International Labour Organization

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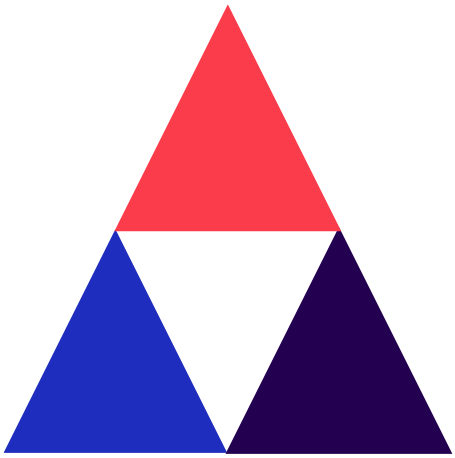
Access to labour justice for all: Prevention and resolution of labour disputes

Report for the Tripartite Technical Meeting on Access to Labour Justice for All
(Geneva, 17–21 February 2025)



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▶ 1. Introduction: Unpacking access to labour justice

1.1. Background

1. The prevention and effective resolution of labour disputes is essential for the realization of rights at work, the maintenance of harmonious industrial relations and the promotion of inclusive and sustainable economic growth. Disputes – whether individual or collective – impose significant costs on workers, employers and society at large. Resolving labour disputes requires a significant investment of both time and money on the part of the disputing parties. It also requires the investment of substantial financial and human resources on the part of national labour administrations and justice systems. However, preventing and de-escalating disputes is usually less costly than engaging in litigation and arbitration processes. [1]

2. Whereas the occurrence of labour disputes is an inevitable feature of the world of work, an increase in their frequency and severity is not in the interest of governments or social partners. Investing in preventing both the occurrence and escalation of labour disputes is key to strengthening labour relations, promoting enabling business environments and upholding the principles of the rule of law and access to justice. This "investment" ultimately pays for itself in terms of the reduction of costs, such as productivity losses, thereby limiting the negative effects on mental health, among other factors.

3. The UN Sustainable Development Goals (SDGs) aim to promote decent work for all (SDG 8), promote just, peaceful and inclusive societies (SDG 16) and reduce inequalities (SDG 10). More specifically, SDG target 16.3 seeks to "promote the rule of law at the national and international levels and ensure equal access to justice for all". However, despite the fact that justice and the rule of law are part of the foundations of the renewed social contract called for in both the UN Secretary-General's report *Our Common Agenda* [2] and the ILO Director-General's report *Towards a Renewed Social Contract*, [3] it is estimated that 5.1 billion people – or two thirds of the world's population – [4] lack meaningful access to justice, adversely affecting social cohesion within society as well as an enabling environment for sustainable enterprises. [5]

4. More than six of every ten workers and four of every five enterprises in the world operate in the informal economy, [6] a situation that impacts the enforcement of rights at work. [7] According to the International Trade Union Confederation (ITUC), workers had no or limited access to justice and the due process of law and justice was denied in 65 per cent of 151 countries surveyed. [8] This supplements the findings of the World Justice Project's Rule of Law Index that civil justice systems

[1] Petra Hietanen-Kunwald and Helena Haapio, "Effective Dispute Prevention and Resolution through Proactive Contract Design", *International Journal of Commerce and Contracting* 5, Nos 1–2 (2021).

[2] United Nations, *Our Common Agenda: Report of the Secretary-General*, A/75/982, 2021.

[3] ILO, *Towards a Renewed Social Contract: Report of the Director-General*, ILC.112/I(B), 2024.

[4] Pathfinders for Peaceful, Just and Inclusive Societies, *Justice for All: The Report of the Task Force on Justice – Overview*, 2019.

[5] *Justice for All: The Report of the Task Force on Justice – Overview.* This figure was reproduced in United Nations, *Our Common Agenda*. ILO estimates also indicate that in 2024, the estimated share of informal employment stands at 57.8 per cent (see ILO, *World Employment and Social Outlook: Trends 2024*, 2024).

[6] ILO, "Transition to Formal Economy".

[7] ITUC, *2022 ITUC Global Rights Index*, 2022, 6.

[8] ITUC, *2024 ITUC Global Rights Index*, 2024.

weakened in two of every three countries between 2022 and 2023, due to longer delays, weaker enforcement and the declining access to and affordability of justice systems. [9] At the same time, there is limited research on how labour disputes negatively affect employers. A recent study by the Advisory, Conciliation and Arbitration Service (ACAS) estimated the annual cost of workplace conflicts to employers in the United Kingdom of Great Britain and Northern Ireland at £28.5 billion. [10] Overall, the cost of leaving civil legal needs unmet has been conservatively estimated from 0.5 to 3 per cent of gross domestic product in most countries. [11] It is therefore no surprise that access to justice has emerged as a critical issue in the multilateral system for inclusive and sustainable growth.

Global Alliance for Reporting Progress on Peaceful, Just and Inclusive Societies
Enabling the implementation of the 2030 Agenda through SDG 16+: Anchoring peace, justice and inclusion (2019) – Summary of Key trends – https://sdghelpdesk.unescap.org/e-library/enabling-implementation-2030-agenda-through-sdg-16-anchoring-peace-justice-and-inclusion

[9] World Justice Project, "WJP Rule of Law Index".

[10] ACAS, "Estimating the Costs of Workplace Conflict", 2021; ACAS, "Resolving Workplace Disputes in SMEs: Qualitative Research with Employers", July 2022.

[11] Global Alliance, *Enabling the Implementation of the 2030 Agenda through SDG 16+: Anchoring Peace, Justice and Inclusion* (2019), Annex I, 104.

5. Labour disputes present a number of specificities that require close consideration: they may be rights-based or interest-based disputes; [12] individual or collective disputes; disputes that are relevant to a single workplace or sector or range across enterprises or sectors; or they may include a cross-border dimension. The prevention and de-escalation of labour disputes facilitates business continuity, secures livelihoods and ultimately fosters social peace. Most significantly, labour dispute prevention and resolution (LDPR) is closely linked to the strength of labour relations, in which ILO tripartite constituents and social dialogue have an indispensable role to play.

▶ The cost of disputes

> "Costs may be direct and visible such as the cost of hiring lawyers or other advisers, but others more intangible costs may include the loss of clients and partners, diminishing staff motivation, lack of employer–employee cooperation, business hours spent on the resolution of conflicts by both management and employees, additional mental load and stress for the parties involved."
>
> Source: Hietanen-Kunwald and Haapio.

6. The above-mentioned report *Towards a Renewed Social Contract* highlighted "access to justice as a basic principle of the rule of law". [13] The rule of law is essential to securing property rights of both labour and investments. As emphasized in the Conclusions concerning the promotion of sustainable enterprises, "[a] formal and effective legal system which guarantees all citizens and enterprises that contracts are honoured and upheld, the rule of law is respected and property rights are secure, is a key condition not only for attracting investment, but also for generating certainty, and nurturing trust and fairness in society … They also entail the obligation to comply with the rules and regulations established by society". [14] In this sense, enhancing remedies to rights violations by addressing access to labour justice is synonymous with strengthening the rule of law in the labour market.

7. A number of UN and other multi-stakeholder initiatives have been actively engaging on the topic of access to justice in general. One of the proposals in the above-mentioned report *Our Common Agenda* was the development of a new vision for the rule of law, which "would put people at the centre of justice systems". Moreover, The Pact for the Future, recently adopted at the UN, reaffirms the need for "efforts to build peaceful, just and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels and uphold human rights and fundamental freedoms". [15] However, the existing international and national normative guidance on access to justice does not deal specifically with access to justice in the world of work – apart from the guidance on access to remedy, which has progressively been developed at the national and global levels.

8. The 2019 ILO Centenary Declaration for the Future of Work recalls that persistent inequalities and injustices constitute a threat to securing decent work for all. It also establishes that "[t]he ILO must

[12] A *rights* dispute is a disagreement between a worker or workers and their employer concerning the violation of an existing entitlement embodied in the law, a collective agreement or under a contract of employment. An *interest* dispute is a disagreement between workers and their employer concerning future rights and obligations under the employment contract. See ILO, *Labour Dispute Systems: Guidelines for Improved Performance*, 2013.

[13] ILO, *Towards a Renewed Social Contract*, para. 76.

[14] ILO, Resolution and conclusions concerning the promotion of sustainable enterprises, International Labour Conference, 96th Session, 2007, Conclusions, para. 11(9).

[15] UN General Assembly, resolution 79/1, The Pact for the Future, A/RES/79/1, 2024, section I, action 7.

carry forward … its constitutional mandate for social justice by further developing its human-centred approach to the future of work, which puts workers' rights and the needs, aspirations and rights of all people at the heart of economic, social and environmental policies". [16] In this context, there is an urgent need to better link SDGs 16, 8 and 10 within a human-centred perspective to advancing social justice, securing decent work and reducing inequalities in the world of work. Access to justice is a key element of the ILO's mandate. [17] The Organization is best placed to work towards bridging these SDGs and developing international policy guidance aimed at making rights at work a reality for all.

1.2. International Labour Conference resolutions and conclusions addressing LDPR

9. The International Labour Conference has regularly underlined the importance of LDPR and the need for the ILO to strengthen investment in this area. A number of examples are given below.

96th Session, 2007

Resolution and conclusions concerning the promotion of sustainable enterprises, Conclusions, para. 11(9)

- Recognizes the rule of law and secure property rights as one of the basic conditions of an enabling environment for sustainable enterprises.
- Significance of a formal and effective legal system which guarantees all citizens and enterprises that contracts are upheld, the rule of law is respected and property rights are secure.

[16] ILO, ILO Centenary Declaration for the Future of Work, International Labour Conference, 107th Session, 2019, Para. I(D).

[17] See, for example, the original version of Article 41 of the ILO Constitution (Part XIII of the Treaty of Peace of Versailles): "Ninth. Each State should make provision for a system of inspection in which women should take part, in order to ensure the enforcement of the laws and regulations for the protection of the employed".

101st Session, 2012 Resolution and conclusions concerning the recurrent discussion on fundamental principles and rights at work, Conclusions, paras 6(a), 15(a) and 17(a)	• Significance of respect for the rule of law, an independent judiciary, transparent and effective governance, functioning public institutions and an absence of corruption. • Expeditious, fair and unbiased dispute-resolution mechanisms. • Strengthen the capacity of national courts and institutions involved in law enforcement, including an independent judiciary.
102nd Session, 2013 Resolution and conclusions concerning the recurrent discussion on social dialogue, Conclusions, para. 12(6)	• Strengthen and improve the performance of LDPR systems and mechanisms, including for the effective handling of individual labour complaints, through research, expert advice, capacity-building and exchange of experiences.
105th Session, 2016 Resolution and conclusions concerning decent work in global supply chains, Conclusions, paras 11, 18 and 23(b)	• Non-judicial and operational-level grievance mechanisms and the need to ensure that workers have access to legal remedies, including in export processing zones. • Rule of law and independent and effective judicial systems, implementation and enforcement of national law, and building the capacity of all enterprises to comply with national law.
106th Session, 2017 Resolution and conclusions concerning fair and effective labour migration governance, Conclusions, paras 7 and 17	• Effective enforcement of migrant workers' access to justice, irrespective of migrant status, calling for a coordinated approach
107th Session, 2018 Resolution and conclusions concerning the second recurrent discussion on social dialogue and tripartism, Conclusions, paras 3(j) and 5(j)	• Establishment and development with social partners of LDPR mechanisms that are effective, accessible and transparent. • Strengthen LDPR systems at various levels that promote effective social dialogue and build trust.
111th Session, 2023 Resolution and conclusions concerning the second recurrent discussion on labour protection, Conclusions, para. 22(n)	• Guarantee migrant workers' access to justice, access to effective remedies and dispute settlement.
112th Session, 2024 Resolution and conclusions concerning the third recurrent discussion on fundamental principles and rights, Conclusions, para. 17(b) and(d)	• Expand the coverage of labour laws, establish enabling regulatory frameworks, ensure effective enforcement and strengthen relevant institutions to uphold the rule of law, good governance and protection and promotion of human rights. • Effective, independent, impartial and accessible judicial and non-judicial LDPR mechanisms for all, including grievance mechanisms.

1.3. Purpose and structure of this report

10. Although labour justice has been in the background of many ILO expert meetings, International Labour Conference committees and standard-setting discussions on various topics, the issue of LDPR as a stand-alone subject has not been addressed by a specific ILO tripartite meeting to date. The Tripartite Technical Meeting on Access to Labour Justice for All to be held in 2025 will be the first ILO meeting devoted entirely to this subject.

11. The Meeting will seek to exchange views and perspectives, on a tripartite basis, concerning access to labour justice, and will provide the ILO Governing Body with recommendations: [18]

> on further steps to provide **clear and integrated policy guidance** of a normative or non-normative nature for achieving inclusive access to labour justice, through effective labour dispute prevention and resolution institutions and mechanisms, while considering generally accepted principles of effectiveness for access to labour justice and the diversity of legal and practical solutions to realize them.

12. As a result, informed by the Meeting, the Governing Body would subsequently "decide on subsequent actions, such as possibly placing an item on the agenda of a future session of the Conference". [19]

13. To facilitate the discussion of the Meeting, this report provides an overview of the scope of access to labour justice and the range of dimensions it covers. It proceeds on the basis that access to labour justice is integral to the notion of social justice itself, [20] as well as on the assumption that the overall effectiveness of labour dispute governance systems is a determining factor in preventing conflicts, realizing rights at work and strengthening social peace.

14. Access to labour justice is a complex, evolving and multifaceted notion. LDPR mechanisms are rooted in national industrial relation systems and are therefore quite diverse in their form. The scope of the report covers all settlement mechanisms for both rights disputes and interest disputes, as well as comparative law and practice. This includes dispute–resolution procedures related to collective bargaining, as well as voluntary arbitration processes for interest disputes and industrial action. The report also addresses relevant issues arising from the future of work, such as technology and digital transition, as well as the transnational dimensions of labour disputes. However, the report does not address the issue of the interpretation of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) in relation to the right to strike, which is the subject of a specific process overseen by the Governing Body. Due to the constraints associated with the length of the report, some components of access to labour justice will not be examined in detail.

15. The report is organized as follows.

- Section 2 provides the overall context by describing recent developments, as well as challenges and opportunities with respect to access to labour justice, including developments in the field of transnational labour disputes.

[18] ILO, *Agenda of Future Sessions of the International Labour Conference*, GB.349/INS/2, 2023, para. 33 (emphasis added).

[19] ILO, *Agenda of Future Sessions of the International Labour Conference*, GB.349/INS/2, para. 34.

[20] ILO, *Advancing Social Justice: Report of the Director-General*, ILC.111/I(A)(Rev.), 2023, paras 6 and 50.

- Section 3 provides an overview of the existing international normative guidance on access to labour justice, encompassing UN and other sources of international law and the body of international labour standards.
- Section 4 provides an overview of LDPR systems taken from comparative law and practice, based on recent ILO research in this area.
- Section 5 focuses on the operationalization of access to labour justice through ILO technical assistance, research and partnerships. It also presents the principles of effectiveness in relation to LDPR institutions.
- Section 6 draws these threads together to sketch the building blocks of effective and human-centred LDPR systems that could frame further action and guidance going forward.

▶ 2. Developments, challenges and opportunities

2.1. Introduction

16. A number of recent trends in labour markets around the world present specific challenges to, as well as opportunities for, improving access to labour justice. At the outset, it is essential to recognize the close relationship between LDPR and the broader industrial relations and legal systems in which it operates. [21] Freedom of association and the effective recognition of the right to collective bargaining are enabling rights for all the other rights at work [22] that promote sound industrial relations. A cooperative industrial relations climate and the use of consensus-based approaches can help prevent disputes – or at the very least can prevent the escalation of collective disputes into strikes and lockouts, and can also prevent formal legal proceedings in the case of individual disputes. [23]

17. The trend of individualization of work relations, [24] coupled with the decline of trade union density and collective bargaining coverage, has also had an impact on access to labour justice. Labour laws have responded by providing various additional rights to workers as individuals, rather than as part of collective regulation. Anti-discrimination laws are one example of a legal area seeking to address the multiple ways in which workers may experience disadvantage and exclusion based on individual attributes rather than belonging to a group or community. This trend towards individualization is also reflected in the increase of individual labour disputes, [25] the causes of which are complex and vary across countries and regions. [26]

[21] ILO, *Access to Labour Justice: Comparative Law and Practice on Labour Disputes Prevention and Resolution*, 2023; Aristea Koukiadaki, *Individual and Collective Dispute Resolution Systems: A Comparative Review* (ILO, 2020).

