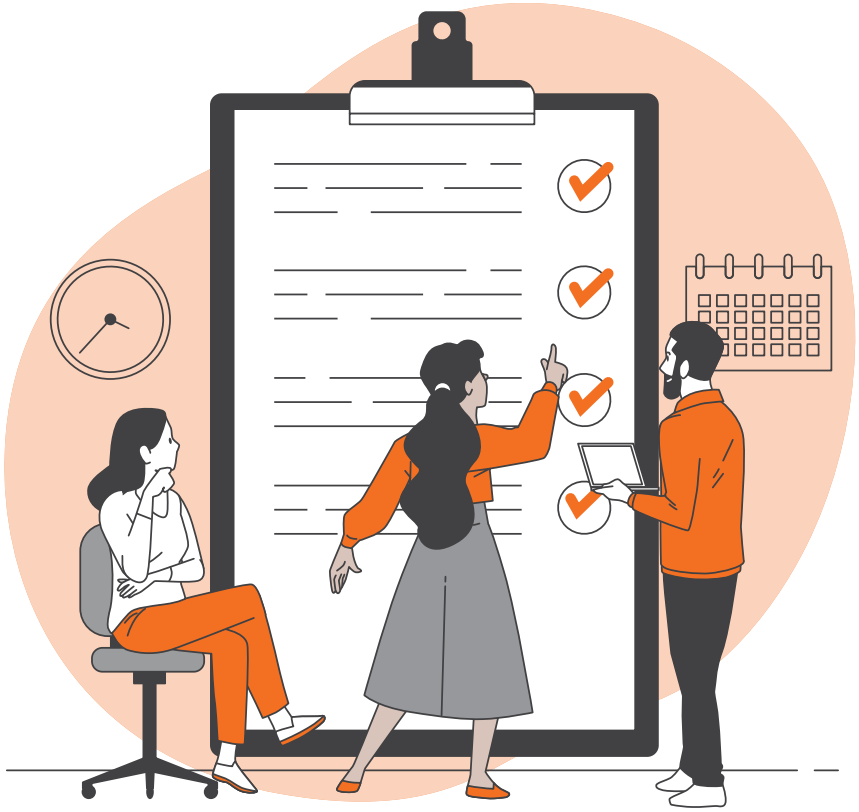
The Committee for the Control of Dismissals was established under the revision of Law No. 62/1996 dated July 15, 1996. This revision aimed to consolidate provisions related to dismissal by combining chapters 21 and articles 391-394-395 into the new chapter 21 titled “New and Subsequent,” primarily concerning the deadlines for reviewing the employer’s request.

According to Article 21 (new) of the Labour Code, any employer intending to dismiss or suspend some or all of their employees for economic or technical reasons must submit a request to the competent labor inspection to convene the Dismissals Monitoring Committee.

The legislator recognized the necessity of involving the dismissal monitoring committee when the labor inspection fails in its reconciliation attempts. This committee proposes alternative solutions to dismissal, usually with the goal of retaining the employee in their position, such as amending the employment contract through a review of working conditions.

In this chapter, the legislator uses the term “propose” rather than “decide,” indicating that the dismissal monitoring committee’s role is limited to providing an opinion on the employer’s claim. Referring to Article 21 of the Labour Code, it can be concluded that the legislator allows the employer to act against the committee’s opinion, as the employer is only required to consult the committee and obtain its opinion in advance. The employer’s duty is limited to following the procedures stipulated in the new articles 21 and subsequent ones of the Labour Code to obtain the committee’s opinion.

Regarding the disciplinary board, it falls under Article 37 (new) of the Joint Framework Agreement, which obliges the employer to conduct an employee hearing before the disciplinary board. The employee must be notified of this decision at least three days prior to the hearing through a certified letter with acknowledgment of receipt. Additionally, the employee has the right to receive a copy of their file and the report submitted against them.



RECOMMENDATION 8:

The employee and the employer create a sense of security and confidence by providing a climate of psychological social safety.

★★★★★ *Highly recommended*

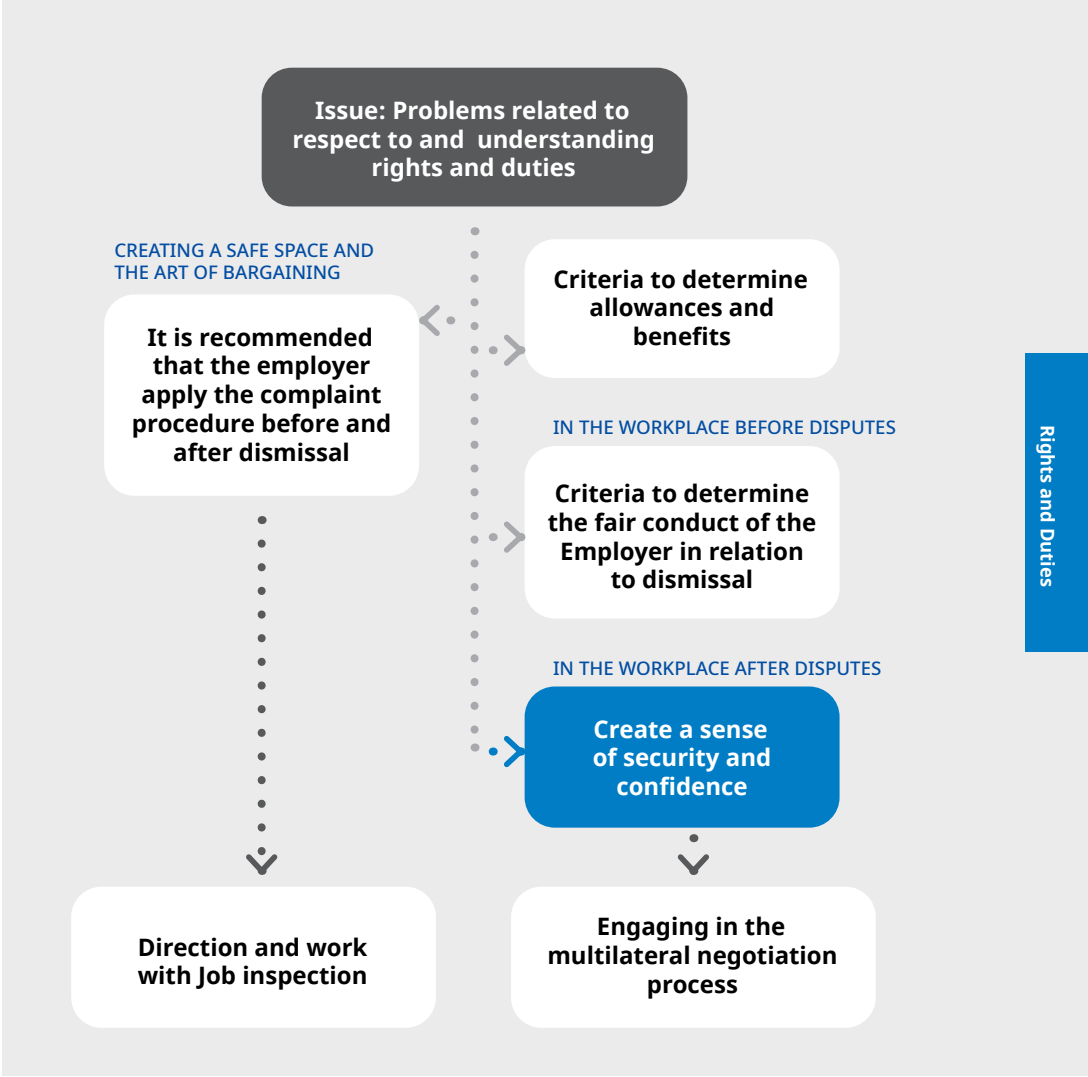
The employer is committed to reducing work-related stress and promoting the mental health of the employee. The employer is advised to create a climate of psychological and social safety.

The psychosocial safety climate (PSC) refers to a regulatory climate for the employee's safety and mental health. It consists of four key components: promoting participation, prioritizing mental health, opening up space for suggestions, and supporting initiatives of the employee.

The legislator has outlined a set of measures that employers must undertake to ensure occupational health and safety conditions for their employees. These measures include eliminating any hazards related to work machinery or the workplace itself and providing employees with the necessary resources to effectively handle potential dangers. The implementation of these measures depends on the nature of the work and the specific location.

To enforce compliance with workplace safety standards, the legislator has granted significant authority to labor inspectors. They are empowered to document any violations by employers who neglect their employees' rights in this regard. The labor inspector plays a crucial role in ensuring that all necessary conditions are met within the workplace.

Furthermore, the legislator mandates that institutions employing more than 500 workers must establish their own occupational medical units. On the other hand, institutions with less than 500 employees have the option to either establish their own medical units or join existing vocational medical centers. This requirement aims to prioritize the provision of adequate medical support and assistance to employees based on the size of the employing institution.



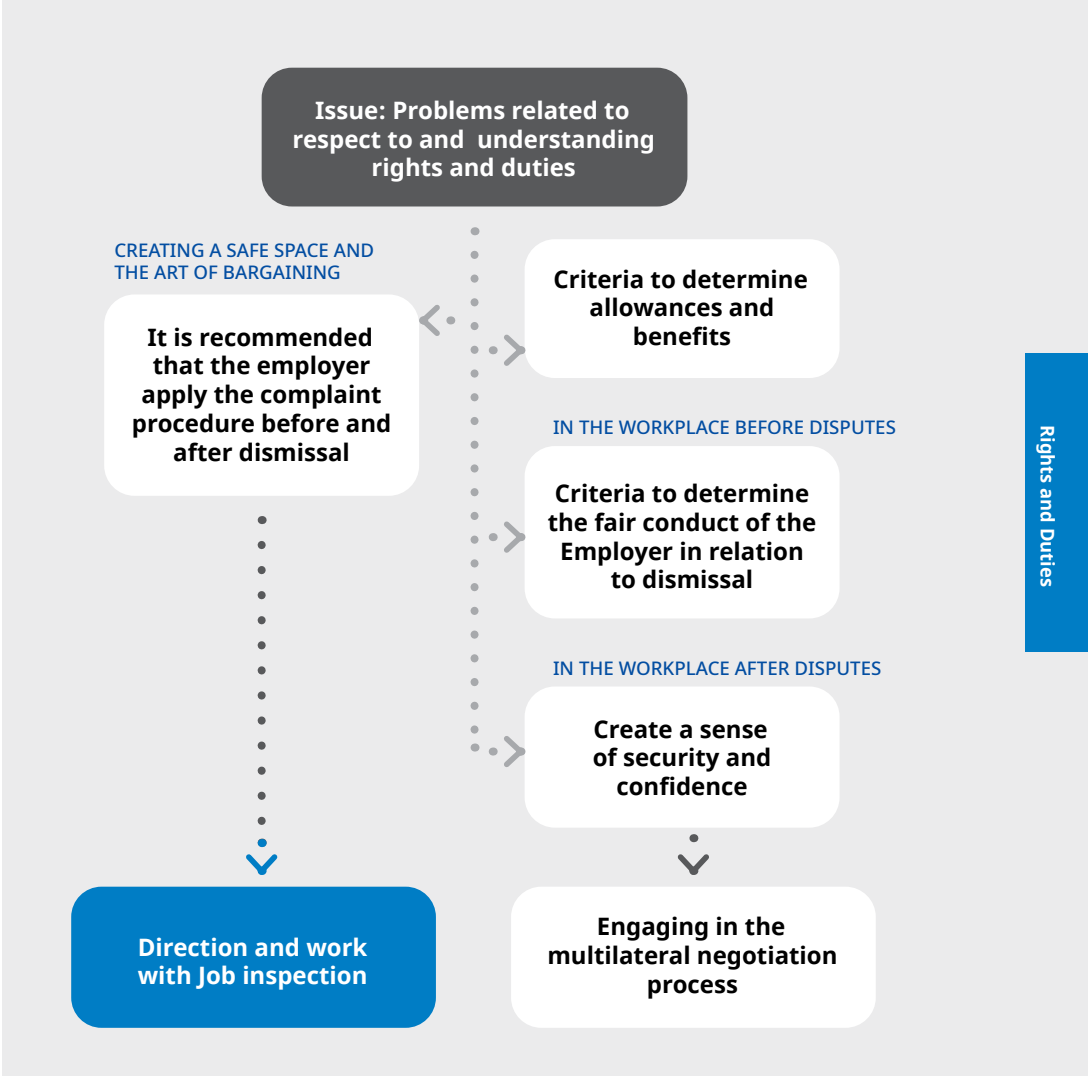
RECOMMENDATION 9:
Employee and the employer resort to the labour inspection

★★★★★ *Highly recommended*

The labor inspection[3] plays a vital role in ensuring the effective implementation of labor laws by conducting monitoring, providing guidance, and offering assistance. It oversees compliance with regulations regarding working conditions, minimum wage requirements, and social security coverage.