[22] ILO, *ILO Integrated Strategy for the Promotion and Implementation of the Right to Collective Bargaining*, GB.349/POL/2, 2023, para. 2.

[23] ILO, *Labour Dispute Systems*, 5.

[24] ILO, *A Challenging Future for the Employment Relationship: Time for Affirmation or Alternatives?*, The Future of Work Centenary Initiative, Issue Note No. 3, November 2016.

[25] ILO, *Social Dialogue: Recurrent Discussion under the ILO Declaration on Social Justice for a Fair Globalization*, ILC.102/VI, 2013, para 134, box 2.9.

[26] Minawa Ebisui, Sean Cooney and Colin Fenwick, eds, *Resolving Individual Labour Disputes: A Comparative Overview* (ILO, 2016); ACAS, "Disputes and their Management in the Workplace: A Survey of British Employers", 2020.

18. Related to this are the challenges around the scarcity of data of recent trends in labour disputes (section 5.3). While the broad trend of increasing individual disputes is well understood, [27] much less is known about the substantive basis of those disputes. Recent ILO research [28] suggests that one common topic of dispute is whether a termination of employment is lawful or fair. Other recurrent issues of individual disputes relate to wage claims, discrimination, working hours, overtime and leave entitlements, social security payments, severance pay, notice periods and occupational safety and health. In relation to collective disputes, the issues highlighted revolved around the capacity of trade unions to conclude collective agreements, the representativeness and recognition of employers' and workers' organizations, violations of the right to organize and bargain collectively and acts of discrimination against union officials. [29]

19. Significantly, there are several broader global trends that are impacting and shaping both the occurrence of labour disputes and the mechanisms employed for their prevention and resolution. Deepening regional and global economic integration lend a transnational dimension to labour disputes. As corporations expand their operations across jurisdictions, new questions are emerging around determining jurisdiction over labour disputes. Transnational mechanisms providing access to labour justice have emerged, some of these under the purview of trade agreements. New and emerging technological developments in the world of work, as well as their application to dispute-resolution processes, have given rise to both challenges and opportunities that may be harnessed. At the same time, existing trends in labour markets, such as international and domestic labour migration, as well as persisting informality, continue to pose a challenge to ensuring access to labour justice. The following subsections briefly address some of these issues in the context of making access to labour justice a reality for all.

2.2. Private international law and extraterritorial jurisdiction

20. Under the established principle of territoriality in international law, States possess sovereignty over their territory and have jurisdiction over events and persons within that territory. The corollary is that States are required to establish dispute-resolution mechanisms to ensure that any legal or moral person whose rights have been violated can access justice. Over the years, the expansion of an open global economy relying on economic diversification along supply chains has also caused labour contracts to increasingly assume transnational dimensions, requiring guidance from private international law (conflict of laws) to determine which court has jurisdiction and which law governs a given legal dispute. The rules of private international law also help establish the conditions under which a decision handed down by a foreign court can be recognized and enforced domestically.

21. The extraterritorial application of national laws (extraterritoriality) provides an additional legal framework in which to address labour disputes involving a cross-border dimension. The notion of "extraterritoriality" or "extraterritorial jurisdiction" refers to the competence of a State to make, apply and enforce rules of conduct in respect of persons, property or events beyond its territory. [30] This type of cross-border regulation typically applies in the context of gross human rights violations to address abuses committed by nationals of one country in other jurisdictions, such as in cases of child prostitution. Some of the crimes against humanity and war crimes listed in the

[27] ILO, *Social Dialogue*, para. 134, box 2.9.

[28] ILO, *Access to Labour Justice: Comparative Law and Practice on Labour Disputes Prevention and Resolution*, 2023.

[29] European Foundation for the Improvement of Living and Working Conditions, "Collective Labour Disputes in the EU", 2022.

[30] See Oxford Public International Law, "Extraterritoriality".

Rome Statute of the International Criminal Court [31] for which the principle of "universal jurisdiction" may apply overlap with international labour standards, such as those concerning forced labour, sexual slavery or child soldiers. This principle provides for a State's jurisdiction over crimes against international law, even when the crimes did not occur on that State's territory and neither the victim nor perpetrator is a national of that State. The scope and application of the principle is being discussed by the United Nations. [32]

22. In line with the principle of territoriality, international labour standards rarely refer to issues of conflict of laws or extraterritorial jurisdiction, in part due to the fact that labour laws are generally regarded as an issue of national prerogative. The Maintenance of Social Security Rights Convention, 1982 (No. 157) is an exception, when underlining the importance of "**avoiding conflicts of laws** and the undesirable consequences that might ensue for those concerned" (Article 5(1); emphasis added). The Worst Forms of Child Labour Recommendation, 1999 (No. 190) is an exception as well, when referring to measures "providing for the prosecution in their own country of the Member's nationals who commit offences under its national provisions for the prohibition and immediate elimination of the worst forms of child labour **even when these offences are committed in another country**" (Para. 15(d); emphasis added). Overall, however, despite the mounting prevalence of conflicts of laws in the context of labour disputes, this topic is not often addressed by ILO standards. [33]

2.3. Technological developments

23. Technological applications in the area of access to labour justice encompass a wide range of functions. As a starting point, digital tools have served to disseminate information and increase general awareness of labour laws and rights at work. They have also helped connect affected persons more effectively to legal aid services and supporting institutions. Technology-assisted negotiations have been seen to be successful with digital tools to streamline communication, exchange documents, schedule video calls and meetings and manage the overall negotiation process. Other emerging applications of technology to LDPR include online blind-bidding procedures to help the parties reach an agreement on a settlement sum and online jury-based procedures that allow many jurors to express their opinion on the resolution of the dispute. [34] Beyond this, there are a number of direct applications to judicial mechanisms for LDPR (see box below). These technological applications present a number of challenges and opportunities that deserve close consideration. [35]

24. Given the new and emerging applications of technology, there is an urgent need to review the management of labour conflict in light of digitalization and how it has impacted access to labour

[31] International Criminal Court, Rome Statute of the International Criminal Court, 2021.

[32] UN General Assembly, The Scope and Application of the Principle of Universal Jurisdiction: Report of the Secretary-General, A/78/130, 2023.

[33] Existing studies include Ulla Liukkunen, "Decent Work and Private International Law", *The Rabel Journal of Comparative and International Private Law* 86, No. 4 (2022): 876–904; see also Jean-Michael Servais, "The Contemporary Quest for Social Justice: Some Further Thoughts on the ILO Contribution", in *Social Justice and the World of Work: Possible Global Futures*, eds Brian Langille and Anne Trebilcock (Bloomsbury, 2023).

[34] ILO, "Brief on Technology and Access to Justice", forthcoming.

[35] See for example Larry A. DiMatteo et al., eds, *The Cambridge Handbook of Lawyering in the Digital Age* (Cambridge University Press, 2022); see also ILO, *Report on the Rapid Assessment Survey: The Response of Labour Dispute Resolution Mechanisms to the COVID-19 Pandemic*, 2021.

justice for all.[36] Technological applications in the world of work have led to a multitude of developments, including the emergence of the platform economy,[37] remote work, work from home, and the application of artificial intelligence and robotics to work functions and tasks, to name only a few. On the one hand, these developments can be a source of labour disputes, including regarding how work processes can be managed in light of digitalization.[38] On the other hand, technology can equally be leveraged in LDPR processes to ensure speedy, simplified and effective access to justice. While some jurisdictions had already applied technological improvements to their dispute-resolution procedures, in most cases this was observed following the COVID-19 pandemic, when several LDPR institutions accelerated the use of technological solutions to ensure the continuation of services.[39, 40]

▶ Court technology

"Court technology" refers to a wide range of technological applications intended to support the functioning and administration of public courts. These technologies can be aimed at different actors involved in litigation: the parties to the dispute; their legal representatives; judges; and bailiffs and/or the court's administrative support staff.

Technological applications in courts may include:

- providing information about and supporting the collection of court fees;
- allowing the electronic filing of a claim and the maintenance of electronic case files to allow remote access, together with facilitating the digital service (or notification) of documents to the counter-party;
- facilitating remote hearings through video-conferencing for parties to present their case or for the cross-examination of witnesses;
- supporting language translation of documents, as well as interpretation during oral hearings; and
- aiding a judge's decision-making through digital assistants for legal research, such as identifying relevant case law or summarizing case files, assistance in drafting of orders or judgments, as well as the more far-reaching possibility of "robot courts" that automatically generate judgments with no or limited human oversight.

Source: ILO, "Brief on Technology and Access to Labour Justice", forthcoming.

2.4. Labour migration and the informal economy

25. Access to labour justice is an important consideration for employers and workers in vulnerable situations, such as those operating in the informal economy and migrants. A large number of workers and enterprises remain confined to the informal economy, which accounts for more than 60 per cent of total employment. The Resolution and conclusions concerning decent work and the informal economy recognize the importance of the implementation and enforcement of rights in

[36] The ILO Centenary Declaration, in paragraph IA, emphasizes that the transformative changes of today's world of work are driven, among other things, by technological innovations, which have profound impacts on the nature and future of work.

[37] Setting standards for the effective resolution of labour disputes in the platform economy will be covered by a standard-setting discussion that is expected to be initiated at the 113th Session of the International Labour Conference in 2025 and completed in 2026; see ILO, *Realizing Decent Work in the Platform Economy*, ILC.113/V(1), 2024.

[38] ILO, *Social Dialogue Report 2022: Collective bargaining for an inclusive, sustainable and resilient recovery* for an overview of how technological transitions are being addressed in recent collective bargaining agreements.

[39] ILO, *Report on the Rapid Assessment Survey*.

[40] European Commission for the Efficiency of Justice, *European Judicial Systems: CEPEJ Evaluation Report – 2024 Evaluation Cycle (2022 data)*, 2024.

the informal economy on the basis of improved labour inspection systems and access to legal aid and the justice system.

26. However, few models of such dispute resolution in the informal economy have been identified. A significant proportion of informal enterprises tend to be small economic units, while informal workers may be self-employed, work for multiple employers or lack a clear employment status. Furthermore, it is well understood that when informal workers do negotiate, these negotiations are often not with counterpart employers or labour-users but with public authorities, for which no formal dispute-resolution channels may be available. [41] For example, this is the case of street vendors or waste-pickers negotiating with municipal authorities. [42] For these reasons, extending access to labour justice and effective mechanisms for LDPR in the informal economy remains a significant challenge.

▶ The Mathadi Boards of Maharashtra, India

Mathadis are informal workers who carry loads on their heads, backs or shoulders, loading and unloading material and goods at markets, shops and factories. The Mathadi Boards in the State of Maharashtra were established in terms of the Maharashtra Mathadi, Hamal, and other Manual Workers (Regulation of Employment and Welfare) Act 1969. These Boards are of tripartite composition and financed through a levy charged to labour-users (termed as "employers" under the Act). Along with performing important functions such as registering workers, fixing wages and providing social security benefits to workers, the Boards also provide a valuable dispute-resolution function, particularly in the resolution of disputes related to wages and worker registration.

Source: ILO, "Strengthening State-Level Social Dialogue Institutions in Maharashtra, Tamil Nadu and Kerala", March 2019.

27. Another difficult-to-reach group insofar as access to labour justice is concerned are migrant workers, in particular low-wage migrant workers who are susceptible to exploitation, especially during their recruitment. The ILO's general principles and operational guidelines for fair recruitment [43] accordingly emphasize access to justice for this group (see box below). [44] The Migration for Employment Convention (Revised), 1949 (No. 97) prohibits inequality of treatment between migrant workers in a regular situation with nationals in four distinct areas, including with respect to access to justice. [45] This requires both countries of origin and countries of destination to ensure that migrant workers, like other workers, have the right to access legal proceedings at the national level. [46]

[41] WIEGO, *Handling Disputes between Informal Workers and Those in Power*, 2009.

[42] See example provided in Verena Schmidt et al., *Negotiations by Workers in the Informal Economy,* ILO Working Paper 86, 2023.

[43] ILO, *General Principles and Operational Guidelines for Fair Recruitment and Definition of Recruitment Fees and Related Costs*, 2019.

[44] ILO, *Fair Recruitment and Access to Justice for Migrant Workers: Discussion Paper*, 2022.

[45] Art. 6(1); see also ILO, *Promoting Fair Migration: General Survey concerning the Migrant Workers Instruments*, ILC.105/III/1B, 2016, para. 82. In this respect, Article 18(1) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families provides that "Migrant workers and members of their families shall have the right to equality with nationals of the State concerned before the courts and tribunals. In the determination of any criminal charge against them or of their rights and obligations in a suit of law, they shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law".

[46] See also ILO, *Fair Recruitment and Access to Justice for Migrant Workers*; ILO, *Access to Justice for Migrant Workers in South-East Asia*, 2017, and; ILO, *Justice across borders: Access to labour justice for migrant workers through cross-border litigation*, Geneva: International Labour Office, 2024.

▶ General principles and operational guidelines for fair recruitment

These general principles and operational guidelines, which were adopted by the ILO in 2019, include a component on labour dispute resolution and grievance handling, underlining the need to ensure that workers, irrespective of their presence or legal status in a State, have access to free or affordable grievance and other dispute-resolution mechanisms.

See: General principle 13, Operational guidelines 8 and 27.

2.5. Transnational mechanisms providing access to labour justice

28. Finally, an important development in relation to access to labour justice is the emergence of a number of transnational mechanisms providing for LDPR. About one of three trade and investment agreements – particularly those involving Canada, Chile, the European Union (EU), New Zealand, the United Kingdom and the United States of America – contain labour provisions, which among other requirements may include requirements to abide by certain international minimum standards; adequately enforce the applicable domestic labour law; and refrain from weakening domestic labour standards in order to attract investment or gain a competitive advantage. [47] These provisions are often accompanied by complaint mechanisms through which individuals or groups can raise alleged compliance deficits of a State party with a designated office in another State party. [48] Dispute-settlement processes in relation to labour provisions in trade agreements, which can be triggered by a third-party complaint or by a party on its own motion, typically begin with formal consultations between the parties. If these consultations fail to reach an amicable conclusion, many trade agreements allow for dispute settlement to be escalated to a panel with a mandate to determine whether the party in question has conformed with its obligations under the agreement. A number of trade agreements provide for steps to be taken to implement the panel's decisions, and in some cases they allow for the suspension of benefits or the imposition of fines as a last resort. [49] In practical terms, complaints by unions and other stakeholders have been filed under several trade agreements, [50] while under three agreements labour-related disputes have emerged that led to decisions by a panel. [51]

[47] See data available at ILO, "Labour Provisions in Trade Agreements Hub", which refers to trade agreements that are in force and have been notified to the World Trade Organization.

[48] This is notably the case of the trade agreements adopted by Canada, the European Union and the United States. See Marva Corley-Coulibaly, Gaia Grasselli and Ira Postolachi, *Promoting and Enforcing Compliance with Labour Provisions in Trade Agreements: Comparative Analysis of Canada, European Union and United States Approaches and Practices* (ILO, 2023).

[49] Gabrielle Marceau, Rebecca Walker and Andreas Oeschger, "The Evolution of Labour Provisions in Regional Trade Agreements", *Journal of World Trade* 57, No. 3 (2023): 361–410. An exception to the model described above is the Rapid Response Labour Mechanism under the United States–Mexico–Canada Agreement (USMCA), which also allows imposing trade sanctions at the company level; see Graciela Bensusán, "Labour Reforms in Mexico and International Trade Negotiations: From the North American Free Trade Agreement to the United States–Mexico–Canada Agreement", in *Integrating Trade and Decent Work, Volume 2: The Potential of Trade and Investment Policies to Address Labour Market Issues in Supply Chains*, eds Marva Corley-Coulibaly, Franz Christian Ebert and Pelin Sekerler Richiardi (ILO, 2023), 143–172.

[50] Including the USMCA, the Dominican Republic–Central America–United States Free Trade Agreement (CAFTA–DR), the United States–Colombia, the United States–Peru, the United States–Bahrain, the Canada–Colombia, the EU–Colombia and the Ecuador–Peru Agreements, and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership; see data available at ILO, "Labour Provisions in Trade Agreements Hub".

[51] This involved a dispute between the United States and Guatemala under CAFTA–DR (handed down in 2017), a dispute between the EU and the Republic of Korea under the EU–Republic of Korea Agreement (handed down in 2021) and a dispute between the United States and Mexico under the USMCA (handed down in 2024); see data available at ILO, "Labour Provisions in Trade Agreements Hub".

29. Apart from complaint and dispute-settlement mechanisms under trade agreements, transnational mechanisms facilitating access to labour justice include a number of other institutional arrangements. Regional human rights courts have increasingly been engaging with labour-related jurisprudence, providing legal interpretation on the scope and content of rights at work, as well as serving as forums for labour dispute resolution. [52] Complaint mechanisms have also emerged in the context of supply chain-related transnational multi-stakeholder initiatives, including companies' operational-level grievance mechanisms; enforceable brand agreements such as the International Accord for Health and Safety in the Textile Industry; and other multi-stakeholder initiatives such as those of the Fair Labor Association and the Fair Wear Foundation. [53] Finally, an interesting development in the area of access to labour justice has been the establishment of dedicated accountability mechanisms to foster the implementation of their labour (and other sustainability-related) safeguard policies by development finance institutions such as the World Bank, the International Finance Corporation, the African Development Bank and the European Bank for Reconstruction and Development. These mechanisms typically include a non-judicial alternative dispute resolution (ADR) or mediation dimension, through which workers' organizations and other stakeholders can raise concerns regarding the conduct of companies receiving the financial services of a development finance institution, which are often supply chain-related. [54]

30. These transnational mechanisms have developed either in the context of bilateral and plurilateral trade agreements, regional human rights courts, development finance institutions or in some cases as private initiatives within supply chains, with little if any linkages with national-level LDPR systems. Nevertheless, they are increasingly being leveraged by social partners for LDPR purposes and form an important institutional pathway for access to labour justice. For these reasons, it is important to consider how such transnational mechanisms for LDPR could be better coordinated with national labour justice systems.

▶ 3. International law and policy framework

3.1. Access to justice: International and regional guidance

31. Access to justice is a fundamental principle of the rule of law enshrined in SDG 16. It ensures that individuals can make their voices heard, exercise their rights, have access to independent and impartial courts, obtain a remedy and hold decision-makers accountable. [55] It is essential for protecting rights, resolving disputes and ensuring that vulnerable groups and entities are not

[52] Filip Dorssemont, "The European Convention on Human Rights as a Fountain of Labour Rights", in *Research Handbook on Labour, Business and Human Rights Law*, eds Janice R. Bellace and Beryl ter Haar (Edward Elgar Publishing, 2019), 314–333; and Franz Christian Ebert, "A Regional Revitalisation of Labour Rights? The Emerging Approach of the Inter-American Court of Human Rights", in Langille and Trebilcock, 227–236.

[53] James Harrison and Mark Wielga, "Grievance Mechanisms in Multi-Stakeholder Initiatives: Providing Effective Remedy for Human Rights Violations?", *Business and Human Rights Journal* 8, No. 1 (2023): 43–65; and Janelle M. Diller, "Multi-Stakeholder Initiatives (MSIs) and the Law of Work", in *The Oxford Handbook of the Law of Work*, eds Guy Davidov, Brian Langille and Gillian Lester (Oxford University Press, 2024), 743–758.

[54] Franz Christian Ebert, "Labour Safeguards of International Financial Institutions: Can They Help to Avoid Violations of ILO Core Labour Standards?", *European Yearbook of International Economic Law* (2019): 107–132; and Yifeng Chen, "The Making of Global Public Authorities: The Role of IFIs in Setting International Labor Standards", in *Good Governance and Modern International Financial Institutions*, eds Peter Quayle and Xuan Gao (Brill, 2019), 184–216.

[55] UN, "United Nations and the Rule of Law: Access to Justice".

overlooked, marginalized or abused. [56] Both the right to an effective remedy and the right to justice, at least in a procedural sense, are internationally recognized human rights. [57] They are also prerequisites that help the enforcement of other rights. [58]

32. Although an internationally agreed definition of the "rule of law" across the international legal system is lacking, [59] international consensus [60] points towards a notion of the rule of law that goes beyond procedural formality, focuses on justice delivery and is rooted in the principles of accountability, justice, equality and the respect of human rights. [61] Access to justice, which is intrinsic to the promotion of the rule of law, encompasses several core human rights recognized by international and regional instruments. Overall, the international legal order covers many aspects of access to justice and several UN agencies and others have defined and operationalized access to justice in various ways. [62] Many of these organizations and stakeholders are members of the Pathfinders, of which the ILO, however, is not currently a member. [63]

33. The instruments listed below provide general guidance on access to justice without specifically addressing the settlement of labour disputes. Other provisions of international and regional human rights instruments advance certain key principles underpinning access to justice, including freedom of association and the effective recognition of the right to collective bargaining. Moreover, these instruments are primarily protecting individual rights, as well as due process and fair trial guarantees of individuals as rights holders. They more rarely encompass collective rights. [64]

[56] UN, "SDGs: Explainers. Goal 16: Fast Facts", fact sheet, January 2019.

[57] Universal Declaration of Human Rights, Art. 8: "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law"; Universal Declaration of Human Rights, Art. 10: "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charges against him"; International Covenant on Civil and Political Rights, Art. 2(3): States parties will "ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy" as well as "ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State".

[58] Francesco Franconi, ed., *Access to Justice as a Human Right* (Oxford University Press, 2007); European Union Agency for Fundamental Rights and Council of Europe, *Handbook on European Law Relating to Access to Justice*, 2016.

[59] In 2004, the UN Secretary-General offered a far-reaching definition of the rule of law; see UN Security Council, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary-General,* S/2004/616, 2004.

[60] UN, "United Nations and the Rule of Law: Key Documents".

[61] UN, "United Nations and the Rule of Law: High-level Meeting on the Rule of Law, 24 September 2012". UN General Assembly, Declaration of the high-level meeting of the General Assembly on the rule of law at the national and international levels A/RES/67/1, 2012, refers in paragraph 12 to "the principle of good governance" and the "effective, just, non-discriminatory and equitable delivery of public services pertaining to the rule of law, including criminal, civil and administrative justice … and legal aid".

[62] See for example UNDP, *Beyond the Pandemic: The Justice Emergency*, 2022; UNDP and IEO, *Evaluation of the UNDP Support to Access to Justice: Annexes*, 2023; and OECD/Open Society Foundations, *Legal Needs Surveys and Access to Justice Guide*, 2019.

[63] See Pathfinders website, https://www.sdg16.plus/about/. Among the UN agencies that are members of the Pathfinders are for instance, UNDP, the United Nations Children's Fund and UN-Women. Members with a labour-related mandate include Alliance 8.7 and the ITUC.

[64] An example of a provision that encompasses a collective dimension is Article 6 of the European Social Charter (1961) and of the revised the European Social Charter (1996), regarding the promotion of conciliation and voluntary arbitration for the settlement of labour disputes in the context of collective bargaining. Another example is the collective right to self-determination of indigenous peoples expressed in the United Nations Declaration on the Rights of Indigenous Peoples, which has been successfully invoked in some cases to demarcate and title ancestral lands (Inter-American Court of Human Rights).

▶ Main international and regional human rights instruments referring to access to justice

- Universal Declaration of Human Rights, 1948
- International Convention on the Elimination of All Forms of Racial Discrimination, 1965
- International Covenant on Civil and Political Rights, 1966
- Convention on the Elimination of all Forms of Discrimination against Women, 1979
- Convention on the Rights of the Child, 1989
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990
- Convention on the Rights of Persons with Disabilities, 2006
- European Convention on Human Rights, 1950
- American Convention on Human Rights, 1969
- African Charter on Human and Peoples' Rights, 1981
- European Social Charter, 1961, and European Social Charter (Revised), 1996
- Charter of Fundamental Rights of the European Union, 2000
- Arab Charter on Human Rights, 2004
- ASEAN Human Rights Declaration, 2012

34. Based on the instruments listed above, a number of components of access to justice can be identified, as set out below. Many of these guiding principles have been further developed by the decisions of international and regional human rights bodies. [65] A classic example is the right to legal aid in civil matters established by the European Court of Human Rights, the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights. Although this jurisprudence is part of the guidance on access to justice, in the interest of conciseness it will not be included in this section. Similarly, while the provisions of UN treaties and regional instruments regarding individual complaints or state-to-state complaints or States' reporting obligations may help to strengthen the implementation of access to justice at the national level, they will not be discussed here for reasons of brevity.

Main components of access to justice included in international and regional human rights instruments [66]

(a) **Right to legal protection and equality before the law.** Article 6 of the Universal Declaration of Human Rights establishes that "everyone has the right to recognition everywhere as a person before the law". Several international and regional human rights instruments also explicitly enshrine equality before the law and include provisions prohibiting discrimination. The principle of equality before the law is often complemented by the principle of equality of treatment regarding legal proceedings.

(b) **Access to judicial institutions/Access to justice.** The right to effective recourse to a competent court or tribunal against acts that violate one's fundamental rights, as well as the right to have one's cause heard, are recognized as fundamental by various international and

[65] See for example the general comments of the UN Human Rights Treaty Bodies (see OHCHR, "General Comments: Treaty Bodies", in particular CCPR general comment 32 (see Human Rights Committee, CCPR, General Comment No. 32: Right to Equality before Courts and Tribunals and to Fair Trial, CCPR/C/GC/32, 2007)); the list of guidelines and recommendations published by the Council of Europe in the area of access to justice (see European Committee on Legal Co-operation, "Recommendations, Resolutions and Guidelines"); or the list of advisory opinions of the Inter-American Court of Human Rights.

[66] A detailed list of international and regional human rights provisions under each of the components will be issued separately on the web page of the Tripartite Technical Meeting on Access to Labour Justice for All.

regional human rights instruments. The notion of "access to justice" is explicitly referred to in Article 13 of the Convention on the Rights of Persons with Disabilities, which requires States parties to ensure "effective access to justice for persons with disabilities on an equal basis with others". The promotion of ADR is sometimes also referred to, such as friendly settlements (Article 39 of the European Convention on Human Rights) or consultation and voluntary arbitration mechanisms (Article 6 of the European Social Charter and the European Social Charter (Revised)).

(c) **Fair trial and public hearing by competent, independent and impartial authorities.** The right to a fair trial and a public hearing by a competent, independent and impartial authority is well recognized as central to access to justice by various international and regional human rights instruments. One of the most comprehensive formulations of the right to a fair trial is provided by Article 8 of the American Convention on Human Rights, which specifically recognizes this right in relation to the determination of obligations of "civil, **labour**, fiscal or any other nature" (emphasis added). These rights entail several components, such as the right to judicial review and appeal, as well as the right to a hearing with due guarantees and within a reasonable time and precise conditions for any derogation. As far as criminal law is concerned, additional components also include, among others, the presumption of innocence; the legal predictability and proportionality of criminal offences and penalties; the right not to be tried or punished twice (non bis in idem); the principle of non-retroactivity (freedom from ex post facto laws); and the right to representation, defence and legal aid.

(d) **Effective remedy and enforcement.** Effective enforcement and remedy include the right to have a court decision effectively enforced, including effective enforcement of the remedy. Failure to execute a judgment may indeed unreasonably obstruct access to justice. The rights to effective enforcement and remedy are reflected in many international and regional human rights instruments, some of them providing specifically for labour-related issues, such as the European Social Charter in the case of employment termination (Article 24). They are also reflected in non-binding instruments, such as the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, 2003, which were adopted by the African Commission on Human and Peoples' Rights and elaborate specifically on the right to an effective remedy. [67] As provided in section 3.2 below, international guidance on access to remedy is also provided by the Guiding Principles on Business and Human Rights (UNGPs).

(e) **Right to defence and legal representation.** The right to defence, legal representation and assistance, throughout all stages of the proceedings, is mostly recognized by international and regional human rights instruments with respect to criminal proceedings. It is also in some cases extended to non-criminal matters. The right to legal assistance requires the provision of effective representation, not just the mere presence of a lawyer. The notion of assistance also includes the measures to be taken to support access to justice by persons with disabilities or in situations of vulnerability.

35. Detailed lists of international and regional human rights provisions under each of the components can be found on the Meeting's web page together with a glossary of working definitions.

[67] African Union, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, 2003, 2003, section C(b). Other provisions of the Principles and Guidelines address the judicial and procedural rights of specific and vulnerable groups, geographical access to judicial services and access to lawyers and legal services.

3.2. Access to remedy

36. The notion of access to remedy is reflected in the third pillar of the Guiding Principles on Business and Human Rights. As summarized in Guiding Principle 25, access to remedy is a foundational principle within the State's duty to protect human rights, whereby "States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy". [68] Guiding Principles 26 and 27 further expand on this State duty, explaining that States "should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms", including by "considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy", and also "should provide effective and appropriate non-judicial grievance mechanisms, alongside judicial mechanisms, as part of a comprehensive state-based system for the remedy of business-related human rights abuse". Access to remedy is also part of the responsibility of business enterprises to respect human rights, requiring them to take action "[t]o make it possible for grievances to be addressed early and remediated directly" and to "establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted". [69]

37. The Office of the United Nations High Commissioner for Human Rights (OHCHR) Accountability and Remedy Project has developed recommendations to strengthen the implementation of the "access to remedy" pillar of the Guiding Principles on Business Human Rights and enhance the effectiveness of the three categories of dispute-resolution mechanisms referred to therein, namely judicial mechanisms, state-based non-judicial mechanisms and non-state-based grievance mechanisms. [70]

38. Overall, the notion that access to remedies encompasses a broader category of measures than access to justice is reflected in the Guiding Principles on Business and Human Rights. These principles interpret "access to remedy" as both a person's ability to access the procedures through which a remedy may be delivered and the ability to obtain an effective remedy from those procedures. [71] Broader dimensions of access to justice have also been highlighted, emphasizing the need to address larger issues of injustice that may not be resolved through individualized remedies for specific human rights abuses but require more fundamental changes in social, political or economic structures. [72]

39. Similar duties and responsibilities regarding access to remedy for governments and multinational enterprises are included in the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration) (see box below). The ILO's support for

[68] UN, *Guiding Principles on Business and Human Rights*, para. 25. See also UN, *Report of the Working Group on the issue of Human Rights and Transnational Corporations and Other Business Enterprises*, A/72/162, 2017.
[69] UN, *Guiding Principles on Business and Human Rights*, para. 29.

[70] OHCHR, *Access to Remedy in Cases of Business-Related Human Rights Abuse: An Interpretive Guide*, October 2024; OHCHR, *Access to Remedy in Cases of Business-Related Human Rights Abuse: A Practical Guide for State-Based Judicial Mechanisms*, September 2024; OHCHR, *Access to Remedy in Cases of Business-Related Human Rights Abuse: A Practical Guide for State-Based Non-Judicial Mechanisms*, September 2024; OHCHR, *Access to Remedy in Cases of Business-Related Human Rights Abuse: A Practical Guide for Non-State-Based Grievance Mechanisms*, September 2024.

[71] OHCHR, *Access to Remedy in Cases of Business-Related Human Rights Abuse: An Interpretive Guide*, 2024, 26.

[72] OHCHR, *Access to Remedy in Cases of Business-Related Human Rights Abuse.*

governments and enterprises in ensuring access to effective remedy also forms part of the ILO strategy on decent work in supply chains. [73]

40. Existing barriers to effective remedies may be addressed by States acting unilaterally through legislative and policy reform, or through judicial decisions. Some States have sought to improve access to remedy through mandatory human rights due diligence regimes. Such laws can help to clarify the legal obligations of companies with respect to the management of human rights risks within their value chains, as well as creating causes of action through which affected stakeholders can seek remedy for harm. [74]

▶ **Relevant extracts from ILO MNE Declaration**

Access to remedy and examination of grievances

64. As part of their duty to protect against business-related human rights abuses, governments should take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction any affected worker or workers have access to effective remedy.
65. Multinational enterprises should use their leverage to encourage their business partners to provide effective means of enabling remediation for abuses of internationally recognized human rights.
66. Multinational as well as national enterprises should respect the right of the workers whom they employ to have all their grievances processed … This is particularly important whenever the multinational enterprises operate in countries which do not abide by the principles of ILO Conventions pertaining to freedom of association, to the right to organize and bargain collectively, to discrimination, to child labour, to forced labour and to a safe and healthy working environment.