As one of the authorities involved in pre-dismissal controls, the labor inspection serves as an initial point of contact for employers. Before approaching the dismissal monitoring committee, employers are required to engage with the locally competent labor inspection or, in the case of institutions operating across multiple provinces, with the Labor Inspection General Directorate. The labor inspection or the Labor Inspection General Directorate, as applicable, conducts a preliminary investigation into the employer's request and attempts to facilitate a reconciliation between the involved parties within a maximum period of 15 days from the start of their mission. If reconciliation proves unsuccessful, the labor inspection or the Labor Inspection General Directorate submits the dismissal or suspension case to the Regional or Central Dismissal Monitoring Committee, respectively, within three days following the reconciliation attempt's conclusion.

One of the activities carried out by the labor inspection includes the role of reconciliation. While the legal responsibility for reconciliation lies with judges, the labor inspection has achieved an impressive rate of resolving nearly 70% of labor dispute court cases through reconciliation efforts. Additionally, the labor inspection plays a crucial role in promoting awareness and disseminating information about rights and obligations. It operates through 25 departments spread across different governorates, each with a technical unit dedicated to fostering social dialogue within institutions. The powers of the labor inspection extend beyond inspection alone and encompass social dialogue facilitation as well as the resolution of individual and collective labor disputes, aiming to minimize the necessity of resorting to court proceedings.



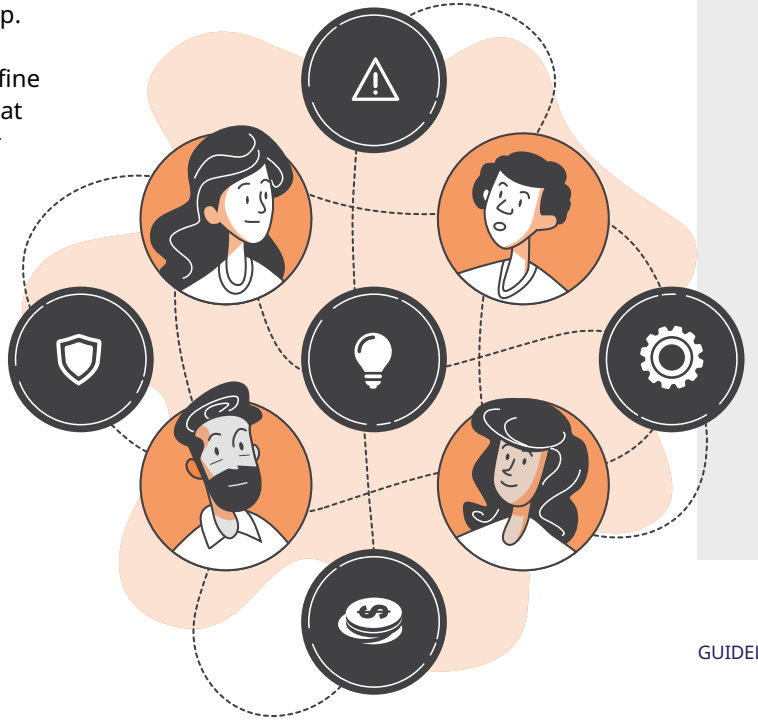
3 IDARATY site of the Labor Inspectorate
https://idaraty.tn/organisations/division-de-linspection-du-travail-et-de-conciliation-de-tunis

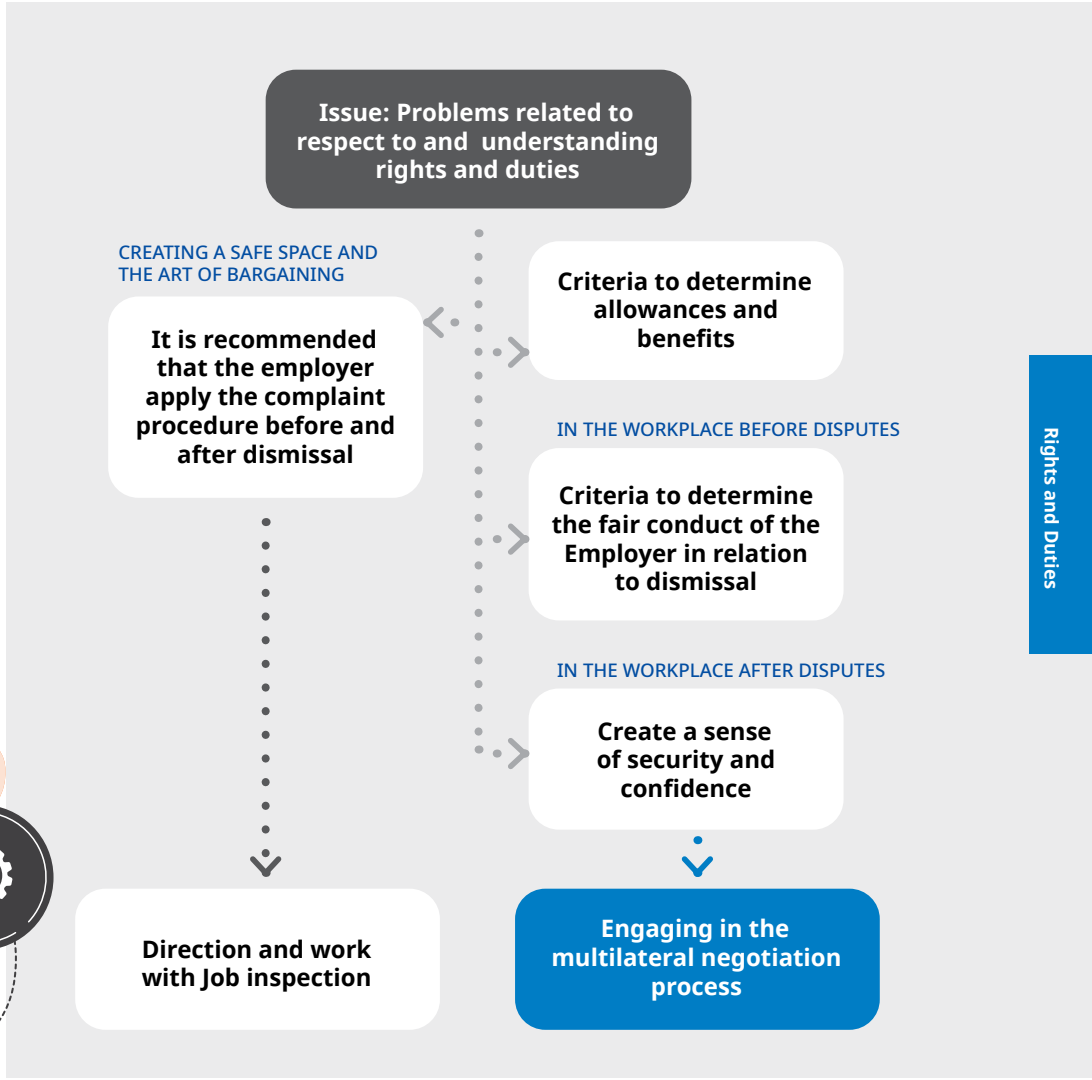
RECOMMENDATION 10:
The employee and the employer apply the multilateral negotiation process.

★ ★ ★ *Context-specific recommendation*

Multilateral negotiation is a collaborative process in which multiple employers come together to engage in collective bargaining with a union or a group of unions. This approach serves as a means to ensure widespread coverage of benefits outlined in collective bargaining agreements. Multilateral negotiations can occur at various levels, such as the workplace, sector, region, or national level. This enables the presentation and establishment of standards that are specific to the respective workplace or sector.

At its core, multilateral negotiation involves the decision-making process between representatives of employees and employers. It encompasses the negotiation and implementation of mutually agreed-upon rules that govern the substantive and procedural aspects of the employment relationship. Through this process, both parties work together to define the conditions and terms that shape the dynamics of their working relationship.





B. Concepts Around Rights and Duties of the Parties to the Employment Contract, the Employee and Employer

DEFINITION OF RIGHTS: a set of legal benefits related to relations that govern the employee and the employer and are protected by law.

DEFINITION OF DUTIES: a set of obligations borne by the employee and the employer.

C. Legal framework

→ Constitution

→ International Conventions:

- Convention N. 87 on trade union freedoms and protection of the right to trade unions
- Convention N. 98 on the Right for association and Joint Negotiations
- Convention N. 135 on the protection and facilitation of employee representatives in institutions
- Labour Journal and its applied texts on the basic wage
- Allowances and benefits: Determined by joint agreements in the form of various rewards and benefits, including those related to the profitability of the employee at work, such as the performance premium and others aimed at encouraging employees to persevere and continue to work, such as granting attendance and transportation allowances, providing accommodation for employees, or providing them with vehicles.

EMPLOYEES' MOST IMPORTANT

1) The employee shall have the right to receive his pay. The legislator sets a "guaranteed minimum wage" that cannot be reduced, and joint agreements often include financial benefits for the employee.

2) The employee shall enjoy protection that guarantees his continuation in his work without the possibility of terminating the employment relationship without controls, as the law obliges the employer who intends to dismiss the employee to indicate the reasons for dismissal in a notification letter. Proof of unfair dismissal entitles the employee to redress the damage with a fine ranging from one to two months' wages for each year of work in the institution, but not to exceed three years' wage.

3) The Labour Code grants special rights to women employees through net paid maternity leave; women also have the right to be able to breastfeed the child for nine months from the day of birth during two half-hour rest periods per day during work.

4) The Labour Code stipulates that the actual period of work cannot exceed 48 hours per week and may be reduced to at least 40 hours per week.

5) Institutions subject to provisions of the Labour Code and employing at least forty permanent workers shall establish an advisory structure called the "Business Advisory Committee" which shall include representatives of management and employees' representatives in order to ensure the preservation of their rights in disciplinary and other matters.

6) The Labour Code enshrines the right to form trade unions by emphasizing the possibility of establishing trade unions or professional associations "freely" with persons practising the same profession or trade. Tunisia's Constitution enshrines the right to form trade unions.

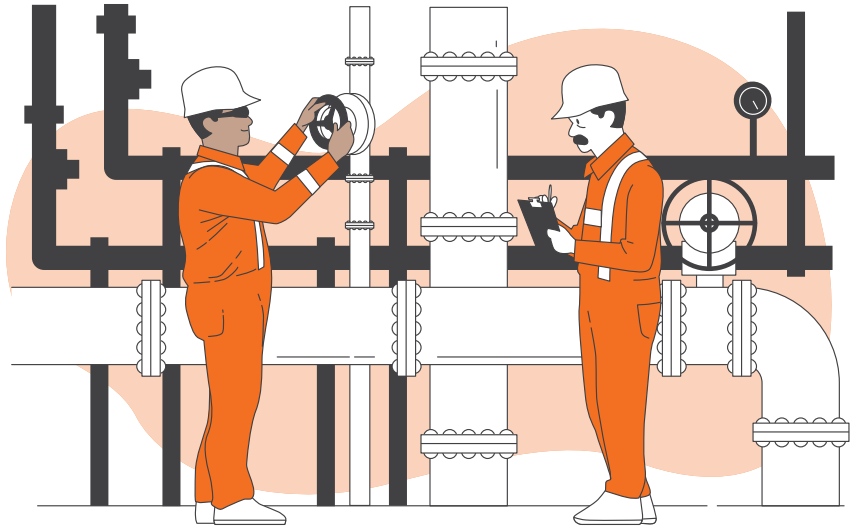
7) The Labour Code imposed on the employer the duty to protect employees from occupational hazards and provides for many measures that the employer must take to provide occupational health and safety conditions. The legislator also granted inspection powers to ensure that this protection is properly implemented and to draw up reports against employers who neglect the rights of their employees in this regard.

8) The Labour Code obliges institutions employing more than 500 workers to set up an occupational medical unit to provide necessary health care for employees, while businesses employing less than 500 workers can either set up occupational medical units or join vocational medical centres in accordance with the provisions of the law.

9) There is a special judicial system for labour matters, which are the labour chambers in each court of first instance, in charge of settling individual labour disputes between the employee and the employer. In view of the employee's position as a weak party in the employment relationship, the Labour Code provides easy litigation procedures, including the possibility of presenting the case orally or in writing without a lawyer or by ensuring access and collection of a receipt from the Labour Department's Secretary, in order to facilitate the employee's access to the judiciary to preserve his rights.

The employee has certain duties which include fulfilling the agreed-upon work tasks, adhering to working hours and regulations, obtaining legitimate permission from the employer for any necessary absences, following instructions provided by the employer to complete assigned tasks, refraining from using company equipment for personal purposes, maintaining confidentiality regarding the company's proprietary information, accepting overtime work when required, and adhering to legal provisions or contractual agreements regarding competition restrictions.