Settlement of industrial disputes

67. Governments should ensure that voluntary conciliation and arbitration machinery, appropriate to national conditions, is made available to assist in the prevention and settlement of industrial disputes between employers and workers. The procedure should be free of charge and expeditious.

3.3. Access to labour justice: Existing guidance from international labour standards

3.3.1. Introduction

41. Access to labour justice is essential to the realization of labour rights and the effective implementation of international labour standards. These standards, by codifying rights at work, constitute one of the pillars of the ILO's Decent Work Agenda, the relevance of which is recalled in the 2030 Sustainable Development Agenda. The rule of law, access to justice, access to remedy and the effective realization of labour rights are routinely referred to in a wide range of instruments – spanning Conventions, Recommendations and Protocols, some of which are fundamental.

42. Before embarking on the examination of these instruments, three points need to be recalled. First, a key role of ILO's normative function as a whole – that is, a key role of all the international labour standards – is to prevent labour disputes, notably by providing authoritative guidance and balanced solutions in respect of issues that arise in the world of work and thus could give rise to

[73] ILO, *ILO Strategy on Decent Work in Supply Chains*, GB.347/INS/8, 2023, output 9.

[74] OHCHR, *Access to Remedy in Cases of Business-Related Human Rights Abuse*, 30.

conflict. Second, improved access to labour justice contributes to regulatory clarity and legal certainty, notably through court decisions. Third, part of the body of international labour standards is currently subject to a review guided by the Governing Body, under the Standards Review Mechanism Tripartite Working Group. [75] This review aims at ensuring a clear, robust and up-to-date body of international labour standards that respond to the changing patterns of the world of work for the purpose of the protection of workers and taking into account the needs of sustainable enterprises. Four instruments that deal wholly or primarily with dispute resolution are provisionally scheduled to be reviewed by the Working Group in 2026, together with two instruments on the freedom of association. [76] Other instruments on industrial relations have already been classified as up-to-date. [77]

3.3.2. ILO's normative framework on access to labour justice

43. The ILO adopted specific standards for LDPR between 1950 and 1970, following the adoption of fundamental conventions that guarantee freedom of association and promote collective bargaining. [78] These standards aimed to guide the creation of mechanisms and institutions for labour market governance, fostering social dialogue at all levels and facilitating sound labour relations. [79] Initially, the regulatory approach was institutional rather than human-centred, focusing on mechanisms to prevent or settle labour disputes rather than addressing the human need for justice in cases of individual or collective rights disputes.

44. During the same period, international labour standards began to increasingly recognize labour dispute-resolution outcomes, such as collective agreements, arbitration awards and court decisions, as legitimate and effective means of implementing certain technical standards. [80] The entitlement to remedies, particularly for seafarers, has been referenced in international labour standards since 1920. Instruments adopted since 2000 have become more explicit about the types of remedies to which workers should be entitled, covering aspects such as compensation; personal and material damages; legal assistance; and access to courts, tribunals and other resolution mechanisms. Access to remedies is highlighted in the Violence and Harassment Convention, 2019 (No. 190) and its accompanying Recommendation (No. 206) (see section 3.3.3, box), as well as in the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203). The concept of access to justice in the world of work appeared in international labour standards for the first time in 2014 and 2015. [81]

[75] ILO, "Standards Review Mechanism Tripartite Working Group".

[76] Recommendations Nos 92, 94, 129 and 130. For the provisional schedule of the instruments to be reviewed by the SRM Standards Review Mechanism Tripartite Working Group until 2028, see *Report of the Eighth Meeting of the Standards Review Mechanism Tripartite Working Group*, GB.349/LILS/1, 2023, Annex II.

[77] For example the Collective Agreements Recommendation, 1951 (No. 91) and the Labour Relations (Public Service) Recommendation, 1978 (No. 159). Other up-to-date instruments are also relevant to labour dispute settlement, such as Recommendation No. 158 (see for example Para. 10).

[78] Recommendation Nos 91, 92 and 94, the Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113) and Recommendations Nos 129 and 130.

[79] The Governing Body has listed the instruments under the subject category "Industrial relations" and classified them under the strategic objective of social dialogue.

[80] A total of 46 instruments, the earliest of which was adopted in 1949, reference arbitration awards, while 22 instruments, the earliest of which was adopted in 1963, reference court decisions.

[81] See Recommendation No. 203, section entitled "Remedies, such as Compensation and Access to Justice", and Recommendation No. 204, Para. 11.

45. Among all the international labour standards relevant to access to justice, the Examination of Grievances Recommendation, 1967 (No. 130) and the Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92) are the two standards that address the issue of dispute resolution in more detail. However, as currently structured, different international labour standards identify various aspects of access to justice as instrumental to advancing the central theme of the standards concerned, without offering any systemic organization or standards for facilitating access to justice that are tailored to the specific needs of labour market governance. [82] Consequently, the existing body of international labour standards does not provide a clear definition of "labour disputes" or "labour justice". [83]

46. Furthermore, the way in which elements of access to labour justice are framed in ILO norms also varies. In some instances, they are framed as rights belonging to a single individual or a group of individuals. [84] In other instances, they are shaped as duties imposed on Member States. [85] Overall, the right to access to labour justice for all workers and employers is covered through a thematic lens that has not yet been systemically articulated in ILO standards across a growing variety of labour disputes resulting from changing patterns in the world of work. Similarly, international labour standards do not articulate any clear corresponding obligation for Member States to establish effective and coordinated LDPR systems in respect of all types of labour disputes.

47. The ILO supervisory bodies consistently raise issues of inadequate access to justice in their recommendations in respect of the application of various Conventions. In 2023 alone, the Committee on the Application of Standards (CAS) referred to access to justice in its conclusions concerning three individual country cases. [86] The Committee of Experts on the Application of Conventions and Recommendations routinely refers to access to justice in its recommendations, most frequently in the context of the application of standards on non-discrimination (including anti-union discrimination and towards employers), domestic workers, migrant workers, indigenous peoples, forced labour and child labour – thereby indicating that access to justice is critically important to disadvantaged groups in particular. [87] The Committee on Freedom of Association also regularly refers to notions related to access to labour justice in its decisions, such as due process and fair trial or the need for rapid and effective procedures. [88]

[82] See also: ILO, *Agenda of Future Sessions of the International Labour Conference*, GB.337/INS/2, 2019, Appendix I. para. 25; ILO, *Agenda of Future Sessions of the International Labour Conference*, GB.343/INS/2(Rev.1), 2021, Appendix I, paras 57–60; ILO, *Agenda of Future Sessions of the International Labour Conference*, GB.344/INS/3/1, 2022, Appendix I, paras 69–72.

[83] The absence of a single ILO instrument that establishes consistent and comprehensive principles for labour dispute-resolution systems was noted in the report *Social Dialogue and Tripartism*, ILC.107/VI(Rev.), 2018, para. 184.

[84] Rights-based provisions can be found for example in Conventions Nos 111 and 158 regarding the right to appeal and in Convention No. 169 in relation to land rights disputes.

[85] Duty-based provisions can be found in wide range of instruments, such as Convention No. 190 (Art. 10) or MLC, 2006, Title 5.

[86] Afghanistan (Convention No. 111), Indonesia (Convention No. 98) and Lebanon (Forced Labour Convention, 1930 (No. 29)). One example of CAS conclusions in 2024 on issues related to access to justice concerned Turkey (Convention No. 98).

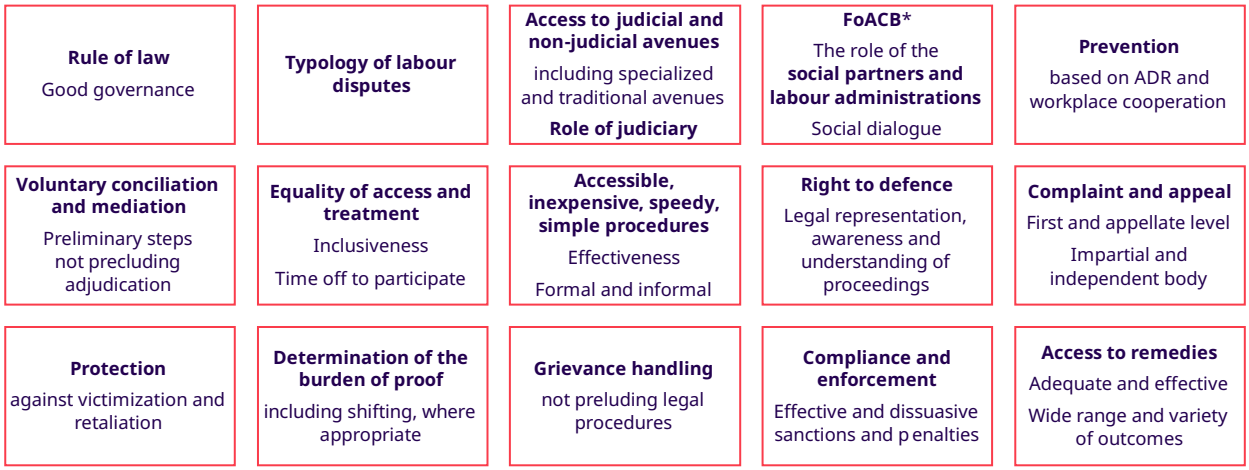
[87] See for example Cambodia (Convention No. 87), 2024; the Comoros (Convention No. 98), 2024; Ecuador (Convention No. 189), 2021; Hungary (Convention No. 111), 2021; Lao, People's Democratic Republic (Convention No. 111), 2024; Peru (Convention No. 169), 2024.

[88] See, for example, ILO, *Freedom of Association: Compilation of Decisions of the Committee on Freedom of Association*, 2018, paras 83, 113, 167 and 168 (due process), paras 163, 168 or 468 (fair, rapid and effective proceedings), paras 1148 or 1165 (sanctions), and paras 468, 1144 and 1145 (remedies).

3.3.3. Foundational elements of access to labour justice emerging from ILO standards [89]

48. Against this background, there exist a number of foundational elements concerning LDPR that stem from nearly 100 years of ILO standard-setting activity. The boxes in the figure below present an overview of these elements, which are further elaborated in this section.

▶ **Foundational elements of access to labour justice based on international labour standards**



***FoACB:** Freedom of association and the effective recognition of the right to collective bargaining.

49. A brief analysis of the relevant provisions of the international labour standards is set out below. It identifies some recurrent themes that point toward essential features of access to labour justice.

(1) **Rule of law and good governance.** Although the rule of law and good governance are in the background of many ILO standards and are a part of the ILO's mandate, explicit references to these notions were included in international labour standards only from 1998 onwards. [90]

Examples:

- Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), Preamble and Para. 23
- Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), Preamble and Para. 23
- Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189), Para. 10(4)(a)

(2) **Typology of labour disputes.** The types of disputes that are referred to in international labour standards vary depending on the parties involved or the purpose under consideration. Some Conventions or Recommendations tend to focus only on collective or industrial labour disputes, while others refer to individual labour disputes or to both types of disputes. Some differentiate between interest and rights disputes, while others are formulated in general terms without referring to any specific type of dispute.

[89] A detailed list of international labour standards provisions under each of these foundational components will be issued separately on the webpage of the Tripartite Technical Meeting on Access to Labour Justice for All.

[90] Recommendations Nos 189, 204 and 205.

Examples:

- Discrimination (Employment and Occupation) Convention, 1958 (No. 111): individual disputes
- Maritime Labour Convention, 2006, as amended (MLC, 2006): broad formulation
- Labour Administration Recommendation, 1978 (No. 158): collective disputes
- Recommendation No. 130: individual or joint grievances but not "collective claims"
- Recommendation No. 92: industrial disputes

(3) **Access to judicial and non-judicial avenues and the role of the judiciary.** The complementarity of proceedings between judicial and non-judicial avenues is a key component of access to labour justice that is referred to in the international labour standards. The role of judicial authorities, courts and tribunals, including specialized bodies, in implementing and enforcing national laws and standards is referred to in various instruments. The provision of ADR services, formal and informal, in addition to judicial proceedings, forms the basis of the continuum of the dispute-resolution processes envisaged by the international labour standards, starting with consensus-based approaches and moving towards arbitration and adjudication processes. The non-judicial processes referred to in ILO standards include voluntary conciliation, mediation and arbitration, mostly referred to with respect to collective disputes. They also include traditional dispute-resolution methods, subject to respect for fundamental human rights, especially regarding indigenous and tribal peoples. Finally, international labour standards also provide for sectoral-level LDPR processes, for example with respect to the maritime sector or regarding labour relations in the public service.

Examples:

- Convention No. 190, Art. 10(b)
- MLC, 2006, Article 5, Title 5, Regulations 5.1 and 5.2.
- Indigenous and Tribal Peoples Convention, 1989 (No. 169), Art. 8(2)
- Labour Relations (Public Service) Convention, 1978 (No. 151), Art. 8
- Employment Relationship Recommendation, 2006 (No. 198), Para. 14
- Recommendation No. 130, Para. 17
- Recommendation No. 92, Paras 1–6
- Medical Care Recommendation, 1944 (No. 69), Paras 112–114

(4) **Freedom of association and the effective recognition of the right to collective bargaining, social dialogue, the role of the social partners and labour administrations**. As noted in section 4.2 above, employers and workers, their respective organizations and the social dialogue mechanisms they engage in are at the heart of labour market governance and therefore of effective labour justice systems while the freedom of association and the effective recognition of the right to collective bargaining are prerequisites for these systems to be effective. The role of employers' and workers' organizations and labour administrations is addressed by various instruments, placing the emphasis notably on voluntary ADR processes set up on a joint basis; the joint examination of cases; consultation of a joint body with equal representation of employers and workers before a decision is taken; conciliation or mediation facilities provided by labour administrations; and the role of labour inspection in preventing labour disputes and promoting compliance. The role of collective bargaining and social dialogue as means of finding effective solutions is also explicitly pointed out.

Examples:

- Convention No. 87
- Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
- Convention No. 151, Art. 8
- MLC, 2006, Article 5, Title 5, Regulations 5.1 and 5.2.
- Collective Bargaining Convention, 1981 (No. 154), Art. 5(2)(e)
- Labour Inspection Convention, 1947 (No. 81), Art. 3(1)(c) and (2)
- Recommendation No. 203, Para. 1(b)
- Recommendation No. 198, Paras 4(g) and 18
- Recommendation No. 158, Para. 10
- Recommendation No. 130, Para. 17(a)
- Recommendation No. 92, Para. 2
- Labour Inspection Recommendation, 1947 (No. 81), Para. 8

(5) **Prevention, based on ADR and workplace cooperation.** Prevention is a cornerstone of the approach of international labour standards to access to labour justice. It aims at limiting both the occurrence and escalation of disputes. It is addressed both directly and indirectly, in terms of the support for ADR and workplace cooperation, providing direction for bilateral labour relations and emphasizing the benefits of a climate of mutual understanding and confidence for business efficiency and workers' aspirations. By preserving relationships, encouraging collaboration and seeking consensus, ADR processes often enable conflicts to be resolved more quickly, in some instances with the support of labour administrations, thereby helping to de-escalate disputes. Preventive measures can also be explicitly spelled out, such as in Recommendation No. 204, which refers to "a combination of preventive measures, law enforcement and effective sanctions", or Recommendation No. 203.

Examples:

- Worst Forms of Child Labour Convention, 1999 (No. 182), Art. 7 (2)
- Termination of Employment Convention, 1982 (No. 158), Arts 7 and 13
- Recommendation No. 204, Para. 22
- Recommendation No. 203, Paras 3 and 4
- Recommendation No. 130, full text, in particular Para. 7
- Communications within the Undertaking Recommendation, 1967 (No. 129), Para. 2(1)
- Co-operation at the Level of the Undertaking Recommendation, 1952 (No. 94), Para. 1

(6) **Voluntary conciliation and mediation, not precluding adjudication.** The principle of voluntarism is one that is directly addressed by several international labour standards. It is also implicit in provisions mandating the use of ADR institutions and workplace-level complaints mechanisms. Voluntarism implies an emphasis on consensus-based solutions to dispute settlement, including through collective bargaining, that are appropriate to national conditions. It implies ensuring that the parties to the dispute maintain full control over both the process and outcome in order to allow them to find a solution to the dispute themselves, in some instances with the support of labour administration. Although voluntarism and ADR processes are essential for industrial relations and access to labour justice, international labour standards provide that they should not preclude adjudication or arbitration processes, especially not regarding rights-based disputes.

Examples:

- Convention No. 98, Art. 4
- Nursing Personnel Convention, 1977 (No. 149), Art. 5(3)
- Plantations Convention, 1958 (No. 110), Art. 61
- Collective Bargaining Recommendation, 1981 (No. 163), Para. 8
- Recommendation No. 92 (in full)

(7) **Equality of access and treatment, inclusiveness and time off to participate in dispute resolution.** Equality of access and treatment are key principles of access to labour justice provided for under various international labour standards, in particular those dealing specifically with the rights of workers belonging to groups that are in vulnerable situations or at risk of discrimination, such as indigenous and tribal persons, as well as domestic workers and migrant workers. Other elements of international labour standards – such as ensuring an understanding of legal proceedings, the provision of legal representation, the determination of who should bear the burden of proof, as well as the ability for workers to get time off to participate in dispute-resolution procedures without suffering any loss of income on account of their participation in such procedures – all relate to the idea of inclusiveness and equality.

Examples:

- Domestic Workers Convention, 2011 (No. 189), Art. 16
- MLC, 2006, Article 5 (2), Title 5, point 4
- Convention No. 169, Art. 8(2)
- Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), Art. 9(2)
- Recommendation No. 130, Paras. 14 and 18

(8) **Accessible, inexpensive, speedy, impartial and simple procedures – formal and informal processes – and effectiveness.** Following the principle that "justice delayed is justice denied", which has been repeatedly recalled by the ILO supervisory bodies, [91] the body of international labour standards recognizes the imperative for dispute-resolution mechanisms to be swift-acting and time-efficient. Given that the costs of dispute-resolution processes and litigation can serve as a significant barrier to workers and employers wishing to pursue claims, there have been several references to the principle of ensuring that procedures, including appeal procedures, are kept affordable. Related to this principle is the requirement that such procedures be accessible, simple, rapid and efficient. In addition to the direct references to the need for speedy and simple procedures, these include the possibility of accessing ADR institutions prior to judicial ones, which can be more time-consuming, and ensuring the presence of workplace-level complaint mechanisms that can quickly address labour disputes. "Effectiveness" in terms of access to justice is also referenced in some instruments.

Examples:

- Convention No. 190, Art. 10(b)
- Convention No. 189, Art. 16
- Recommendation No. 204, Para. 11(s)
- Social Protection Floors Recommendation, 2012 (No. 202), Para. 7

[91] ILO, *Freedom of Association*, para. 170.

- Recommendation No. 198, Para. 4(e)
- Recommendation No. 130, Para. 12
- Recommendation No. 92, Para. 3(1)

(9) **Right to defence and legal representation, legal awareness and understanding of proceedings.** Several international labour standards directly address the issue of access to legal aid and affordable legal representation, spanning the complainants' right to be represented by a person of their choice or by a delegate from a representative employers' or workers' organization, or collective representation. The right to defend oneself against the allegations made is also foreseen, in particular in the context of employment termination or disputes affecting domestic workers. Legal awareness (access to information and training) and access to counsel are also part of the right to defence, as well as ensuring that those accessing the justice system can understand and be understood in the proceedings that concern them, where necessary through the provision of interpretation or by other effective means. It also includes the need to ensure that employers and workers are fully informed of the possibilities of appeal at their disposal.

Examples:

- Convention No. 189, Art. 16
- Convention No. 169, Art. 12
- Convention, No. 158, Art. 7
- Convention No. 143, Art. 9 (2)
- Recommendation No. 206, Para. 16(c) and (d)
- Termination of Employment Recommendation, 1982 (No. 166), Para. 15
- Recommendation No. 130, Para. 13

(10) **Complaint and appeal to an impartial and independent body.** Several international labour standards refer to the importance of ensuring effective and accessible complaint and appeal procedures. In some instances, the right to appeal is referred to in the sense of allowing for the submission of a complaint against an administrative decision or a decision by the employer, such as in the case of employment termination or in connection to social security benefits. Other instruments refer to appeal in the sense of an appellate mechanism that would allow for the provision of correcting any errors, such as a "superior appeal tribunal" (Income Security Recommendation, 1944 (No. 67)). In all instances, ILO standards point to the significance of ensuring that the body to which complaints and appeal can be made is independent and impartial.

Examples:

- Employment Promotion and Protection against Unemployment Convention, 1968 (No. 168), Art. 27(1)
- Convention No. 158, Art. 8(1)and (3)
- Social Security (Minimum Standards) Convention, 1952 (No. 102), Art. 70
- Recommendation No. 204, Para. 29
- Recommendation No. 202, Para. 7
- Recommendation No. 166, Paras 14–15
- Recommendation No. 67, Para. 27(10)

(11) **Protection against victimization and retaliation.** Protection against victimization or retaliatory action in case of exerting a right, including the right to take legal proceedings or present a grievance, without suffering any prejudice whatsoever, is an established principle of dispute resolution recognized by different international labour standards. For example, Convention No. 190 refers to "safe, fair and effective reporting and dispute-resolution mechanisms and procedures", while the MLC, 2006, defines the term "victimization" as far as seafarers are concerned. Protection of the privacy of those individuals involved and confidentiality are also called for in some instruments.

Examples:

- Occupational Safety and Health Convention, 1981 (No. 155), Art. 5(e)
- Protocol of 2002 to Convention No. 155, Art. 3(a)(iv)
- Convention No. 190, Art. 10(b)(iv)
- MLC, 2006, Title 5, Regulations 5.1.5. and 5.2.2, standards A5.1.5 and A5.2.2
- Convention No. 158, Art. 5(c)
- Recommendation No. 130, Paras 2(a) and 13(3)

(12) **Determination of the burden of proof, including shifting where appropriate.** The need for clarity in the determination of the burden of proof is another foundational element of access to labour justice provided by ILO standards. While the general principle is that the burden of proof should rest with the claimant, some instruments provide for the establishment of legal presumptions and the shifting of the burden of proof, in cases in which the burden of proof can pose a significant barrier to workers' claims and access to justice, often in disputes concerning discrimination, maternity protection, employment status or dismissals.

Examples:

- Maternity Protection Convention, 2000 (No. 183), Art. 8(1)
- Convention No. 158, Art. 9(2)
- Recommendation No. 206, Para. 16(e)
- Recommendation No. 198, Para. 11(b) and (c)
- Recommendation No. 143, Para. 6(2)(e)

(13) **Grievance handling, not precluding legal procedures.** ILO standards call for the provision of appropriate workplace-level grievance procedures and complaints mechanisms, both formal and informal, regarding any measure or situation that concerns the relations between employer and worker, or that affects or may affect the conditions of employment. Guidance is also provided at the sectoral level, such as in the MLC, 2006, regarding on-board and onshore complaint procedures for seafarers. [92] However, international labour standards also underscore that establishing mechanisms for dispute resolution as close as possible to the source shall operate together with ensuring the right of workers to apply directly to the competent labour authority or to a labour court or other judicial authority in respect of a grievance, even when ADR mechanisms are provided for.

[92] "Such procedures shall seek to resolve complaints at the lowest level possible. However, in all cases, seafarers shall have a right to complain directly to the master and, where they consider it necessary, to appropriate external authorities." (MLC, 2006, Title 5, standard A5.1.5(2)).

Examples:

- MLC, 2006, Title 5, Regulations 5.1.5 and 5.2.2
- Convention No. 190, Art. 10(b)(i)
- Recommendation No. 130 (in full)
- Special Youth Schemes Recommendation, 1970 (No. 136), Para. 10

(14) **Compliance and enforcement, effective and dissuasive sanctions and penalties.** Several international labour standards underline the importance of effective implementation and enforcement of their provisions, including through the adoption of sufficiently effective and dissuasive sanctions and penalties, without which access to labour justice may remain a dead letter. Settlement decisions must not remain inoperative. The execution of a decision taken by judicial or non-judicial body must be regarded as an integral part of access to justice. Enforcement may require collaboration with labour inspection services, police authorities, social security administration or tax authorities. Various instruments also point to the importance of measures to enhance voluntary compliance.

Examples:

- Convention No. 182, Art. 7
- Convention No. 190, Art. 10(d)
- Work in Fishing Convention, 2007 (No. 188), Art. 40
- Convention No. 81, Art. 3(1)
- Recommendation No. 143, Para. 6(2)(d)
- Recommendation No. 206, Para. 17(g)
- Recommendation No. 204, Paras 22, 26, 29 and 30
- Recommendation No. 203, Para. 13
- Recommendation No. 198, Para. 15

(15) **Access to adequate and effective remedies.** Finally, a fundamental component of effective access to labour justice is the ability of LDPR systems to provide for adequate and effective remedies to the aggrieved parties, as outcomes of justice procedures. A wide range of remedies is provided by ILO standards, including the right to resign with compensation; reinstatement; appropriate compensation for damages; injunctions (orders requiring measures with immediate executory force to be taken to ensure that certain conduct is stopped or that policies or practices are changed); and coverage of legal fees and costs.

Examples:

- Protocol of 2014 to the Forced Labour Convention, 1930, Arts 1(1) and 4(1)
- Convention No. 190, Art. 10(b)
- Convention No. 158, Art. 10
- Recommendation No. 203, Para. 12
- Recommendation No. 206, Paras 14–19 (see box below)

▶ ILO Recommendation No. 206: Enforcement, remedies and assistance to victims of violence and harassment in the world of work

The **ILO Violence and Harassment Recommendation, 2019 (No. 206)** provides the currently most expansive articulation of approaches and measures promoting access to remedies and access to justice needed to address violence and harassment in the world of work (Paras 14–19):

14. The remedies referred to in Article 10(b) of the Convention [No. 190] could include:

(a) the right to resign with compensation;

(b) reinstatement;

(c) appropriate compensation for damages;

(d) orders requiring measures with immediate executory force to be taken to ensure that certain conduct is stopped or that policies or practices are changed; and

(e) legal fees and costs according to national law and practice.

15. Victims of violence and harassment in the world of work should have access to compensation in cases of psychosocial, physical or any other injury or illness which results in incapacity to work.

16. The complaint and dispute-resolution mechanisms for gender-based violence and harassment referred to in Article 10(e) of the Convention should include measures such as:

(a) courts with expertise in cases of gender-based violence and harassment;

(b) timely and efficient processing;

(c) legal advice and assistance for complainants and victims;

(d) guides and other information resources available and accessible in the languages that are widely spoken in the country; and

(e) shifting of the burden of proof, as appropriate, in proceedings other than criminal proceedings.

17. The support, services and remedies for victims of gender-based violence and harassment referred to in Article 10(e) of the Convention should include measures such as:

(a) support to help victims re-enter the labour market;

(b) counselling and information services, in an accessible manner as appropriate;

(c) 24-hour hotlines;

(d) emergency services;

(e) medical care and treatment and psychological support;

(f) crisis centres, including shelters; and

(g) specialized police units or specially trained officers to support victims.

18. Appropriate measures to mitigate the impacts of domestic violence in the world of work referred to in Article 10(f) of the Convention could include:

(a) leave for victims of domestic violence;

(b) flexible work arrangements and protection for victims of domestic violence;

(c) temporary protection against dismissal for victims of domestic violence, as appropriate, except on grounds unrelated to domestic violence and its consequences;

(d) the inclusion of domestic violence in workplace risk assessments;

(e) a referral system to public mitigation measures for domestic violence, where they exist; and

(f) awareness-raising about the effects of domestic violence.

19. Perpetrators of violence and harassment in the world of work should be held accountable and provided counselling or other measures, where appropriate, with a view to preventing the reoccurrence of violence and harassment, and facilitating their reintegration into work, where appropriate.

▶ 4. Comparative law and practice on LDPR

4.1. Legal, institutional and procedural frameworks

50. Comparative legal analysis of LDPR systems reveals the significant diversity of mechanisms and practices across varied legal, socio-economic, political and industrial relations contexts. Nonetheless, there remain certain elementary practices that are common across a wide variety of countries. These are highlighted briefly in this section. [93]

4.1.1. Legal and regulatory frameworks

51. Legal and regulatory frameworks serve the indispensable role of providing legal certainty in upholding the rule of law and ensuring access to justice. [94] Insofar as access to labour justice is concerned for instance, provisions defining individual and collective disputes, as well as those distinguishing between rights-based and interest-based disputes, serve as the legal basis upon which parties to a dispute may approach labour dispute-resolution systems.

52. In general, individual and collective disputes may be legally defined and distinguished, emphasizing either one or various combinations of three factors: (a) the nature of the dispute (rights-based versus interest-based); (b) the parties to the dispute (single or a group of workers or employers); or (c) the source of the rights over which there is a dispute (the individual employment relationship versus collective agreements). A legal definition of individual and collective disputes is important to the extent that it determines – or contributes to determining – the procedural and institutional pathway that a dispute follows.

[93] For further information, see ILO, *Access to Labour Justice: Comparative Law and Practice on Labour Disputes Prevention and Resolution*, 2023.

[94] On legal certainty, see for example UN Security Council, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary-General*, paras 5–8.

▶ **Varied approaches to defining labour disputes**

Definitions that do not distinguish between individual and collective disputes	Definitions of individual and collective disputes	No statutory definition of labour disputes	Definitions based on nature of the dispute (rights-based or interest-based)	Definitions based on the parties to the dispute (single or a group of workers or employers)	Definitions based on the source of the rights (individual employment relationship or collective agreements)
Bangladesh, Brazil, India, Ireland, Kenya, South Africa, Sweden, United Kingdom	Armenia, Bulgaria, Burkina Faso, Niger, Romania, Togo, Viet Nam	Argentina, Chile, Columbia, Germany, Lebanon, Malaysia, Mozambique	Brazil, Burkina Faso, Colombia, Germany, Ireland, Kenya, Lebanon, Niger, Republic of Korea, Serbia, Togo [1]	Albania, [2] Bulgaria, Niger, Togo	Armenia, North Macedonia, Senegal, Viet Nam

[1] In these cases, the distinction is not made explicitly in a statute but is implicit in how disputes are handled. [2] For collective disputes only.

Source: ILO, 2024.

53. A second critical role played by legal and regulatory frameworks is in determining who can access LDPR systems and the extent to which these frameworks can ensure that all participants in the labour market have the right to access them. LDPR mechanisms are typically available to formal workers in an employment relationship. The direct and indirect exclusion of certain categories of employers and workers presents a significant challenge to the effectiveness and inclusiveness of national LDPR systems and the industrial relations system overall. Moreover, it is most often the case that those who are explicitly excluded from legal protection are those who are susceptible to having their rights violated and facing significant barriers to protection and remedy.

54. It is common practice that labour codes and dispute-resolution statutes do not cover workers such as civil servants, police and defence forces, the armed forces and seafarers, as they are granted access to alternate systems for dispute resolution through special regulatory frameworks. However, the challenge lies in providing access to labour justice to those categories who are excluded from the scope of application of labour legislation but left with no means to access labour dispute-resolution mechanisms at all. This is typically the case, for example, for domestic workers. Other excluded categories of workers include agricultural and rural workers, workers in export processing zones, family workers, workers in traditional microenterprises, managerial and executive personnel, apprentices, trainees and workers whose employers are entitled to sovereign or diplomatic immunity. Beyond these explicit legal exclusions, a number of workers or employers may be de facto excluded from access to labour justice on account of operating in the informal economy or because they fall outside the legal boundaries of the employment relationship.