On the other hand, the employer has a set of responsibilities which include providing timely payment of wages and salaries to employees (as per Article 139 and subsequent articles of the Labour Code), ensuring appropriate health conditions for the execution of work, safeguarding employees from occupational hazards by implementing necessary precautions and safety measures, facilitating the provision of weekly rest periods and holidays, providing employees with work clothing when required, recruiting employees, defining the nature of work, evaluating employee performance, and taking appropriate action, such as dismissal, in cases where employees fail to fulfill their obligations.



D. Best practices of experts and legal practitioners with direct professional involvement in labour disputes

Best practices on the issue of discrimination in the workplace:

- The employer should resort to internal procedures in accordance with ISO 9001 Quality Management System standard[4].
- The employer should create a neutral social enterprise to monitor the work of advisory commissions.
- The parties should establish an impartial administrative institution to resolve labour disputes.

Best practices related to the role of the labour inspection in the process of settling labour disputes between employer and employee:

- Establish a unified procedure or working document that allows all parties involved, including judges, lawyers, mediators, and labor inspectors, to have direct and daily access to the dispute file and relevant information, including personal details of the disputing parties. This form should include essential information such as the employee's identity, contact details, nature of the dispute, legal references, and applicable laws and penalties.
- The implementation of this procedure is a collaborative effort between the Ministry of Justice and the Labor Inspectorate, ensuring effective cooperation in resolving disputes. The procedure initiates with the labor inspection as the primary party responsible for handling the dispute resolution process.

4 ISO 9001 is an internationally recognized standard for quality management systems (QMS). This standard sets out the standards necessary to implement and maintain an effective quality management system within an organization. https://www.iso.org/iso-9001-quality-management.html

Enhancing the Relationship Between Employer and Employee

This chapter emphasizes the significance of establishing a strong employment relationship between employees and employers, and it proposes ways to enhance this relationship and offer alternative solutions for dispute resolution. While there are various reasons for terminating an employment relationship, including instances of arbitrary dismissal, the deterioration of the employment relationship itself can be a factor leading to termination.

Let's begin by addressing the establishment of an arbitration mechanism. It is worth noting that the individual labor article contradicts the provisions of Article 183, which exclusively designates the labor department as the decision-making authority for individual labor disputes. This conflict arises in relation to the establishment of arbitration, which may go against public order. This issue is similar to the arbitration mechanism employed in the settlement of collective labor disputes, as outlined in Article 382 and subsequent articles of the Labor Code.

Secondly, we acknowledge the absence of structures for conflict prevention as a problem. The third issue pertains to the underutilization of remedial efforts by the labor inspectorate in resolving individual labor disputes.

The fourth problem concerns the possibility of seeking legal advice, consultation, and mediation, which contradicts the simplified procedures in labor litigation where the appointment of a lawyer is not obligatory. Additionally, concerns arise regarding the fees associated with legal representation.

Lastly, we address the fifth problem, which focuses on the employment relationship between employees and employers, specifically the lack of a mediation mechanism in individual labor provisions. This absence presents a challenge for resolving disputes that arise within this relationship.

This section of the guideline presents recommendations to address these aforementioned issues and provide guidance for their resolution.

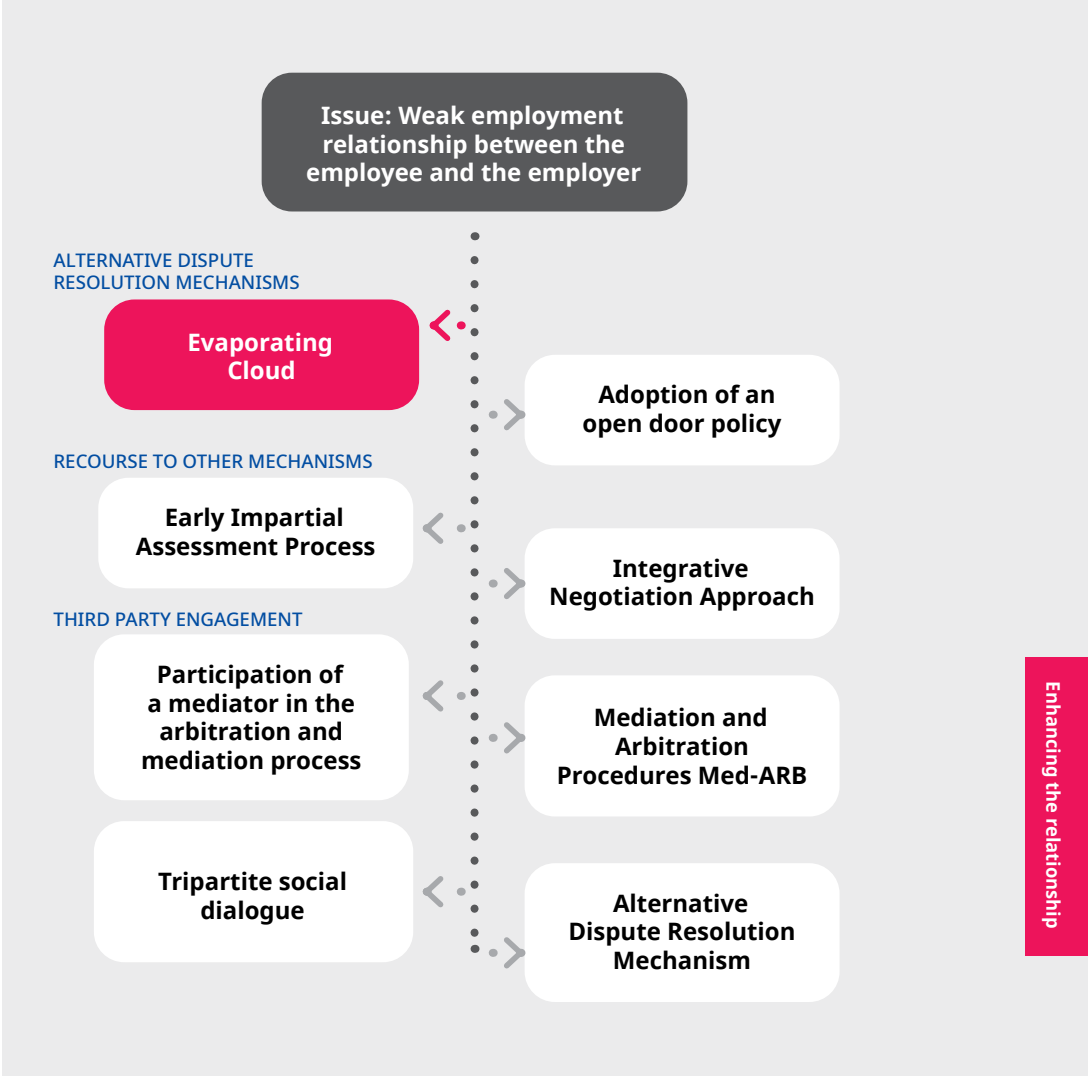
A. Recommendations on enhancing the relationship between employer and employee

RECOMMENDATION 11:
The employee and employer use the practical thinking technique called ‘evaporating cloud’ to solve their disputes.

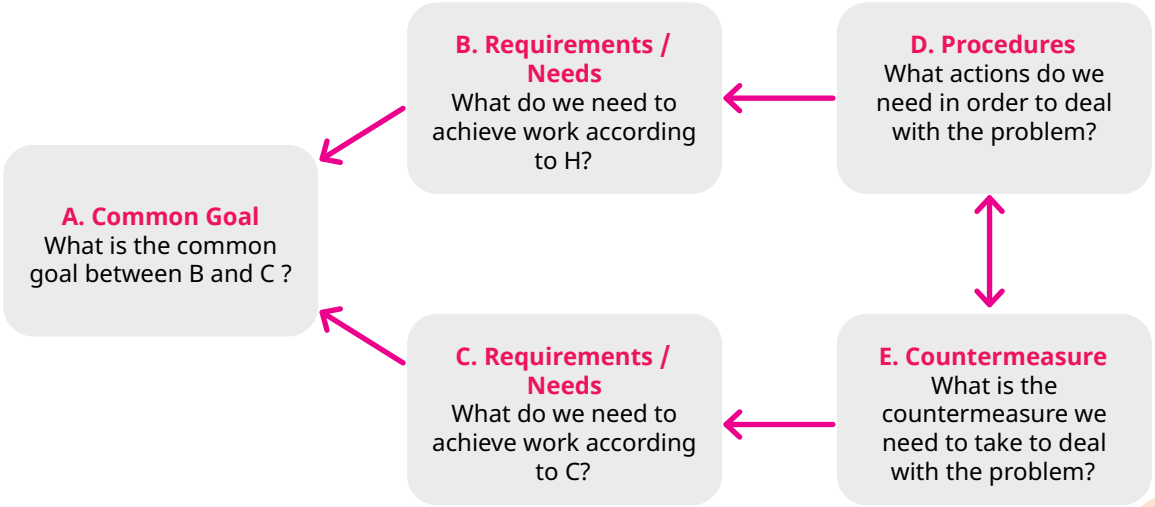
★ ★ ★ *Context-specific recommendation*

The evaporating cloud is a problem-solving process that helps the employee and employer in coming up with practical and win-win solutions. The evaporating cloud is used to explain aspects of conflict. The employer can use evaporating cloud techniques to resolve disputes resulting from problems in the relationship of co-workers, the relationship of the employee and the employer, or general problems within the organization.

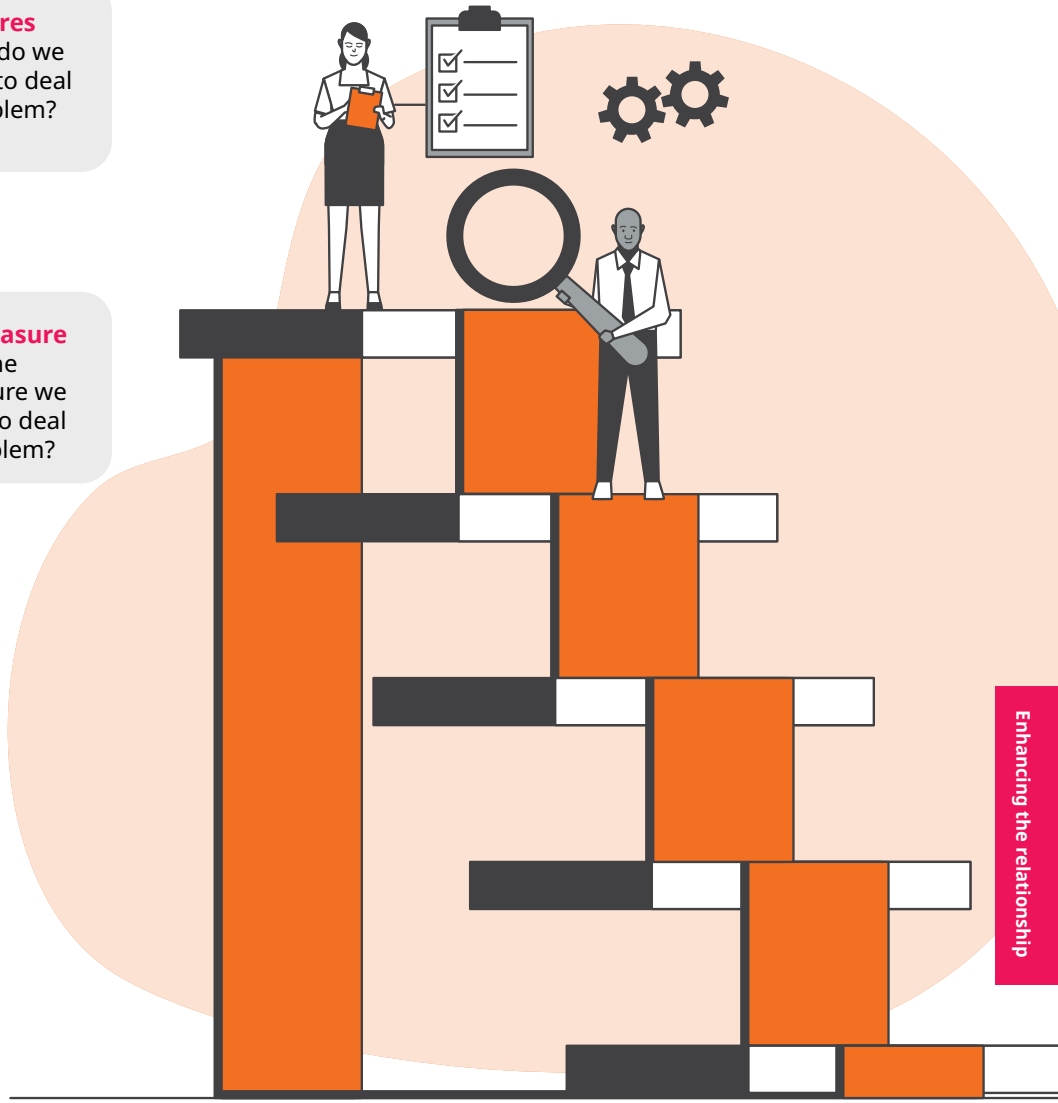
The evaporating cloud (also known as a conflict resolution scheme) is a logical blueprint for solving and systematically solving a problem that may seem without a clear solution. An evaporating cloud finds a solution to the conflict between two parties or between two points of view. The employee and the employer first begin by clearly defining the type of problem and writing it down. The employee and employer then work together to build the evaporating cloud by incorporating all assumptions that led to this problem. The employee and the employer together turn these assumptions into possible solutions. In this process, a third party can be used and must be agreed on by both parties to the dispute.