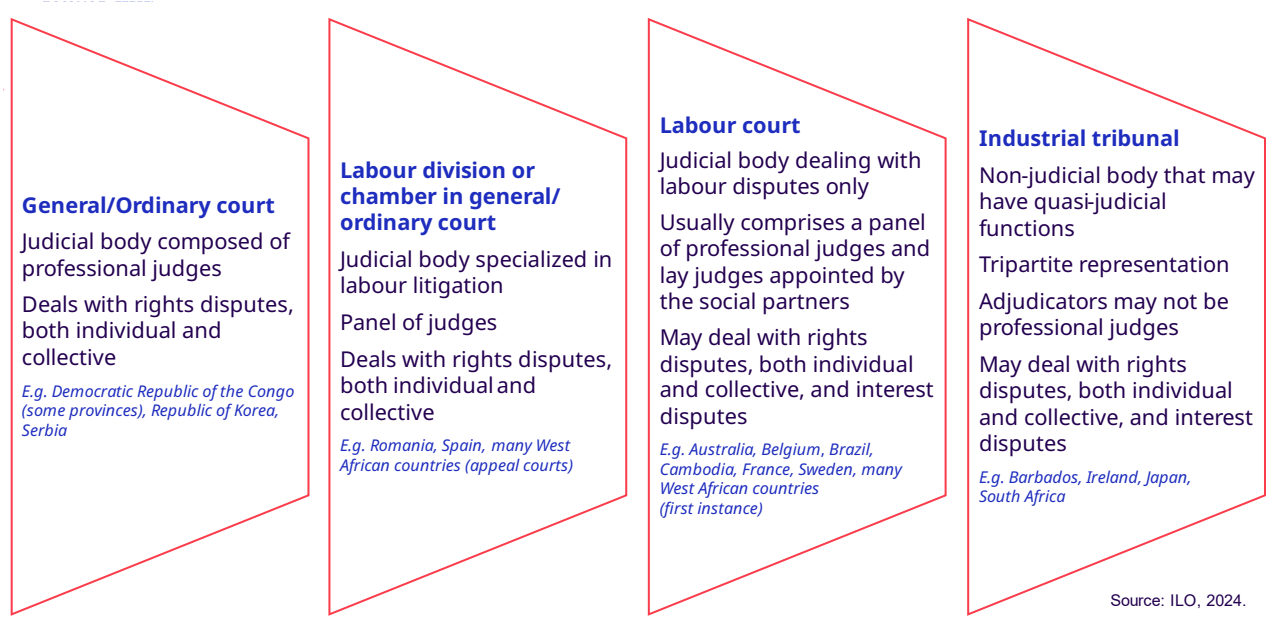
4.1.2. Institutional frameworks

55. A wide variety of institutional arrangements are set up by Member States to prevent and resolve labour disputes. These institutions may vary in the functions they perform in terms of their mandate, composition and governance structures. Regarding the functions performed by various LDPR institutions, this may best be understood in terms of those institutions that exercise final

(or near final) authority to render a binding decision in a dispute (typically judicial or quasi-judicial institutions) and those that use consensus-based mechanisms (typically ADR mechanisms).

56. Despite the high prevalence of administrative and quasi-judicial bodies in LDPR systems, given how often they are invoked by parties, judicial institutions tend to remain the dominant mechanism for resolving labour disputes, particularly rights-based disputes – whether individual or collective. [95] These judicial mechanisms may either be specialized labour courts or ordinary courts in the civil jurisdiction. In some systems parties must exhaust conciliation and/or mediation procedures before submitting a rights dispute for adjudication, while in other systems they have the right – or the only option – to submit a complaint directly to a court. ADR mechanisms for LDPR are normally embedded in the national labour administration system, except for those under the parliament or president, such as the ombuds office or equality bodies. [96] National tripartite bodies and social dialogue institutions can also play a role in dispute mediation and conciliation, especially for collective labour disputes of a certain importance (such as in Argentina, Colombia, Côte d'Ivoire or Senegal). Finally, traditional justice systems can also constitute alternatives to state-based (judicial or non-judicial) processes. When traditional dispute-resolution methods comply with national laws and fundamental rights, they can constitute useful first-level entry points for access to justice, as explicitly recognized, for instance, by the Constitution of South Africa. [97]

▶ Judicial or quasi-judicial bodies



Source: ILO, 2024.

[95] ILO, *Access to Labour Justice: Comparative Law and Practice on Labour Disputes Prevention and Resolution*, 2023.

[96] See for example European Network of Equality Bodies website; and European Commission, Commission Recommendation of 22.6.2018 on standards for equality bodies, 2018.

[97] UN, *Human Rights and Traditional Justice Systems in Africa*, 2016.

▶ Extrajudicial settlement bodies

57. Yet, it is clear from the analysis of judicial and non-judicial institutions that depending on the type of labour dispute and severity of rights infringement, they function more effectively as complementary than as alternative or overlapping mechanisms. Depending on how they are set up in different jurisdictions, this degree of complementarity is achieved to different extents. Ideally, ADR mechanisms serve to reduce the courts' caseload. Equally, courts must recognize and delineate between cases in which conciliation or mediation of the dispute is possible and refer such cases to the appropriate forums when adversarial litigation is unnecessary or premature. In this way, disputing parties will be able to benefit from the advantages of one or both systems, depending on their needs at any given time.

▶ **Advantages and disadvantages: Judicial and non-judicial (ADR) processes**

Judicial processes		Non-judicial (ADR) processes	
Advantages	Disadvantages	Advantages	Disadvantages
• Vested with the authority of the State • Law-enforcement mechanisms • Finality of decision-making • Provide judicial safeguards for certain rights (e.g., anti-union discrimination)	• Adversarial nature of litigation (win–lose) • Not suitable for collective (interest) disputes • May be costly, lengthy and complex, ultimately restricting access to justice for vulnerable groups	• Parties have greater control over the dispute-settlement process • Less procedural and formal, quicker and more affordable • Based on negotiation and consensus-building • Best suited for collective (interest) disputes and some rights-based disputes, in which parties seek to preserve the relationship	• Reliant on parties' willingness to follow through with settlement agreement (risk of low enforcement rates) • Mandatory conciliation/ mediation may unnecessarily delay access to justice for rights violations • Limited margin of negotiation and compromise for rights-based disputes

Source: ILO, 2024.

4.1.3. Procedural frameworks

58. Procedural rules are a critical factor that determine certain essential features of labour dispute-resolution systems. For instance, the costs imposed on parties are a key factor in determining the accessibility of dispute-resolution systems. In addition to fees and costs, other factors influencing the accessibility of labour dispute-resolution systems include the provision of legal aid, the participation of representative organizations and the criteria that determine the admissibility of claims.

▶ **Access to LDPR institutions free of charge**

Judicial institutions	Quasi-judicial institutions	Non-judicial institutions
Bangladesh, Bulgaria, Burkina Faso, Colombia, Niger, Senegal, South Africa, Sweden, Togo	Ireland, Malaysia, Republic of Korea, South Africa	Albania (collective labour disputes only), Brazil (mediation only), Burkina Faso, Colombia, Niger, North Macedonia, Panama, Republic of Korea, Senegal, Serbia, South Africa, Togo

Source: ILO, 2024.

59. Another important feature of LDPR systems is their speediness in the handling of disputes. Simplified and streamlined procedures, set timelines and the efficient processing of applications play a role in allowing for swift access to labour justice. Various jurisdictions specify time limits in which complaints must be heard and addressed in order to ensure that dispute resolution is carried out relatively quickly.

▶ Average number of days provided by law for institutions (judicial and non-judicial) to render a decision

0–15 days	15–30 days	30–90 days
Burkina Faso, Chile, Mozambique, Niger, Panama, Romania, Senegal	Brazil, Montenegro, North Macedonia, Viet Nam	India, Lebanon, Malaysia, Serbia

Source: ILO, 2024.

60. A third and equally important aspect of procedural rules is their role in ensuring fairness in dispute prevention and resolution. This implies that the procedures should ensure that the outcomes of the dispute-resolution process are fair, and that those outcomes are reached – and seen to be reached – in a fair way. [98] In that context, it is important to ensure that there are clear rules of evidence and burden of proof in place, that the possibilities of appeal and legal aid are made available and that the enforcement of final outcomes, whether judgments, awards or settlement agreements, are carried out effectively.

▶ Reversal of the burden of proof (as an exception to general rules on evidence)

Complete reversal of the burden of proof in labour disputes	Reversal of the burden of proof in employment termination cases	Reversal of the burden of proof in discrimination-related cases	Reversal of the burden when "evidence is with the management"
Bolivia (Plurinational State of), Romania	Albania, Armenia, Australia, Burkina Faso, Canada, Chile, China, Croatia, Germany, Ireland, Kenya, Montenegro, Morocco, Mozambique, Niger, Republic of Korea, Senegal, South Africa, Viet Nam	Albania, Lebanon, Republic of Korea, Serbia, South Africa, all EU Member States *	Brazil, Canada, China, Viet Nam

* The reversal of the burden of proof is included in EU law, which must be implemented by al EU Member States. See in particular EU, Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, art. 8; and EU, Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, art. 10.

Source: ILO, 2024.

[98] ILO, *Access to Labour Justice: A Diagnostic Tool for Self-Assessing the Effectiveness of Labour Dispute Prevention and Resolution*, 2023, 28.

61. Finally, a key factor in the effectiveness of LDPR is the voluntary feature of non-judicial methods. In terms of procedural rules and requirements, an important factor is whether legal systems impose the compulsory arbitration of disputes upon the disputing parties. It is necessary to distinguish between compulsory arbitration, [99] that is, arbitration to which parties are subject against their will and to which they are ultimately bound by the arbitral award, and compulsory conciliation, to which parties are obliged to be subjected to by law but the outcome of which they are not ultimately bound to accept. While both systems conflict with the principle of voluntarism, which calls for parties to be free to decide on the methods by which they choose to settle their disputes, the extent to which they do so is different. In the former, both the process and outcome are compulsorily imposed on the parties, but in the latter only the process is mandatory.

4.2. Tripartite and bipartite involvement in LDPR

4.2.1. The contribution of the social partners

(a) The role of collective bargaining

62. Employers and workers and their respective organizations are at the heart of effective labour justice systems, while the freedom of association and the effective recognition of the right to collective bargaining are prerequisites for these systems to be effective. The ILO's integrated strategy for the promotion and implementation of the right to collective bargaining underlines the contribution of social dialogue, including collective bargaining, in the realization of SDG 16. [100]

63. Collective bargaining plays a pivotal role in relation to access to labour justice, not only in terms of prevention but also by providing for processes and mechanisms for dispute settlement – in both the public and the private sectors. Procedures for the settlement of labour disputes typically make a distinction between two types of disputes: interest disputes, which arise during collective bargaining; and rights disputes, which arise over the application or interpretation of a collective agreement. [101]

▶ Collective Bargaining Recommendation, 1981 (No. 163)

> "Measures adapted to national conditions should be taken, if necessary, so that the procedures for the settlement of labour disputes assist the parties to find a solution to the dispute themselves, whether the dispute is one which arose during the negotiation of agreements, one which arose in connection with the interpretation and application of agreements or one covered by the Examination of Grievances Recommendation, 1967." (Para. 8)

[99] "Compulsory arbitration imposed by the authorities or unilaterally sought by the parties engaged in collective negotiations in the case that the parties have not reached an agreement is generally contrary to the principles of collective bargaining. In the view of the ILO supervisory bodies, compulsory arbitration is only acceptable in certain specific circumstances, namely: (i) in essential services in the strict sense of the term, that is those the interruption of which would endanger the life, personal safety or health of the whole or part of the population; (ii) in the case of disputes in the public service involving public servants engaged in the administration of the State; (iii) when, after protracted and fruitless negotiations, it becomes obvious that the deadlock will not be broken without some initiative by the authorities; or (iv) in the event of an acute crisis. However, voluntary arbitration accepted by both parties is always legitimate." (ILO, *Giving Globalization a Human Face: General Survey on the Fundamental Conventions concerning Rights at Work in Light of the ILO Declaration on Social Justice for a Fair Globalization*, 2008, ILC.101/III/1B, 2012, para. 247).

[100] ILO, *ILO Integrated Strategy for the Promotion and Implementation of the Right to Collective Bargaining*.

[101] ILO, *Collective Bargaining: A Policy Guide*, 2015; Susan Hayter, ed., The Role of Collective Bargaining in the Global Economy: Negotiating for Social Justice, 2011; Susan Hayter and Jelle Visser, eds, *Collective Agreements: Extending Labour Protection* (ILO, 2018).

64. The preventive and de-escalation function of collective bargaining is recognized in legislative and industrial relations environments in which social partners opt for voluntary processes in matters that could eventually result in the escalation of a labour dispute. This preventive function is also reflected in labour relations systems in which collective agreements can be seen as social peace treaties of fixed duration, during which strikes and lockouts are limited or prohibited. [102] However, the outcomes of collective bargaining and other forms of social dialogue can also have a regulatory effect that is equally important for the prevention and resolution of labour disputes. In some legal systems, collective agreements determine the procedural pathway for disputing parties. [103]

▶ Fair Work Commission of Australia: Enhancing industrial relations to foster a culture of dispute prevention

The Fair Work Commission of Australia implemented a strategic approach to preventing the escalation of labour disputes by supporting social partners to "build cooperative working relationships using interest-based approaches". The Collaborative Approaches Program provides free support to social partners seeking to address immediate issues, and/or improve long-term workplace processes for resolving conflict through collective bargaining, consultation and joint problem-solving.

(b) Bipartite settlement mechanisms

65. Non-state LDPR procedures can facilitate settlement of labour disputes early and informally, limiting the need for recourse to third parties or formal mechanisms, and also limiting the associated costs, both private and public. Social partners are engaging in bipartite and negotiated processes to address labour disputes that emerge at the workplace, as well as at higher levels such as sectoral or national levels. [104] Bipartite labour dispute settlement processes involve employers and/or employers' organizations on one hand, and workers and/or workers' organizations on the other. This is the case for example in bargaining councils in South Africa, which serve not only as a forum for bargaining but also to resolve rights disputes in their jurisdictions. [105] The social partners are often represented in equal numbers. Bipartite mechanisms may be established through legislative requirements and/or in the context of collective agreements.

66. Bipartite settlement mechanisms also include joint bodies established at the sectoral level, as well as national bipartite processes, such as peak-level social dialogue and collective bargaining, for dispute prevention and resolution. These mechanisms should be taken into account when addressing labour justice systems as a whole.

[102] "if legislation prohibits strikes during the term of collective agreements, this restriction must be compensated by the right to have recourse to impartial and rapid arbitration machinery for individual or collective grievances concerning the interpretation or application of collective agreements." (ILO, *Giving Globalization a Human Face*, para. 142).

[103] For example, see labour laws of Australia, Bangladesh, Brazil, Cambodia, Italy, Paraguay, Philippines, Spain and United Kingdom.

[104] ILO, IRLEX Legal Database on Industrial Relations.

[105] For more information, see ILO, *Access to Labour Justice: Comparative Law and Practice on Labour Disputes Prevention and Resolution*, 2023.

(c) Workplace grievance handling

67. The ILO's approach to grievance handling places a firm emphasis on finding solutions that are worked out in a dialogue between worker and employer within the enterprise. Recalling the importance of a workplace environment that focuses on minimizing grievances, Recommendation No. 130 calls for cooperation between management and workers' representatives to achieve this (Para. 6). The Recommendation also provides for the right to assistance during the process of grievance examination (Para. 13; see also section 3.3.3 above). In many cases, workplace cooperation bodies play an important role in reducing the emergence of workplace grievances by providing a platform for regular consultation between workers and management on matters of mutual interest. [106]

68. Workplace-level mechanisms of this kind may be established by law, or voluntarily by managerial decision or through collective agreements. In some countries, workplace dispute management entails the election of workers' representatives, who may provide similar functions to those of workplace bodies. They can also play a particularly enabling role in granting access to justice for all workers, including non-unionized workers (such as community union representatives in Japan or worker centres in the United States).

69. Even if grievance handling is available at the enterprise level, international labour standards provide that other means of redress should also remain available external to the enterprise, such as ADR and/or judicial resolution. [107]

▶ Labour dispute management by workplace bodies

The functions of workplace bodies may include:

- receiving information and consulting with management on matters relevant to industrial relations and economic performance in the workplace (can be mandatory in some instances, such as economic restructures);
- informing and advising workers on terms and conditions of employment;
- resolving workplace disputes within their scope through voluntarily established procedures or local negotiations; and
- issuing joint decisions, awards, remedies and establishing working conditions or other workplace policies.

Algeria: Participation Committee

Denmark: Cooperation Committee

Germany: Works Council

Japan: Labour–Management Committee

Panama: Company Committee

Poland: Works Council

Senegal: Social Dialogue Committee

Sri Lanka: Employees' Council

70. However, a clear differentiation must be made between workplace grievance handling provided for by ILO standards and the inclusion of grievance/complaints mechanisms in (soft) law instruments, such as the Guiding Principles on Business and Human Rights, the performance standards of international financial institutions or in mandatory human rights due diligence laws. [108] While such complaints mechanisms may be effective in resolving human rights and environmental disputes, they are different from enterprise-level grievance-handling mechanisms.

[106] ILO, "Grievance Handling", Fact Sheet No. 5, March 2018.

[107] Recommendation No. 130, Para. 9.

[108] See for example World Bank, *The World Bank Environmental and Social Framework*, Environmental and Social Standard 2: Labor and Working Conditions; and IFC, "Performance Standards on Environmental and Social Sustainability", 1 January 2012.

(d) Lay judges and representation

71. Employers' and workers' organizations can assist their members in legal proceedings in several ways, including by providing legal advice or representation services in grievance or disciplinary hearings, among others. [109] More formally, a number of legal systems provide for the participation of social partners as lay members in judicial panels, in addition to professional judges. [110] Social partners may also participate as members or decision-makers within quasi-judicial bodies (such as the Fair Work Commission (Australia), the Workplace Relations Commission (Ireland) or the Industrial Court of Malaysia). The rationale for the inclusion of lay judges or social partners members is to improve access to justice by providing balanced perspectives and realities from the labour market, which can enhance the legitimacy of court proceedings, and the appropriateness of their outcomes. [111]

72. The tripartite representation of government, employers and workers in LDPR bodies is an important factor in ensuring expertise in and understanding of the concerns of disputing parties. However, the legitimacy of tripartite dispute resolution may be limited by realities such as the national industrial relations context, in particular union density and the public trust afforded to them, which also need to be considered.

4.2.2. Role of labour administration

(a) Facilitating labour relations, preventing and solving disputes

73. As clearly detailed by the general survey concerning labour administration in a changing world of work, public authorities can assist employers, workers and their organizations to establish LDPR procedures and provide them with LDPR services. In most countries, dedicated directorates, departments or bodies have been set up for the promotion, establishment and pursuit of labour relations. The specific functions performed by these bodies depend largely on the national industrial relations tradition of each country. They are generally responsible for setting the relevant policies and regulatory framework and for providing services to employers and workers and their organizations to support social dialogue and collective bargaining at various levels. [112, 113]

74. LDPR functions can fall within the labour administration system, with the labour ministries having permanent departments or divisions for dispute resolution [114] or convening ad hoc bodies or experts to resolve collective disputes, which are selected from a verified list of suitably qualified independent officials maintained by the authorities. [115] In some countries, permanent tripartite bodies for collective labour dispute resolution, including tripartite social dialogue institutions, are formed under the purview of the labour ministry (see section 4.1.2.). [116]

[109] This is the case for example in Germany, where employees may be represented by trade union officials and employers may be represented by a representative of an employer's association.

[110] This is the case in Belgium, Burkina Faso, Denmark, France, Germany, the Niger, Romania, Senegal, Sweden, Togo and the United Kingdom.

[111] ILO, *Access to Labour Justice: Comparative Law and Practice on Labour Disputes Prevention and Resolution*, 2023.

[112] ILO, *Labour Administration in a Changing World of Work: General Survey concerning the Labour Administration Convention, 1978 (No. 150) and the Labour Administration Recommendation, 1978 (No. 158)*, ILC.112/III(B), 2024, para. 120.

[113] ILO, *Collective Bargaining*.

[114] For example, Argentina, Belgium, Brazil, Chile, Cyprus, Dominican Republic, Georgia, Ghana, the Philippines and Romania.

[115] For example, Albania, Canada, Georgia, Iceland, Peru, Poland and Slovakia.

[116] For example, Austria, Bulgaria, Canada, Lithuania, Spain and Viet Nam.

(b) The role of labour inspectors

75. The role of labour inspectors is essential in terms of prevention and enforcement. By advising employers and workers about the best way to comply with standards and enforcing labour laws, labour inspectors play a key role in preventing violations of rights at work and promoting labour justice. Where working conditions and the protection of workers are at stake and technical information and advice fail to achieve compliance with legal provisions, labour inspectors must be empowered to secure the enforcement of legal provisions – and in cases of imminent danger to the health or safety of workers they may even do so with immediate executory force. [117]

76. However, in relation to labour dispute resolution, the role of labour inspectors must be nuanced – even if in a number of countries, they are being assigned formal dispute-resolution functions. The ILO supervisory bodies have repeatedly recalled the risks of entrusting labour inspectors with additional duties that could interfere with the effective discharge of their primary duties or prejudice the authority and impartiality that are necessary to inspectors in their relations with employers and workers. [118] This is further elaborated in the Guidelines on general principles of labour inspection, which underline that labour inspectors "should not be involved in formal conciliation, arbitration, determination or adjudication of individual disputes, given the potential conflict of interests between the functions of enforcement and conciliation, and the fact these are not among the primary functions of labour inspectors". [119]

▶ 5. Operationalizing access to labour justice

77. In 2013, the International Labour Conference called upon the ILO to expand its assistance to strengthen the performance of LDPR through "research, expert advice, capacity-building and exchange of experiences". [120] Subsequently, the plan of action adopted by the Governing Body, noting the sharp increase in demand for advisory services in this area, listed several measures to be taken, including conducting research on dispute-resolution systems and their performance, improving the access to and performance of labour judiciary and dispute-resolution agencies through an office-wide labour dispute-resolution technical assistance strategy, and strengthening partnerships with dispute-resolution agencies. [121]

78. The acknowledgment in the ILO's Programme and budget for 2024–25 of the importance of "[m]odern and just regulatory frameworks providing necessary protections and access to justice to all", [122] together with the inclusion, for the first time, of a stand-alone indicator on effective LDPR (indicator 2.3.3.) is a strong mark of recognition of the relevance of the Office's work ahead. [123] This is further acknowledged in the ILO's Programme and Budget proposals for

[117] Convention No. 81, Arts 3 and 13.

[118] In line with Art. 3(2) of Convention No. 81 and Art. 6(3) of Convention No. 129. The functions of labour inspectors should not include that of acting as conciliator or arbitrator in proceedings concerning labour disputes (Recommendation No. 81, Para. 8).

[119] ILO, *Guidelines on General Principles of Labour Inspection*, para. 1.2.5.

[120] ILO, Resolution and conclusions concerning the recurrent discussion on social dialogue, 2013, Conclusions, paras 9(4) and 12(6).

[121] ILO, *Follow-up to the Discussion on Social Dialogue at the 102nd Session of the International Labour Conference (2013): Plan of Action*, GB.319/POL/3(Rev.1), 2016, Appendix I.

[122] ILO, *Programme and Budget for 2024–25*, 2023, para. 99.

[123] Indicator 2.3.3. reads: "Number of Member States in which there are newly established or reformed regulatory or institutional frameworks for the effective prevention and resolution of labour disputes".

2026–27, which includes various references to supporting "access to labour justice" at both country and global levels. [124]

79. The measures taken by the ILO to support access to labour justice are outlined in this section.

5.1. Principles for effectiveness of LDPR institutions

5.1.1. Rationale of the principled approach

80. When defining the objective of the Meeting, the paper submitted to the Governing Body pointed to the need to take into account "**generally accepted principles of effectiveness** for access to labour justice and the diversity of legal and practical solutions to realize them" (emphasis added). [125] This demand echoes the plan of action submitted in 2013 to the Governing Body, according to which the research findings of the Office should be used "to identify guiding principles for the effective handling of individual labour complaints, recognizing the diversity among national systems". [126] All the research conducted by the Office in this context over the last decade has therefore aimed at identifying generally accepted guiding principles for effective LDPR. The idea of "effective" access to labour justice and effectiveness of LDPR is itself drawn from ILO standards (see section 3.3.3 above).

81. Drawing on international labour standards, as well as International Labour Conference resolutions and comparative law and practices, the ILO has derived 13 generally accepted guiding principles of effectiveness to assess the performance of LDPR institutions. These principles apply to institutions that deal with both individual and collective labour disputes, in various legal and labour relations systems. They have informed the ILO's technical assistance over the last decade – on the understanding that the national context remains fundamental in determining performance. These principles have been brought together and reflected in the ILO's diagnostic tool for self-assessing the effectiveness of LDPR institutions, launched in 2023, which uses "effectiveness principles" as assessment criteria. [127]

82. It is worth noting that the realization of some of these principles depends on the consolidation of others, so that the relation between them is reciprocal. For example, it is virtually impossible to conceive of a fair LDPR system that is not also impartial, nor is it possible to envisage impartiality without independence. This interconnectedness and complementarity of principles form a harmonious whole that acts as a strong foundation for ensuring effective access to labour justice for all.

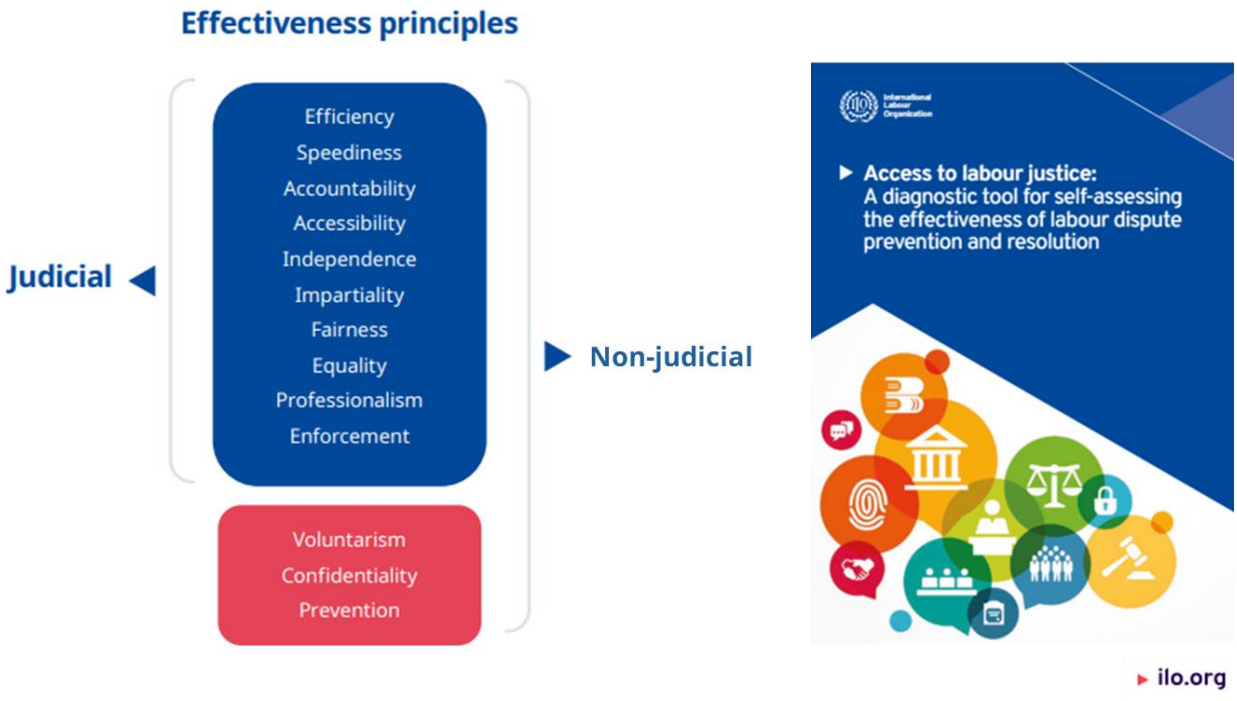
[124] ILO, Preview of the Programme and Budget Proposals for 2026–27, GB.352/PFA/2, 2024.

[125] ILO, *Agenda of Future Sessions of the International Labour Conference*, GB.349/INS/2, para 33.

[126] ILO, *Follow-up to the Discussion on Social Dialogue at the 102nd Session of the International Labour Conference (2013): Plan of Action*, GB.319/POL/3(Rev.1), para. 22.

[127] ILO, *Access to Labour Justice: A Diagnostic Tool for Self-Assessing the Effectiveness of Labour Dispute Prevention and Resolution*, 2023.

▶ ILO Diagnostic tool for self-assessing the effectiveness of LDPR institutions



5.1.2. Overview of the principles

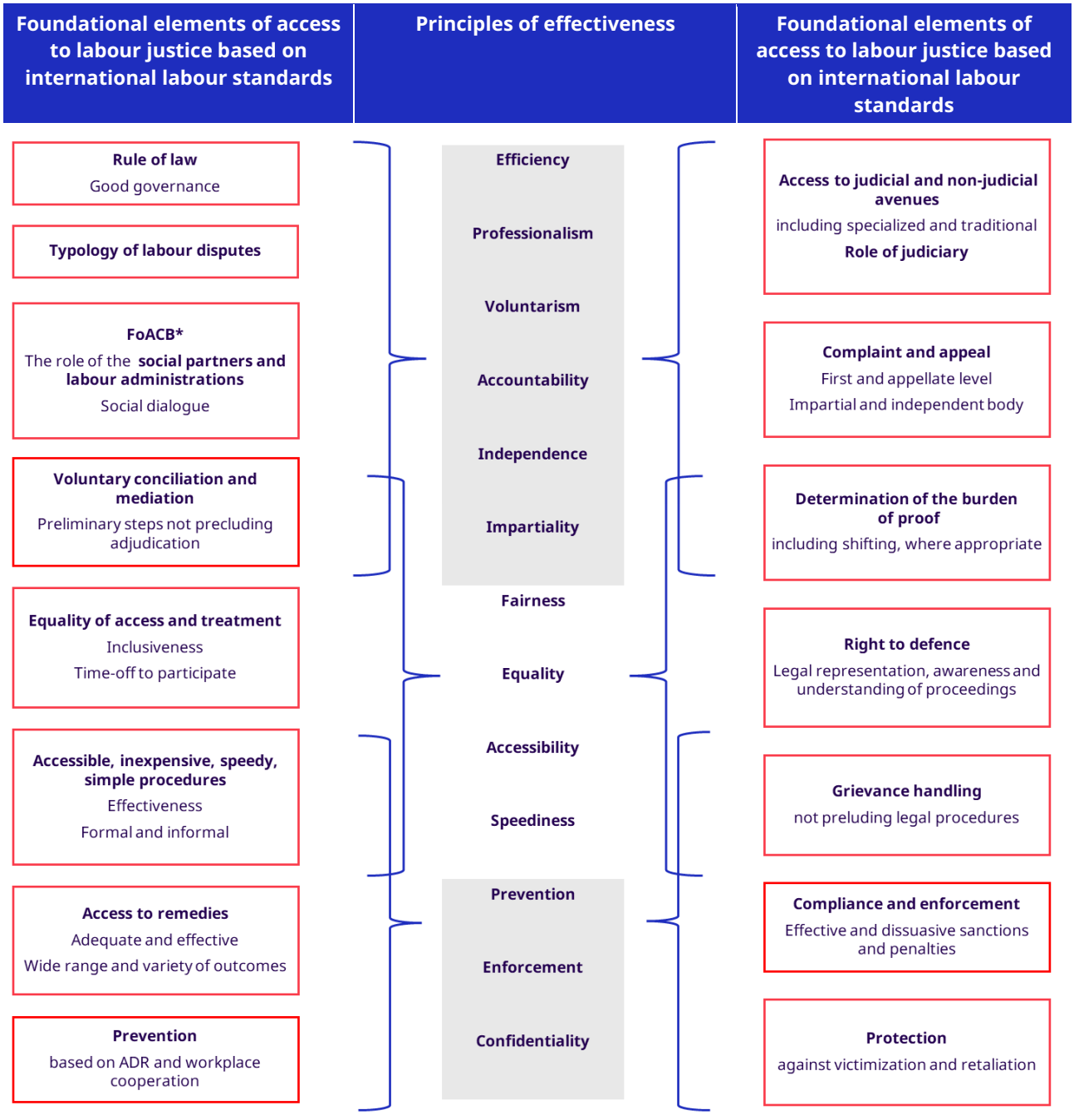
83. As described in section 3.3 above, a range of the foundational elements of access to labour justice have been derived from ILO standards. These elements emerging from international labour standards, together with comparative law and practices, have served to identify 13 generally accepted guiding principles of effectiveness. The figure below provides an explanation for each of them. Principles 1 to 10 apply to both judicial and non-judicial institutions, namely: efficiency, speediness, accessibility, fairness, equality, accountability, independence, impartiality, professionalism and enforcement. In addition, principles 11 to 13 also apply to non-judicial institutions, namely: voluntarism, confidentiality and prevention.