The chart below shows stages for the formation of the evaporating cloud:



We chose this recommendation because it separates people from the problem by focusing on the goal. It makes the employee, the employer or the parties to the dispute focus on interests rather than on positions.



RECOMMENDATION 12:
The employer adopts an open-door policy.

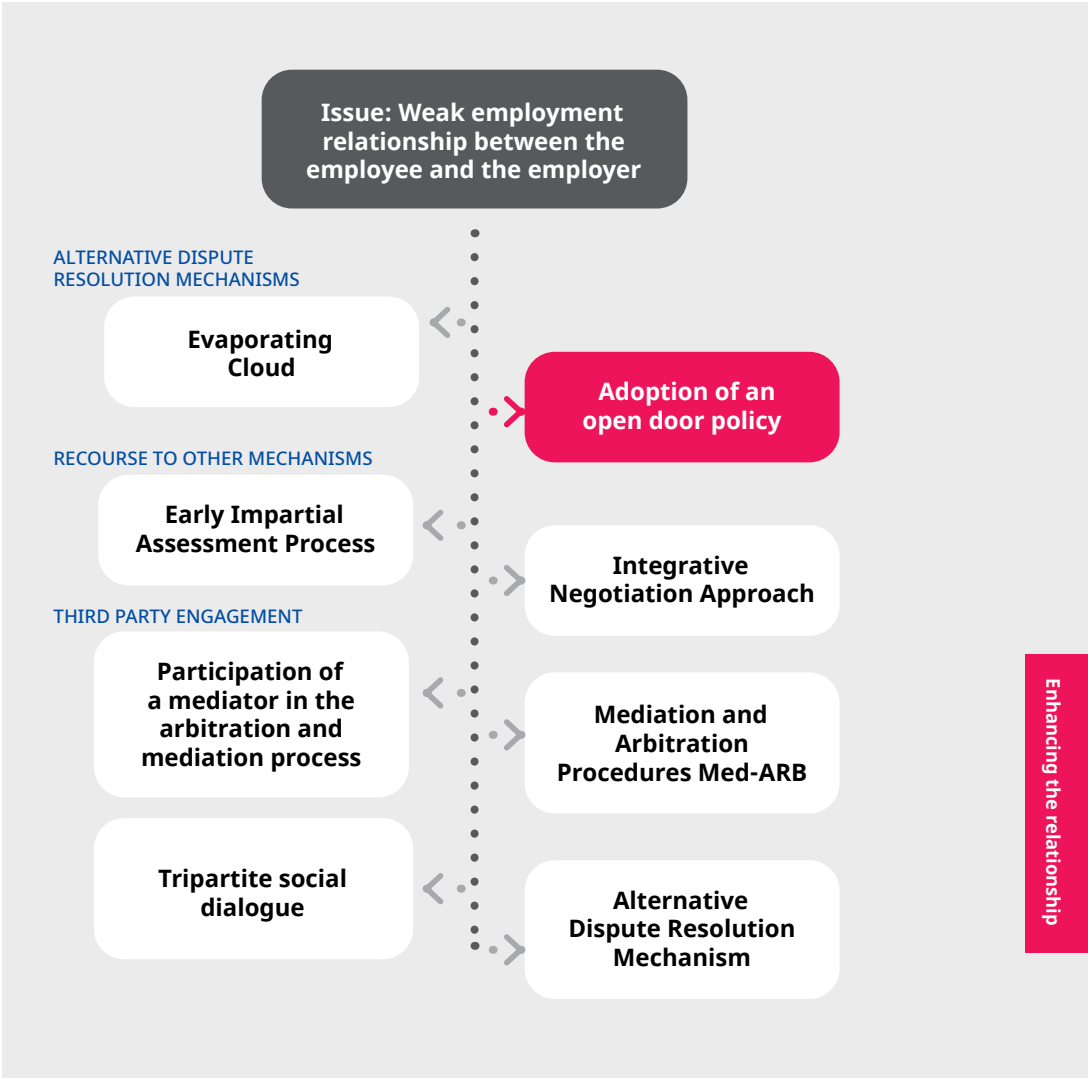
★★★★★ *Highly recommended*

The implementation of an open-door policy creates a secure environment where employees have the freedom to discuss business-related issues with parties other than their direct employer or manager, depending on their preference.

The Open-Door Policy enables employees to communicate and express their opinions and feelings directly to the employer. This procedure also allows the organization to address complaints, seek advice, and find solutions to the issues raised. It provides employees with a sense of safety and encourages open dialogue on work-related matters. Adopting the open-door policy demonstrates the employer's commitment to fostering employee confidence and ensures that valuable information and feedback reach the employer, enabling significant improvements.

Typically, the open-door policy is outlined in the employee manual as a guideline for employees. When an employer embraces the open-door policy, it means that employees are free to approach and meet with their manager or employer to discuss any relevant matters.

It is important for companies to train managers and employers on how to effectively implement and follow this policy. This ensures that the open-door policy is utilized in a constructive manner, preventing the development of an environment where employees are encouraged to engage in gossip or create divisions among colleagues.



RECOMMENDATION 13:

The employee and the employer build an employment relationship based on an integrative negotiation approach.

★★★ *Recommended*

Integrative negotiation is a cooperative strategy employed by both the employee and the employer to achieve mutually beneficial results. It involves seeking an agreement that satisfies the interests of both parties, transforming a win-lose situation into a win-win outcome. Through integrative negotiation, joint problem-solving occurs, leading to a mutual agreement that maximizes the benefits for each party involved.

The integrative negotiation approach expands the scope of possible solutions by focusing on finding multiple resolutions to the same problem. It involves identifying the problem, exploring alternative solutions, and ultimately selecting a mutually advantageous outcome.

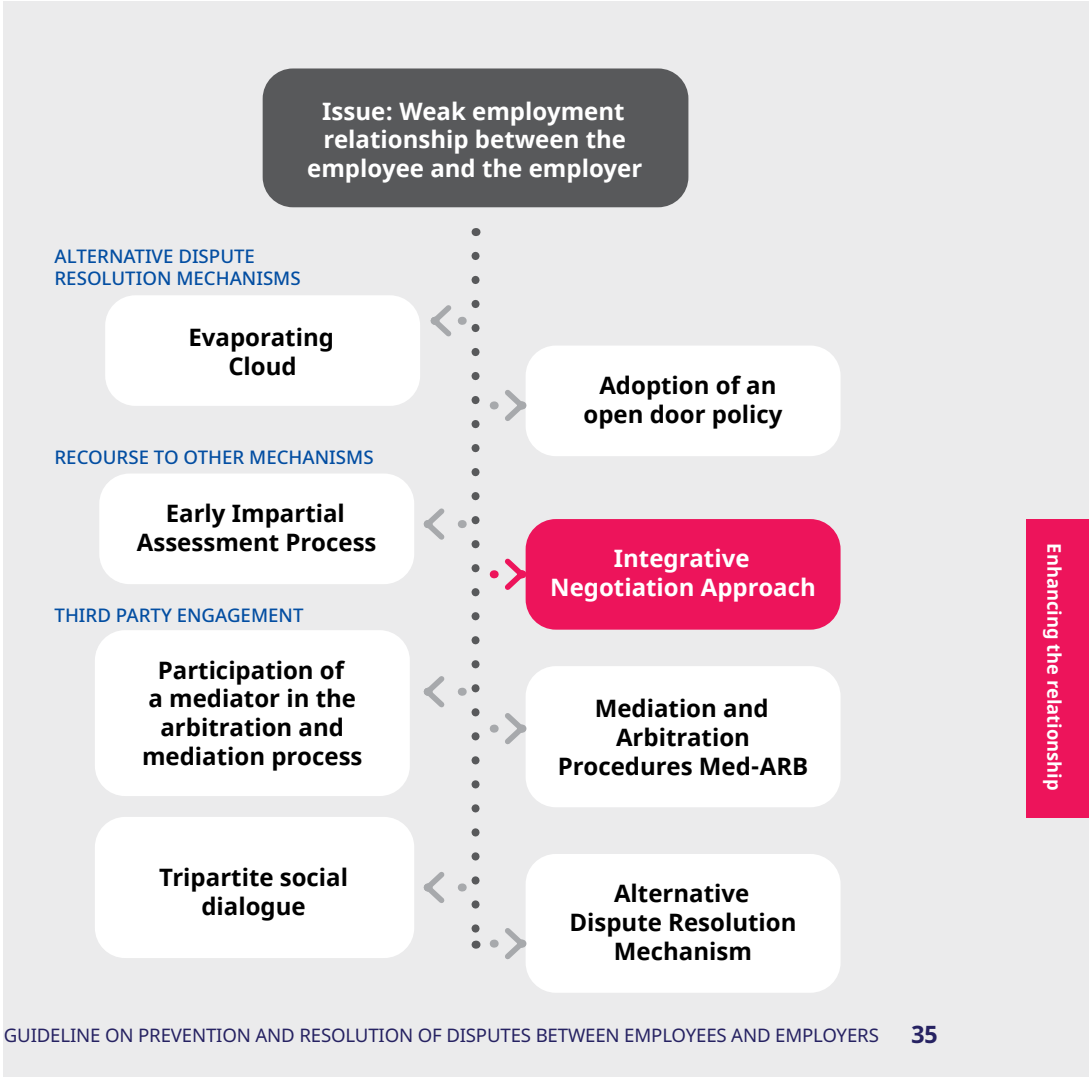
Several strategies and tactics are commonly used in integrative negotiation. These include openly sharing all relevant information, particularly from the employer's perspective, understanding and assessing the employee's satisfaction levels, and clearly highlighting the objectives of both parties. These steps enable negotiators to identify the problem, determine its causes, develop potential solutions, and evaluate the benefits of proposed resolutions.

Integrative negotiation improves the negotiation process by fostering cooperation and considering the needs and goals of all parties involved. It creates a collaborative environment that limits or avoids conflicts, facilitating the agreement-making process.

Moreover, integrative negotiation strengthens professional relationships between the employee and the employer. As conflicts are minimized and interests are addressed, both parties feel their objectives have been met. This fosters a positive relationship, paving the way for further opportunities and successes in their interactions.

Additionally, integrative negotiation contributes to the development of effective agreements. By considering each other's interests and making joint decisions, negotiators are more likely to be satisfied with the outcome, leading to a sense of fulfilment and enhancing the overall agreement.

Overall, integrative negotiation promotes cooperative problem-solving, strengthens relationships, and results in mutually satisfactory agreements that benefit all parties involved.



RECOMMENDATION 14:
Employee and the employer carry out an early impartial assessment process in disputes.

★★★ *Recommended*

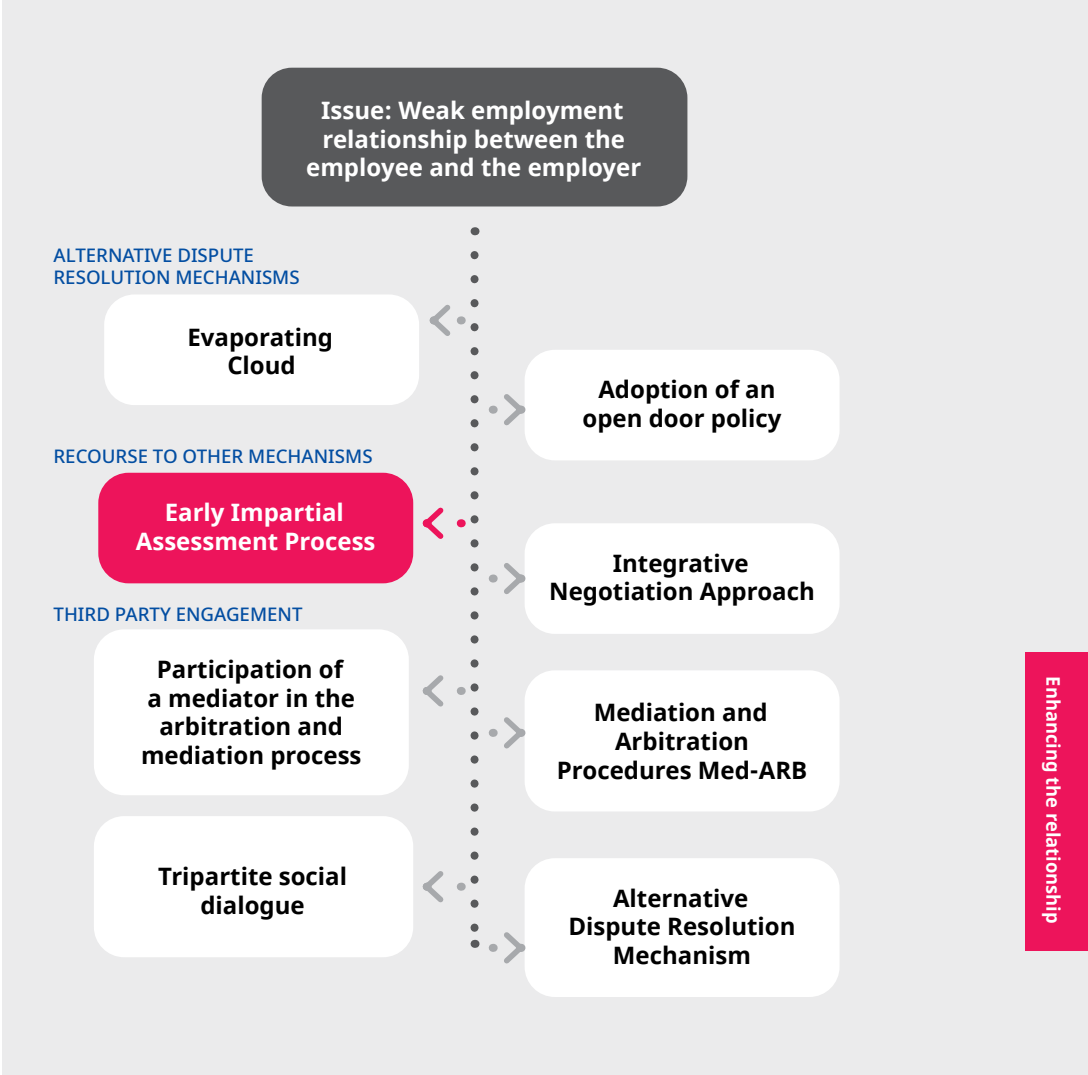
Early Impartial Assessment is a process where parties involved in a dispute, or their respective legal representatives, present their cases to a neutral third party, typically an experienced and knowledgeable lawyer specializing in the relevant field. The purpose of this assessment is to obtain an impartial evaluation of the case. As the name implies, an early impartial assessment is most effective when conducted at an early stage of the conflict.

Through early neutral assessment, the parties have the opportunity to convene early in the case. The neutral evaluator carefully examines the positions of both the employee and the employer, providing them with an objective overview of how the case may unfold.

The process of early impartial assessment can be initiated by mutual agreement between the employee and the employer, even if it is not explicitly stated in the contract. The parties mutually select a neutral third party to act as an intermediary. They define the subject matter of the dispute, outline their respective positions, discuss potential damages, present key evidence, and share any other pertinent information that may assist the evaluator. During the assessment, each party presents their claims or defence strategies, along with supporting evidence. The assessment session is informal, and strict rules of evidence do not apply. Following the assessment session, the parties may agree to participate in subsequent follow-up sessions.

The early impartial assessment process offers several benefits, including the opportunity to gain an unbiased perspective on the case early on, allowing the parties to better understand the strengths and weaknesses of their positions. It promotes open dialogue and provides an avenue for potential resolution without resorting to formal litigation.

Overall, early impartial assessment enables parties to proactively engage in the dispute resolution process, fostering transparency and facilitating the exploration of mutually acceptable solutions.



RECOMMENDATION 15:

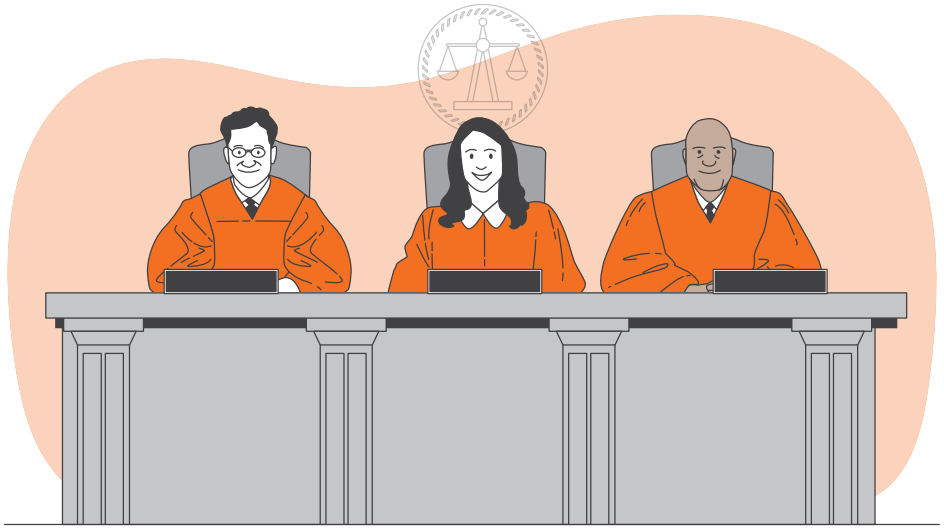
Involve a neutral, third-party mediator in the arbitration and mediation process.

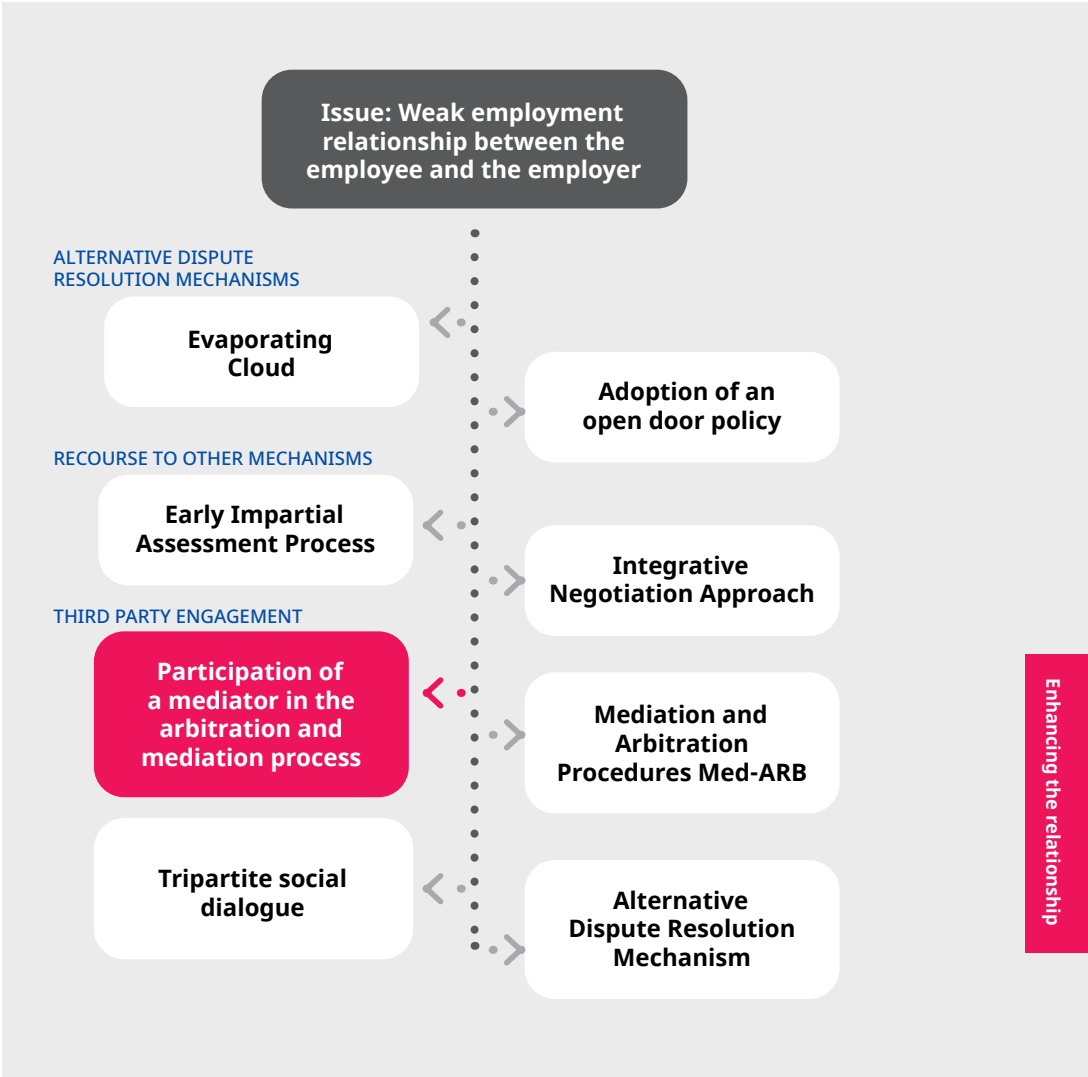
★★★★★ *Highly recommended*

A mediator is an impartial individual appointed by the employer, who holds a senior position and reports to the highest level of the organization and conflict management specialists. The mediator maintains strict confidentiality and does not provide testimony in official proceedings, either internally or externally.

Mediators are commonly found in both public and private sectors and primarily address issues raised by employees. Their role often involves assisting in the resolution of conflicts through informal means within the organization, utilizing methods such as conflict training and informal mediation.

The primary function of a mediator is to uphold and promote values and behaviors that include fairness, integrity, justice, equal opportunity, and respect. They play a vital role in helping parties involved understand and utilize alternative dispute resolution frameworks implemented within the workplace. Their mission is to facilitate constructive communication, encourage mutual understanding, and foster the adoption of peaceful and cooperative approaches to conflict resolution.





RECOMMENDATION 16:
The employee and employer apply Med-Arb procedures.

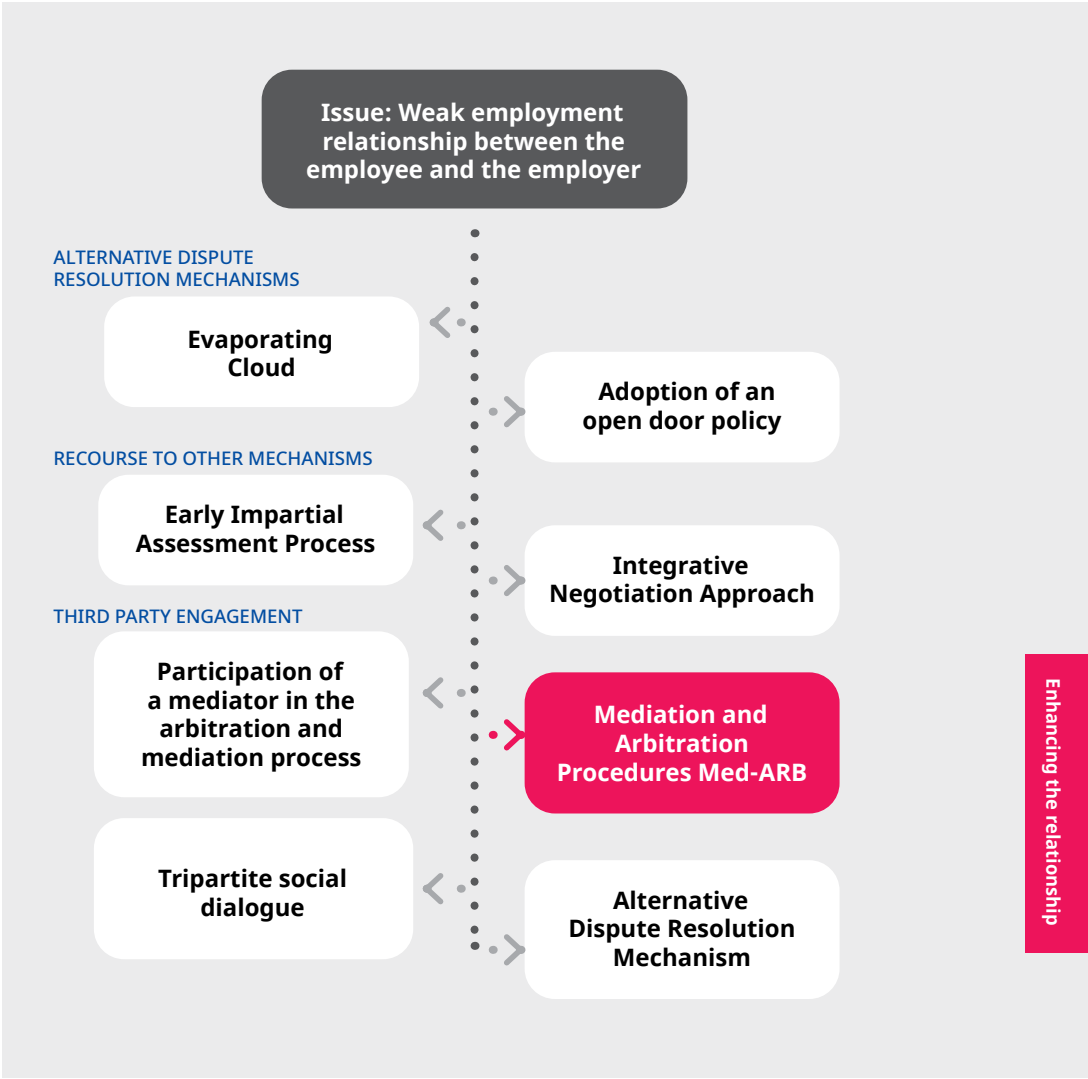
★★★ *Recommended*

In the mediation process, a trained and neutral mediator assists disputing parties in reaching a consensus on their own. The mediator's role is not to impose a solution but rather to facilitate deeper engagement with the issues at hand. With the mediator's guidance, the parties ideally achieve a sustainable, voluntary, and often non-binding agreement.

In arbitration, an impartial and trained arbitrator functions as a judge responsible for resolving the conflict. Similar to judicial proceedings, the arbitrator listens to arguments and evidence and then issues a binding decision. Arbitration proceedings are typically confidential, and the outcome is final and cannot be appealed.

The MED-ARB process involves the parties initially agreeing on the terms of the process itself. Unlike most mediation processes, they must agree in writing that the outcome of the process will be binding. They then attempt to negotiate a solution to their dispute with the assistance of a mediator. The mediator may suggest separate meetings with each party to discuss proposals and also bring them together to express their perspectives and explore solutions, following the principles of traditional mediation.

If mediation reaches an impasse or if the issues remain unresolved, the process does not conclude. At this stage, the parties have the option to proceed to arbitration. The mediator can assume the role of arbitrator, provided they are qualified, and promptly issue a binding decision based on their judgments, either for the entire case or unresolved matters. Alternatively, the arbitrator can take over the case after consulting with the mediator.



Although mediation and arbitration are distinct dispute resolution processes, often seeking different outcomes, the combination of mediation-arbitration practitioners aims to present a process that combines the strengths of both approaches. This approach ensures a final resolution while allowing for informal opportunities for settlement.

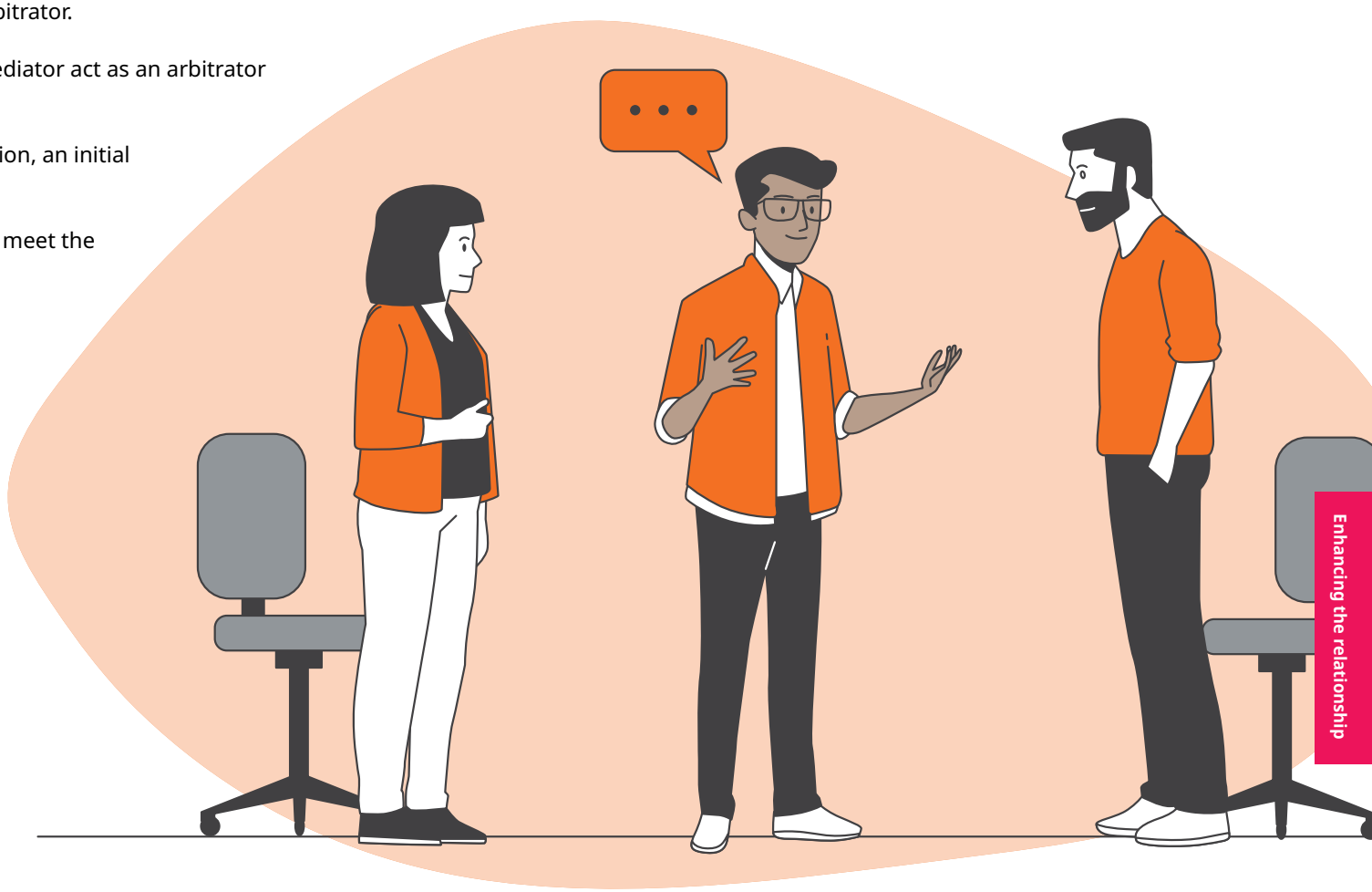
The mediation and arbitration approach can be implemented in various ways:

1. Parties agree before mediation that if certain or all issues cannot be resolved through mediation, the mediator will act as an arbitrator.

2. During mediation, the parties request that the mediator act as an arbitrator for some or all unresolved matters.

3. The arbitrator proposes, before or during arbitration, an initial attempt to mediate the dispute.

This approach provides flexibility and adaptability to meet the specific needs of the parties involved.



RECOMMENDATION 17:
Apply the tripartite social dialogue.

★ ★ ★ *Recommended*

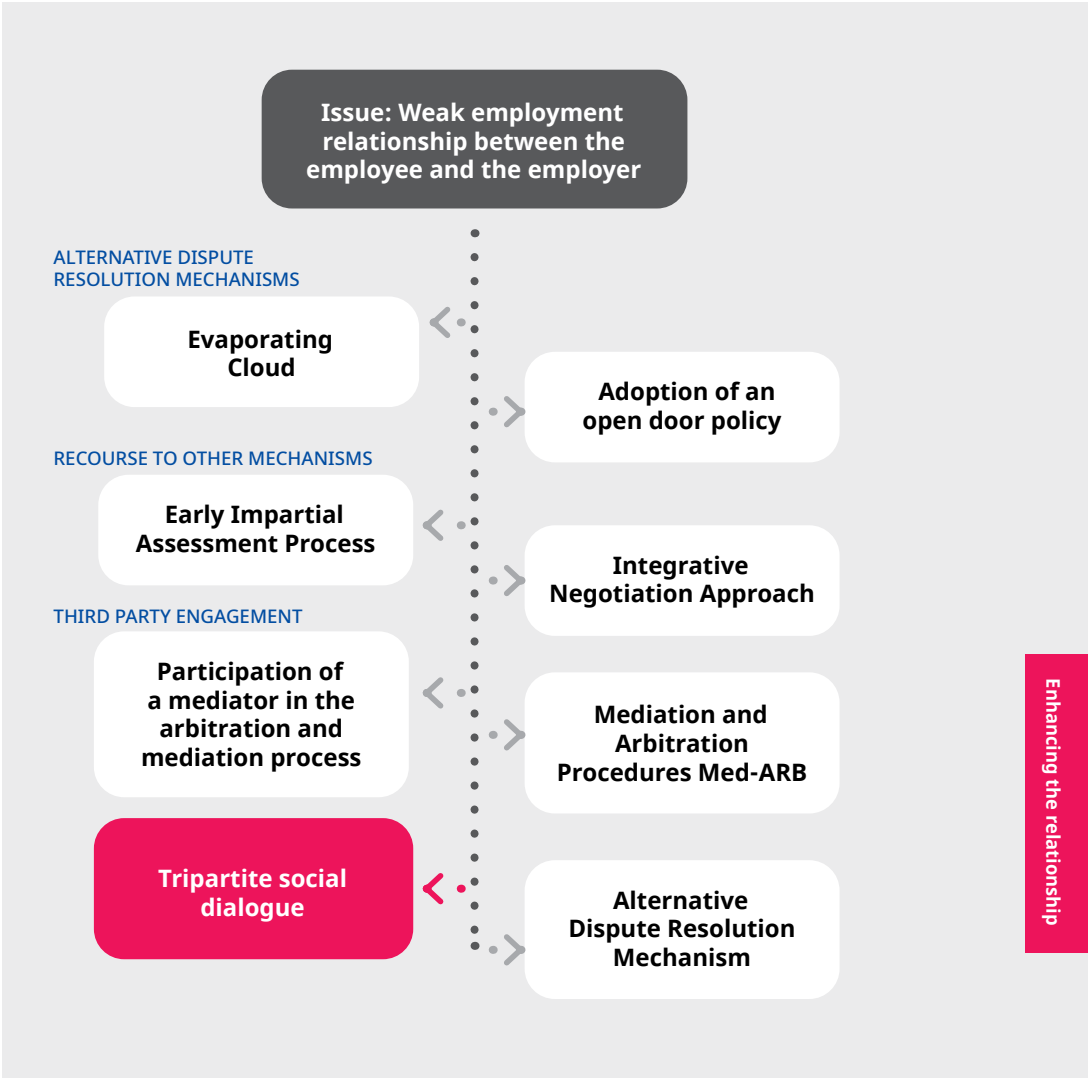
Tripartite social dialogue involves the government, employers, and employees (through their representatives) engaging in equal and independent partnerships to seek solutions to matters of public interest. It can be defined as a form of social exchange where decision-making involves the active participation of employer and employee organizations alongside the government.

Tripartite social dialogue sets it apart from civil dialogue, which involves representatives of employee and employer organizations and a select group of civil and social interest groups, but does not include the government as a partner in consultations or negotiations.

Within tripartite social dialogue, parties have three options that can be adopted based on the specific context:

- Information exchange forums serve as platforms for sharing information between the parties, fostering transparency and requiring a certain level of trust.
- Consultation forums encourage the exchange of views to discuss proposals, allowing for a potential change in positions of the involved parties.
- Negotiating forums involve discussions between parties with differing or conflicting opinions, aiming to reach formal agreements. Negotiation is the most structured, binding, and institutionalized form of social dialogue.

By utilizing these various forms of social dialogue, the government, employers, and employees can collaborate and find mutually beneficial solutions to address issues of public interest.



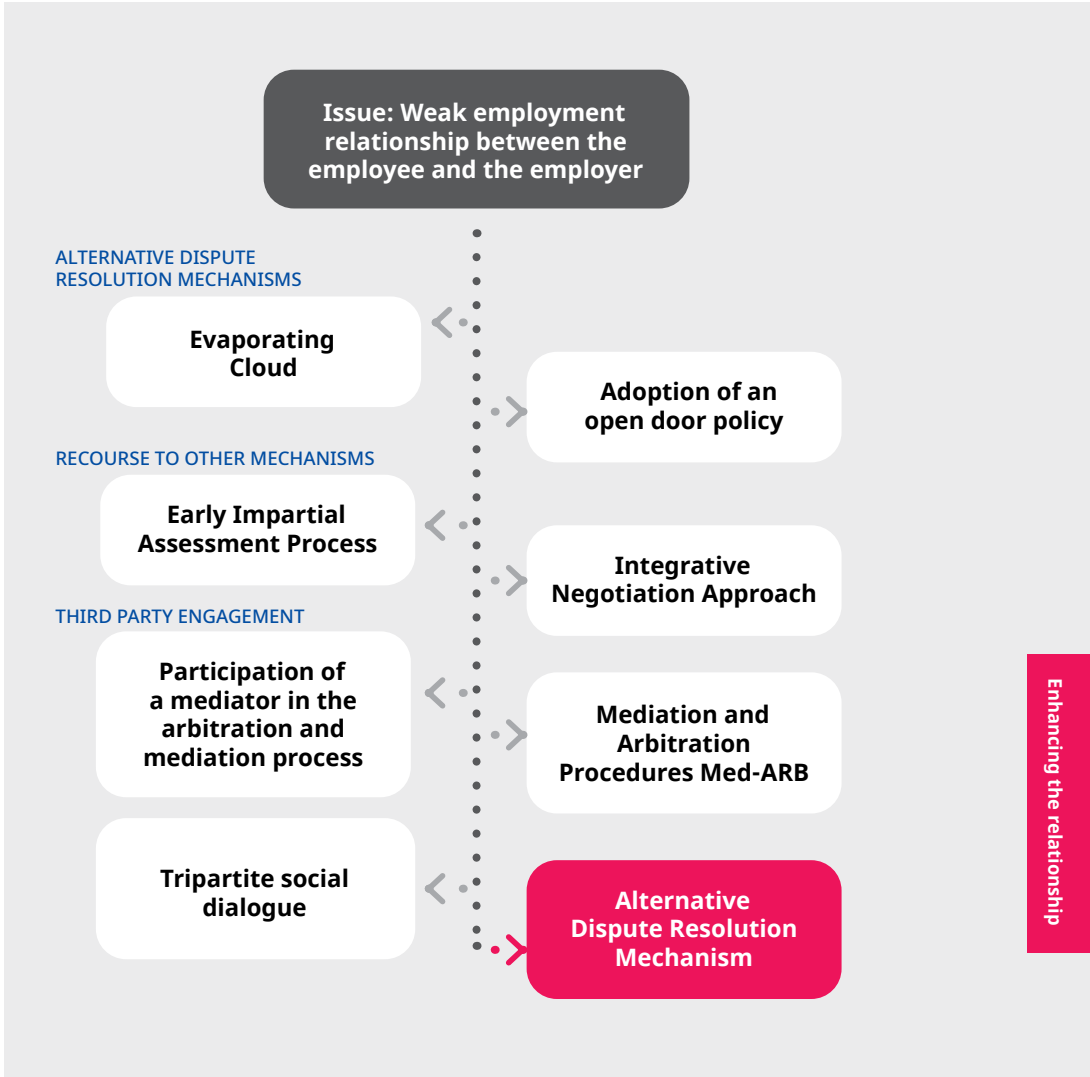
RECOMMENDATION 18:

The employee and the employer adopt and apply alternative dispute resolution mechanisms (ADR).

★ ★ ★ *Recommended*

Alternative Dispute Resolution (ADR) encompasses various processes such as conciliation, mediation, and arbitration, which can take place outside or within a formal court setting. ADR offers alternative avenues for resolving both judicial and non-judicial conflicts and disputes. It involves the engagement of a neutral third party, either a mediator or an arbitrator, who assists the employee and the employer in reaching a mutually agreeable resolution.

ADR can be a suitable option for labor disputes as it provides a constructive platform to discuss issues calmly and avoid the expenses associated with legal disputes. If the employee intends to maintain the employment relationship, ADR serves as an effective means to address problems with the employer and prevent the escalation of the dispute.



B. Concepts around enhancing the relationship between employer and employee

The objective of this section is to encourage the existing legislation to draw inspiration from best practices and establish mechanisms for preventing individual labor disputes, similar to the alternative methods used for resolving collective labor disputes as outlined in article 376 (new) and subsequent sections of the Labor Code. By doing so, it aims to foster workplace stability and strengthen the relationship between employers and employees, thereby facilitating their mutual development.

DEFINITION OF BEST PRACTICES IN THIS CONTEXT

Best practices aim to achieve mutual gains between the employee and the employer to reach possible solutions to prevent or resolve the dispute, whether solutions are prescribed in law and agreements or innovative.

C. Legal framework

The following are the most important legal frameworks and references regulating or offering solutions related to the relationship between the employee and the employer:

→ Bar Decree (Chapter 2), Arbitration Journal (Chapters 2 and 10).

→ Labour Code (Chapter 183 and subsequent then article 376 new et subsequent)

Glossary of terms

KEYWORDS

Best practices refer to interventions demonstrated by practitioners to provide a specific solution to a problem.

Intervention: The word 'intervention' is used in this guideline to describe any action or activity taken with the aim of resolving or preventing an employment dispute.

GRADE: Grading of Recommendations, Assessment, Development and Evaluation. A method used to assess the quality of the best evidence available.

PICO: Person or Patient, Intervention, Comparison, Outcome. Abbreviation for the phrases: patient or person, intervention, comparison and result. A method used in the medical sector to compare different interventions applied to the justice sector.

Recommendation: An intervention-based call for a specific treatment that practitioners and users must apply to address a particular type of justice problem.

CASE-SPECIFIC TERMINOLOGY

Psychological Safety Climate includes policies, practices and procedures to protect the mental health and safety of employees.

Evaporated cloud: also referred to in the literature as a "conflict resolution scheme" - is a logical scheme that represents a problem not having a clear satisfactory solution.

Open Door Policy: It allows the employee to bypass the direct employer and meet with the Manager to discuss work and personal issues, especially if the employee is not comfortable discussing these issues with his supervisor, or if the latter is part of the problem.

Early Neutral Evaluation: The two parties invite a neutral third party to express an opinion or to assess the areas of the dispute or issue. A neutral evaluator is usually a lawyer or expert in the field, and the assessment may help resolve the dispute.

Mediation and Arbitration Procedures, or Med-ARB Combining mediation and arbitration and turning the mediator into an arbitrator.

Tripartite social dialogue is a form of social exchange. It can be defined as "the interaction between the government, employers and employees (through their representatives) as equal and independent partners in the search for solutions to issues of public interest" (ILO Dictionary).

Alternative Dispute Resolution is a process or set of processes that give people the opportunity to resolve legal disputes without having to resort to litigation.

Emotional intelligence is a concept that refers to the ability to understand, analyse, control, and use feelings about oneself and others in a correct and effective way. Emotional intelligence includes awareness of emotions, organization, expression, and interaction, and empathy for others. The ability to handle, understand, and control emotions is an important factor for success and satisfaction in personal and professional life. People who have a high level of emotional intelligence are better able to cope with life's stress, empathize with others, and achieve personal and work success.

Methodology

1. Establish a Committee of Experts

The guideline development process starts by gathering a diverse group of local practitioners and justice experts. This group is referred to as the guideline's Committee of Experts (CoE). The Committee of Experts co-creates the guideline, performs quality control, and helps to establish local ownership. Assembling and engaging a committed Committee of Experts at an early stage is essential and helps to increase buy-in from local justice providers.

The Committee is composed of eight to twelve members. The Committee should include academic experts, mediators, legal professionals, judges, government officials, NGO providers, and providers within the justice system. A Chair is appointed with full endorsement of the Committee. The Chair will serve in that capacity for three years, and may extend his or her term on the Committee for up to six years.

The Committee of Experts also reviews and advises on:

a. Overall scope and purpose of the guideline

i. Topics are clearly defined

ii. Target group is clearly defined

b. Stakeholder involvement

i. Throughout the development process, individuals from all relevant professional groups are included

ii. Proper tests of the guideline have been conducted with the target group

c. Rigour of development

i. Systematic methods were used to gather evidence

ii. Criteria for selecting and grading evidence are clearly described

iii. Formulation and categorization of recommendations are clear

iv. The desirable and undesirable outcomes for recommendations have been clearly described

v. The guideline has been reviewed externally prior to publication

d. Clarity of presentation

i. The recommendations are specific, actionable and unambiguous

ii. Key recommendations are easily identifiable

iii. Suggested best practices are easily identifiable

e. Applicability

i. The guideline is supported with tools for application (such as sufficient introductions, categorizations and infographics)

ii. The guideline clearly presents opportunities for further research

iii. The guideline clearly presents opportunities for further development (adding topics, justice area or geographical area)

f. Editorial independence

i. The views of the funding body have not influenced the content of the guideline

ii. Competing interests of guideline developers have been recorded and addressed

2. Define the theme and topics for the guideline

The overall themes of the justice guidelines are focused on disputes related to family, neighbours, land and employment. Exceptions to other themes (such as crime, domestic violence, debts and public services) can be made, but require alterations in the methodology. The Committee of Experts is responsible for defining the theme and topics of the guideline. Their decision will be based on a fact pack that is presented by HiiL. This includes results from (e)JNS surveys and other data-driven studies, trend reports and policy briefs, HiiL's country strategies, transformation lab results and innovation lab results.

HiiL facilitates the development of a comprehensive list of topics to include in the guideline. Topics are subject matters within the overarching theme, which people dealing with a justice problem will need to address in order to be able to solve it.

The list of topics is based on years of experience and interaction with justice providers and users of the justice sector. HiiL has conducted extensive research on what the most prominent problems are and what kind of solutions people are looking for.[5]

From this initial list, the Committee of Experts identifies the topics that they believe should be prioritized. Additional topics can be included if the Committee considers it necessary. Based on the Committee's input, the resources and staff available, and HiiL's mission and values, HiiL decides on the final list of topics to be covered by the guideline.

We make a distinction between three different categories of topics (examples in italic on family disputes):

ISSUES:

These are the substantive topics that people have to deal with regularly.

For example, in order for people to be able to separate they must agree on housing arrangements.

PROCESS:

These relate to the procedural steps that people must take to solve their justice problem.

For example, in order for people to be able to separate they should receive a diagnosis from a neutral third party.

COMPLICATIONS:

These include complications that need extra attention.

For example, a complication in separation could be the existence of domestic violence (how to deal with that?).

HIIL'S MISSION:

We aim to empower 150 million people to prevent and resolve their most pressing justice problems by 2030.

5 HiiL, *Justice Needs and Satisfaction in Uganda*, accessible via: www.hiil.org/projects/justice-needs-and-satisfaction-in-uganda/ and HiiL, *Understanding Justice Needs, The Elephant in the Courtroom*, p. 54, accessible via: www.hiil.org/projects/understanding-justice-needs-the-elephant-in-the-courtroom/

3. Create a shared understanding of outcomes with scorecards

Identifying and working towards needs-based outcomes is essential for delivering high-quality justice.[6] Outcomes suggested by research (victimology, criminology, empirical research on effective interventions) and practice are listed in the following table.

Examples of outcomes per type of justice problems:

FAMILY:

1. Children are taken care of
2. Secure housing for all
3. Secure incomes for all
4. No violence
5. Respectful communication
6. Division of debts
7. Division of property

LAND:

1. Compensation for loss of income or property
2. Sharing of benefits
3. Allocation of land ownership
4. Agreement on the use of land
5. Protection

NEIGHBOUR:

1. Respectful communication
2. Less nuisance
3. Repair or compensation
4. Repairing relationships
5. Solutions for border issues (buildings, fences, trees)

EMPLOYMENT:

1. Respect for achievements
2. Financial compensation
3. Adjustment of roles
4. Employment prospects
5. Maintaining good relationships
6. Timeline

CRIME:

1. Understanding what happened
2. Return of property, repair or compensation
3. Perpetrator is caught
4. Protection, preventing it will happen again
5. Apology or explanation
6. Punishment
7. Both parties being able to move on

HiiL leads a first workshop with the Committee of Experts to create a common understanding of the outcomes that people need in their local context, backed by international literature research on user needs. The goal is to create a shared understanding of the relevant outcomes in the local context. The outcomes stated above are tested with the Committee to ensure that it is in line with the local context and needs. A common understanding of outcomes will help to identify what practice-based evidence and evidence-based practice we need to identify (steps 4 and 5).

Based on the identified outcomes the Committee of Experts will develop in a second workshop an 'outcome-scorecard', similar to the example shown underneath. All outcomes that are identified in the first workshop will be changed into outcome statements. These are short, actionable statements from the perspective of the people dealing with the justice issues. With this scorecard, the justice practitioner is able to test to what extent people agree with the statements (on a scale from 1-5, 1 being to a very low extent, 5 to a very high extent), thereby checking if people are reaching the outcomes that they need. The scorecard will be added to the guideline. This way, justice practitioners applying the guideline can track where improvement is needed and where people are getting the outcomes that they need.

6 OECD, *Equal Access to Justice for Inclusive Growth*, p. 190, accessible via: www.oecd.org/gov/equal-access-to-justice-for-inclusive-growth-597f5b7f-en.htm and Task Force on Justice, *Justice for All*, accessible via: www.justice.sdg16.plus/report

4. Learn from the experiences of local justice providers (collect practice-based evidence)

After the outcomes and scorecards are defined, we identify what local justice providers from the informal and formal sectors consider best practices for resolving their most pressing justice problems. We organize workshops and invite government, local, civil society leaders and practitioners to share their experiences on what works. The workshops are conducted in mixed groups of around 15 participants of justice providers from the formal and informal sectors from a specific area. It is recommended that at least 3 separate workshops take place in 3 different locations, collecting information from around 50 practitioners. Each workshop is facilitated as half-day workshops and ample time is given to not only collect suggested best practices on specific interventions, but also how they relate to each other.

In order to ensure that workshops are representative of the national population, HiiL conducts several workshops throughout the country the guideline is being developed for. Geographical coverage depends on the resources available, and is determined in partnership with the Committee of Experts.

Workshops are conducted according to a standard format:

1. Define goals and expectations
2. Reflect on the data of the Justice Needs and Satisfaction survey: what are the most pressing justice issues?
3. Reflect on the identified outcomes and scorecards
4. Together identify:
   a. What is a guideline?
   b. What is a best practice?
   c. What is a recommendation?
5. Group sessions: Government, local and civil society leaders share their experiences
6. Share feedback in interactive setting
7. First working session: Define best practices for issues
8. Second working session: Define best practices for process
9. Third working session: Define best practices for complications
10. Reflect on the workshop and conclude

5. Collect evidence from the literature and propose recommendations (evidence-based practice)

There are many different steps in the path to resolving a justice problem. Each problem is broken down into a broad range of topics (such as mediation, adjudication, arrangements for raising children etc.) For each of these topics a number of possible interventions can be identified to help prevent or resolve the problem. Internationally available literature contains evidence which supports or invalidates interventions to justice issues. We test these interventions, rate the quality of evidence that underlies them, and define actionable recommendations. The following steps explain this process.

i. First literature search: Identifying the most common interventions

HiiL conducts a first literature search to identify all possible interventions for each topic. This is done in accordance with the search strategy (explained in step three). For each topic, the team selects the two or three most effective interventions. Two interventions are then compared with each other in PICO format and - if applicable - similarly compared to a third intervention.

ii. Defining the PICO question[7]

In order to assess the effectiveness of interventions, HiiL compares selected interventions using PICO questions. The PICO-approach is used in the medical sector to help define the effectiveness of an intervention. PICO stands for:

- Population
- Intervention
- Comparison
- Outcome

These four elements should always be present in the PICO questions. The standard structure of a PICO question is: For [population/person], is [intervention 1] more effective than [compared intervention 2] for [outcome/goal]?

iii. Search strategy[8] and literature selection[9]

After identifying the PICO question, HiiL reviews and selects the literature. HiiL first defines which keywords are used for the literature search.

The literature search is conducted in a hierarchical manner. HiiL starts with looking into existing evidence-based guidelines, systematic reviews and meta-analyses. In case this results in insufficient evidence, the search extends to randomized controlled trials. If this is not available, the team searches for observational studies and empirical research. Lastly, if needed, HiiL gathers relevant opinions by international experts.

Steps taken in the process of selecting literature are (in this order):

1. Screening of titles and abstracts: A first selection is made where non-relevant titles are excluded.

2. Selection on methodology, based on titles and abstracts: The researcher selects sources according to their methodology.

3. Selection on substance: A substantive and definitive selection based on the title, abstract and the substance.

4. Rating of selected literature: The quality and quantity of the literature are assessed. If not sufficient, the search strategy and criteria are altered.

HiiL consults several (legal and psychology-related) databases, which are accessible through Google Scholar. The most relevant databases are defined on a topic by topic basis.

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7 How to phrase a PICO question is explained in: Schunemann, Brozek, Guyatt and Oxman, *GRADE Handbook*, Chapter 2, accessible via: http://gdt.guidelinedevelopment.org/app/handbook/handbook.html#h.1yd7iwhn8pxp
8 The search strategy is similar to the strategy used in developing guidelines for family doctors in The Netherlands, accessible via: https://www.nhg.org/sites/default/files/content/nhg_org/uploads/handleiding_ontwikkelen_nhg-behandelrichtlijnen_0.pdf
9 The literature selection-process is similar to the selection-process used in developing guidelines for family doctors in The Netherlands, accessible via: https://www.nhg.org/sites/default/files/content/nhg_org/uploads/handleiding_ontwikkelen_nhg-behandelrichtlijnen_0.pdf

iv. Assessing and grading the evidence[10]

The literature contains evidence. Following the selection of literature, the quality of the evidence is evaluated. HiiL grades the quality of evidence for each PICO question, based on the GRADE (Grading of Recommendations Assessment, Development and Evaluation) system. The GRADE-manual (accessible on www.guidelinedevelopment.org/handbook) provides an elaborate description of this method.

GRADE is used extensively by the medical sector for developing guidelines. The GRADE system provides a definition of the quality of evidence. The quality of evidence reflects the level of confidence in the effect of the intervention on people's well-being. The evidence is graded according to a three-step process.

A. Rate the entire study design

Rating the quality of evidence starts with the study design. The evidence is categorized by the type of study, using the four GRADE classifications:

High	Existing evidence-based guidelines, meta-analyses, systematic reviews
Moderate	Random Controlled Trials (RCTs), medium-sized/large empirical research (including observational studies and experimental studies)
Low	Small empirical studies (including observational studies and experimental studies)
Very low	Opinions of international experts

10 The assessment and grading of evidence in the medical sector is explained in: Schunemann, Brozek, Guyatt and Oxman, *GRADE Handbook*, Chapter 5, accessible via: http://gdt.guidelinedevelopment.org/app/handbook/handbook.html#h.1yd7iwhn8pxp

B. Take into account factors for downgrading and upgrading

Next, HiiL looks for factors that reduce the quality of evidence. These being:

Risk of bias of the publication, such as: ▪ Use of evidence by the author to support one favoured intervention (for example: the author is clearly in favour of mediation or supporting completely equal roles of men and women in family life as a matter of principle) ▪ Reporting of outcomes is selective ▪ Samples used in the study to back up arguments are not representative	1 or 2 levels down
Risk of true effects reported being different in other culture/ location, ▪ For example: the Uganda city population may not experience the same effects of an intervention as the Texas rural sample in the study	1 level down
Inconsistent results from different studies, such as those based on: ▪ Geographical area (different studies report different outcomes for different geographical areas) ▪ Interventions (different studies report different interpretations of the same intervention) ▪ Outcomes (different studies report different effects of the same intervention)	1 or 2 levels down
Studies only present indirect evidence, such as: ▪ Different results in different geographical areas in one study ▪ A difference in how the intervention is applied in one study ▪ A difference in the effects of the intervention in one study	1 or 2 levels down
Imprecision ▪ Uncertainty about the study results	1 or 2 levels down

HiiL also looks at factors that increase the quality of evidence:

A large magnitude of the effect of the intervention: ▪ The effects are consistent across different samples ▪ Consistency in the studies on the magnitude of the effect	1 or 2 levels up
Unanimous endorsement of the Committee of Experts	0 or 1 level up
All suggested best practices are in line with the recommendation	0 or 1 level up

Studies may report different outcomes. All outcomes of the studies that are essential to a recommendation are graded separately.

Until now, the upgrading and downgrading process has not been evaluated individually. In future iterations of the guideline, HiiL will provide reasons for upgrading or downgrading a recommendation and explain the reasons.

C. Rate the quality of evidence of the entire recommendation based on step A and B

After taking into account the rating of the study design and the factors for down or upgrading the quality of evidence, HiiL determines the overall quality of evidence. HiiL provides a single grade of quality of evidence for every recommendation. The quality of evidence can be classified into the following four categories of the GRADE model:

High	There is much confidence that the true effects of the tested intervention are close to the estimations of the effects
Moderate	The true effects of the intervention are likely to be close to the estimates of the effect. There is a possibility that it is different
Low	The confidence in the estimates of the effects is limited. The true effects can be substantially different from the estimates
Very low	There is very little confidence in the estimates of the effects

Because the GRADE approach rates the quality of evidence separately for each important outcome of the studies, quality might differ across outcomes. When determining the overall quality of evidence across outcomes, Only the outcomes that are assessed as being most important are considered. These critical outcomes have been identified for each recommendation in the guideline. If the quality of evidence is the same for all critical outcomes, then this becomes the overall quality of the evidence supporting the answer to the question. If the quality of evidence differs across critical outcomes, then the overall confidence in effect estimates cannot be higher than the lowest confidence in effect estimates for any outcome that is critical for a decision. Therefore, the lowest quality of evidence for any of the critical outcomes determines the overall quality of evidence.

D. Define the research gap

After grading the evidence it is important to clarify where more research is necessary, in order to improve the quality of the recommendation. There might be a lack of good quality study designs, or there might be insufficient research on certain interventions available. This way, the research gap can support universities and research institutions in identifying impactful fields of research for in the future.

v. Propose recommendations[11]

The recommendations can be established following the answer to the PICO question and assessment of the quality of evidence by applying GRADE.

The strength of the recommendation depends on whether the desirable effects of an intervention outweigh the undesirable effects, and on the strength of evidence.

11 How to go from evidence to recommendations in medical guidelines is explained in: Schunemann, Brozek, Guyatt and Oxman, *GRADE Handbook*, Chapter 6, accessible via: http://gdt.guidelinedevelopment.org/app/handbook/handbook.html#h.1yd7iwhn8pxp

Recommendations are categorized into four groups:

Strongly recommended	Clear balance towards desirable outcomes of the intervention and a high/moderate quality of evidence **Apply recommendation and advise parties accordingly**
Recommended	Clear balance towards desirable outcomes of the intervention and a low/very low quality of evidence **Apply recommendation and advise parties accordingly**
Context-specific recommendation	Unclear balance towards desirable outcomes of the intervention (where desirable effects do not apply to all situations) and a high/moderate level of evidence **Apply recommendation only in the right circumstances and advise parties accordingly**
Not recommended	Clear balance towards undesirable outcomes of the intervention and a high/moderate level of evidence **Beware of non-recommended practice**

Key factors that influence the direction and strength of a recommendation are:

The balance between desirable and undesirable outcomes (trade-offs) taking into account: ▪ Best estimates of the magnitude of effects on desirable and undesirable outcomes ▪ Importance of outcomes (estimated typical values and preferences)	The larger the differences between the desirable and undesirable consequences, the more likely a strong recommendation is warranted. The smaller the net benefit and the lower the certainty for that benefit, the more likely a weak recommendation is warranted
Confidence in the magnitude of estimates of the effect of the interventions on important outcomes (overall quality of evidence for outcomes)	The higher the quality of evidence, the more likely a strong recommendation is warranted
Confidence in values and preferences and their variability	The greater the variability in values and preferences, or uncertainty about typical values and preferences, the more likely a weak recommendation is warranted
Resource use	The higher the costs of an intervention (the more resources consumed), the less likely a strong recommendation is warranted[12]

12 See: Schunemann, Brozek, Guyatt and Oxman, GRADE Handbook, Chapter 6, table 6.2, accessible via: http://gdt.guidelinedevelopment.org/app/handbook/handbook.html#h.1yd7iwhn8pxp

6. Assess compatibility of local practices with proposed recommendations and define final recommendations

We make a first draft of the guideline by combining practice-based evidence and evidence-based practice. During this process we:

a. Test whether the suggested local practices (practice-based evidence) are consistent with the recommendations (evidence-based practice). In other words, we check if the practices favored by practitioners are supported by the research;

> Compatible practices are highlighted and categorized as **'best practices in line with international literature'**, whereas incompatible suggested practices are categorized as **'other suggested practices'**.

b. Include an annex where we elaborate on and assess the evidence base and identify remaining gaps in international literature. Identifying the gaps in literature helps research institutes to identify where further research is needed;

c. Draft comprehensive descriptions of the interventions tested, so that the resulting recommendations are clearly understood;

d. Categorize and review the "strength" of recommendations, taking into account the local practices. As previously mentioned, there are four categories of recommendations (Strongly Recommended, Recommended, Context-specific Recommendation and Not Recommended). When local practices are in line with the proposed recommendations, this makes for a stronger recommendation. When practices oppose them, the final recommendation will be weaker. This reassessment is done by assessment of the Committee of Experts, facilitated by HiiL. The strength of a final given recommendation is intended to inform whether and to what extent it is applied by justice providers and users.

7. Experts review the first draft of the guideline

HiiL submits the guideline to the Committee of Experts for review. The Committee decides whether the recommendations are acceptable within the local/national context. They report their findings within three months of submission. If the Committee of Experts determines that a recommendation is incompatible with local practice, the Committee and HiiL collectively review the recommendation and determine whether it should remain the same, be modified, or be removed from the guideline entirely.

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Illustrations: Storyset