Principles of effectiveness	Application of the principles for effectiveness of LDPR institutions
1. Efficiency	• Minimizing use of resources (human, financial or technical) while maximizing net benefits for users. Resource minimization may be moderated by other legitimate considerations, such as the complexity and significance of the dispute and the need to facilitate procedural and substantive justice.
2. Speediness	• Provision of LDPR services without undue delay, through swift, streamlined and unbureaucratic procedures and processes.
3. Accessibility	• Adoption of measures to reduce or remove barriers for resolving disputes – and proactively addressing factors that may otherwise obstruct or disincentive use.
4. Fairness	• Ensuring that the outcomes are not only fair but are reached – and seen to be reached – in a fair way.
5. Equality	• Facilitating fair and equitable redress for disputes.
6. Accountability	• Promotion of transparency and accountability mechanisms to make the institution and individual ADR practitioners and decision-makers, as well as staff, responsible to society for performance.

7. Independence	• Performance of functions with reference to the law and merit-based considerations, without inappropriate external influence.
8. Impartiality	• Provides guarantees against actual or perceived bias in its processes and outcomes, including through the creation of a culture of declaring and managing conflicts of interest.
9. Professionalism	• Reliance on specialized expertise and staffed by professionals; recruitments based on fair and merit-based processes; opportunity for professional development for staff and decision-makers; internal performance standards; and publicized codes of conduct.
10. Enforcement	• Mechanisms available to ensure effective compliance with the final resolution.
11. Voluntarism	• Free choice for parties to select dispute-settlement method and maintain full control over the process and its outcome. Voluntarism is not an absolute principle, as there may be labour disputes that require a specific method for dispute resolution.
12. Confidentiality	• Confidentiality during proceedings to encourage the trust of parties; non-disclosure of content produced in the dispute-resolution process to non-participants, subject to specified exceptions.
13. Prevention	• Assistance in conflict de-escalation and strengthening of labour relations.

▶ Linking the principles of effectiveness with international labour standards

84. The following figure provides an overview of how the principles of effectiveness can be linked to the foundational elements of access to labour justice based on the international labour standards presented in section 3.3.3 above.



*FoACB: Freedom of association and the effective recognition of the right to collective bargaining.

5.2. ILO technical assistance, research and partnerships

85. Over the last decade, the ILO has provided support on LDPR grounded in the international labour standards and comparative law and practices in about 15 countries per year in all regions – including in developing, emerging and developed economies. Some examples are set out below.

(a) **Advisory services.** ILO technical assistance to countries included strengthening legal and regulatory frameworks (for example, in Albania, Bangladesh, Malaysia and Mexico); building effective LDPR systems and services within labour administrations through independent statutory bodies or specialized labour courts (for example, in the Democratic Republic of the Congo); and supporting the development of ADR, such as voluntary mediation, conciliation and arbitration processes (for example, in Greece). In some instances, this was done in through development cooperation projects. [128]

(b) **Research and knowledge-sharing.** ILO technical advice has increasingly been strengthened by the development of research and knowledge products, such as:

- ILO, *Diagnostic Tool for Self-Assessing the Effectiveness of Labour Dispute Prevention and Resolution*, 2023; and its related facilitators' guide (forthcoming)
- ILO, "ILO Industrial Relations Global Toolkit", 2022
- ILO, *Labour Dispute Systems: Guidelines for Improved Performance*, 2013
- ILO, *International Labour Law and Domestic Law: A Training Manual for Judges, Lawyers and Legal Educators*, 2015 [129]
- ILO, *Access to Labour Justice: Comparative Law and Practice on Labour Disputes Prevention and Resolution*, 2023
- ILO, *Report on the Rapid Assessment Survey: The Response of Labour Dispute Resolution Mechanisms to the COVID-19 Pandemic*, 2021

Various reports and publications have also been developed at the regional and country levels.

(c) **Capacity-building and partnerships**. Together with the ILO's International Training Centre in Turin, annual or regular trainings are provided in various languages, including on:

- Conciliation/mediation of labour disputes
- Certification course on conciliation/mediation of labour disputes
- Building effective labour-dispute prevention and resolution systems
- Tools for the prevention and management of labour disputes in the workplace
- Managing employment disputes effectively in international organizations
- International labour standards for judges, lawyers and legal educators

[128] See for example ILO, "Promoting Social Dialogue and Harmonious Industrial Relations in Bangladesh Ready-Made Garment Industry"; ILO, "Rights at Work: Promoting Harmonious Labour Relations through Collective Bargaining in China"; ILO, "Support to the Operational Modernisation of the Labour Inspectorate and the Mediation and Arbitration Service (OMED) in Greece"; ILO, "ILO Mexico and the Government of Canada Launch Joint Project to Strengthen Labor Relations in Mexico with a Gender Approach", press release, 10 October 2024; and ILO, "Access to Grievance Mechanisms for Workers in Selected Industries in Serbia".

[129] Edited by Xavier Beaudonnet and Tzehainesh Teklè.

Additional training courses on specific topics at country or regional levels were also provided, such as on:

- Grievance handling guidelines and workplace cooperation guidelines, Sri Lanka, 28–29 October 2019

In addition, the ILO maintains several partnerships with and networks of dispute-resolution agencies, as well as with labour court judges, in various regions. For example, the importance of enhancing LDPR systems was also recently addressed at:

- Subregional Symposium on Labour Dispute Prevention and Resolution In the Caribbean, Trinidad and Tobago, 9–10 October 2024

(d) **Implementation of the ILO's diagnostic tool.** In 2022, the ILO's diagnostic tool for self-assessing the effectiveness of labour dispute prevention and resolution was piloted in Bangladesh, Barbados, Lesotho and Mexico (at federal and state levels) in a tripartite participatory format (see also section 5.1.1 above). In 2023, the tool was implemented in the Democratic Republic of the Congo, India (Karnataka, Kerala and Telangana), Kazakhstan, Mexico, North Macedonia, Pakistan (Sindh and Punjab), Serbia, Spain and Ukraine. In 2024, it was implemented in Grenada, Namibia and Trinidad and Tobago. In addition to the benefit of national tripartite discussions on access to labour justice, the implementation of the tool offered the opportunity to collect at source comparative practical information concerning the challenges faced by dispute-resolution institutions, as well as to identify areas for improvement. Among the challenges revealed by constituents is ensuring access to justice for new categories of workers, including those that tend to be excluded from labour law, such as workers in the informal economy or migrant workers, and delivering justice services during economic, social or health crises. In addition, in most countries, delays in service provision and determining how best to improve the prevention of labour disputes, particularly through ADR, were also a major concern. Similarly, issues related to case management in both judicial and non-judicial institutions were almost systematically reported. In relation to digital case management, the issues raised concerned their technical and financial sustainability, while with regard to manual case management, the challenges included the accessibility of files to lawyers and judges, the security of data and the risk of fraudulent interferences, as well as instances of files being lost. In following up some of these issues identified through the implementation of the tool, the ILO plans to host a workshop in 2025 for an exchange of common challenges and good practices across countries in South Asia and Southern Africa.

5.3. Data collection, statistics and indicators

86. As outlined above, there exists no universally accepted definition of "access to labour justice". The only existing international statistical standard on this topic is the Resolution concerning statistics of strikes, lockouts and other forms of industrial action, adopted by the International Labour Conference of Labour Statisticians at its fifteenth session, in 1993, which supplements the Labour Statistics Convention, 1985 (No. 160) and its accompanying Recommendation (No. 170).

87. ILO data collection on access to labour justice is limited. ILOSTAT currently publishes three indicators on the number of strikes and lockouts by sector of economic activity, following the selection of "Days not worked due to strikes and lockouts" as one of the ILO's decent work indicators. This measure was proposed to capture the direct impact of labour disputes on production and while it relates only to collective disputes, it provides indirect albeit very incomplete information on the effectiveness of available LDPR processes. Other indicators that

could provide information valuable for the assessment of effective access to labour justice are those related to labour inspection. Although there are three ILOSTAT indicators pertaining to labour inspection, following the selection of "Inspectors per 10,000 employed persons" as one of the decent work indicators, there is no standard methodology or statistical standard to date that is applicable to labour inspection statistics at the international level. [130] Data for these indicators – typically derived from administrative records – are very limited both in terms of their availability and comparability, as well as in the extent to which they can explain factors determining access or lack thereof to effective labour justice. Moreover, even where data is available, their interpretation is highly contextual, especially in relation to effective access to labour justice. The number of industrial disputes, for example, could be a representation of either a "healthy" or an "unhealthy" industrial relations system, depending on the context.

88. One indicator that provides information that is more directly related to the issue of access to justice is SDG indicator 8.8.2, "Level of national compliance with labour rights (freedom of association and collective bargaining) based on ILO textual sources and national legislation, by sex and migrant status". [131] While that indicator measures the overall compliance with freedom of association and collective bargaining rights, it can also provide valuable information through its underlying coding regarding "Lack of guarantee of due process and/or justice". [132]

89. Outside the ILO, there have been several initiatives to address the scarcity of data with respect to the issue of access to justice, at the national, regional and international levels. [133] Among those is the Organisation for Economic Co-operation and Development (OECD)/Open Society Foundations *Legal Needs Surveys and Access to Justice Guide* of 2019. Concerning global indicators, the Inter-Agency and Expert Group on SDG Indicators recommended the addition to the global SDG framework of an indicator focused on "access to civil justice" and subsequently adopted indicator 16.3.3, "Proportion of the population who have experienced a dispute in the past two years and accessed a formal or informal dispute-resolution mechanism, by type of mechanism". [134] The indicator is under the co-custodianship of the United Nations Development Programme (UNDP), the United Nations Office on Drugs and Crime (UNODC) and OECD. Among the categories of disputes, the concept refers to "Occupation/employment".

90. Given that data collection related to access to labour justice is fragmented and only indirect or tangentially relevant to LDPR systems, consideration should be given to similar or other types of data on access to labour justice that the ILO might collect, including the data that supervisory bodies' reports might contain – and how that information could be systematized and collected. A detailed desk review of available data under the ILO and outside the ILO identifying possible paths forward and good practices could also be proposed (administrative registries, legal needs surveys and so on). In addition, seeking collaborations with other organizations involved in data collection on access to justice at the national, regional and international levels could help strengthen the

[130] See also ILO, *Guide on the Harmonization of Labour Inspection Statistics*, 2016.

[131] ILO, "About SDG Indicator 8.8.2".

[132] For the rationale behind the incorporation of the evaluation criteria under SDG indicator 8.8.2, see David Kucera and Dora Sari, "New Labour Rights Indicators: Method and Trends for 2000–15", *International Labour Review* 158, No. 3 (2019): 419–446.

[133] See in particular World Justice Project website, and its category "Civil Justice", which measures whether ordinary people can resolve their grievances peacefully and effectively through the civil justice system. At the EU level, see EU, "Perceived Independence of the National Justice System among the General Public"; the EU's annual overview entitled *EU Justice Scoreboard*; and Eurofound, "Database of Wages, Working Time and Collective Disputes". Information on areas such as courts of law and justice is also collected by the Afrobarometer website, while a set of questions related to the notion of access to justice is included in Center for Global Democracy, "AmericasBarometer".

[134] UNODC, OECD and UNDP, "Manual to Support National Data Collection on SDG Indicator 16.3.3", 2022.

evidence base of the ILO's work. Special attention could be given to further involving the ILO in the work of the Inter-Agency and Expert Group on SDG Indicators on indicator 16.3.3 with respect to occupation and employment data collection.

▶ 6. The way forward: Achieving effective and human-centred access to labour justice for all

6.1. Identifying the building blocks for effective and human-centred LDPR systems

91. This background report has provided an overview of the scope of access to labour justice and the range of dimensions it covers, recalling that access to labour justice is a complex, evolving and multifaceted undertaking that is closely connected with national labour relations systems. It is based on the assumption that the overall effectiveness of labour dispute governance systems is a determining factor in preventing conflicts, realizing rights at work and strengthening social peace. The present section argues that it is important to address LDPR within a systems perspective in order to ensure that access to labour justice is human-centred.

92. There is a convergence of a number of important factors that call for a systems perspective on access to labour justice that is human-centred. The above-mentioned report of the UN Secretary-General, entitled *Our Common Agenda*, proposes developing a "new vision for the rule of law" that would put people at the centre of justice systems. The UNDP's approach has been driven by the goal of establishing people-centred justice by 2030 and it recommends adopting "a justice ecosystems approach to understand the diversity of justice providers and shape reform plans" (including customary and informal justice). [135]

93. Other international initiatives, such as the OECD's 2023 Recommendation of the Council on Access to Justice and People-Centred Justice Systems, suggest establishing a people-centred purpose and culture in the justice system. Moreover, recognizing the systems approach to labour justice, the Ministers of Employment and Labour and Social Partners of the Southern African Development Community (SADC) approved the Model Framework for Autonomous Labour Dispute Resolution Systems in SADC, [136] which seeks to guide the establishment and maintenance of systems that are autonomous, accessible, efficient and subject to tripartite consultation, in line with the SADC Charter of Fundamental Social Rights.

94. These calls and initiatives supplement the 2019 ILO Centenary Declaration for the Future of Work, which requires the ILO to carry forward its constitutional mandate for social justice by further developing its human-centred approach to the future of work, putting "workers' rights and the needs, aspirations and rights of all people at the heart of economic, social and environmental policies". The human-centred approach to the future of work was further recalled in the Abidjan Declaration of 2019. [137] It has also been gradually reflected in international labour standards, in

[135] UNDP, *Diverse Pathways to People-Centred Justice: Report of the Working Group on Customary and Informal Justice and SDG16+*, 2023.

[136] SADC, "SADC Ministers of Employment and Labour and Social Partners Call for Intensified Action to Promote Decent Work in the Region", press release, 28 March 2024.

[137] ILO, Abidjan Declaration. Advancing Social Justice: Shaping the future of work in Africa Realizing the potential for a future of work with social justice, AFRM.14/D.4(Rev.), 2019.

which the regulatory approach of LDPR has been shifting away from an institution-based perspective to a more human-centred one (see section 3.3 above).

95. Furthermore, comparative law and practice in relation to LDPR, as well as the lessons learned through the application of the ILO's diagnostic tool point towards the fact that labour dispute settlement does not depend on any one single LDPR institution. Rather, a number of different inter-linked processes, ranging from the workplace level to the international level, as well as institutional complementarities, together determine the path through which labour disputes are addressed. In this light, it is critical that LDPR be treated holistically from a systems perspective in which the broad range of judicial, non-judicial and quasi-judicial mechanisms, services and interventions – both formal and informal – are synchronized to work together towards delivering access to labour justice for all. In this sense, access to labour justice needs to be delivered by an integrated system to be effective, and a systems approach is needed to improve them.

96. The inability to ensure compliance with labour laws through effective labour justice systems seriously compromises any credible normative and policy approach to labour market governance, undermines public trust in key labour market institutions, drives inequality,[138] and renders productivity enhancement efforts, compliance and related litigation costs for businesses more unpredictable. A human-centred approach to LDPR will help better integrate SDGs 16, 8 and 10 in order to advance social justice, promote decent work and reduce inequalities in the world of work.

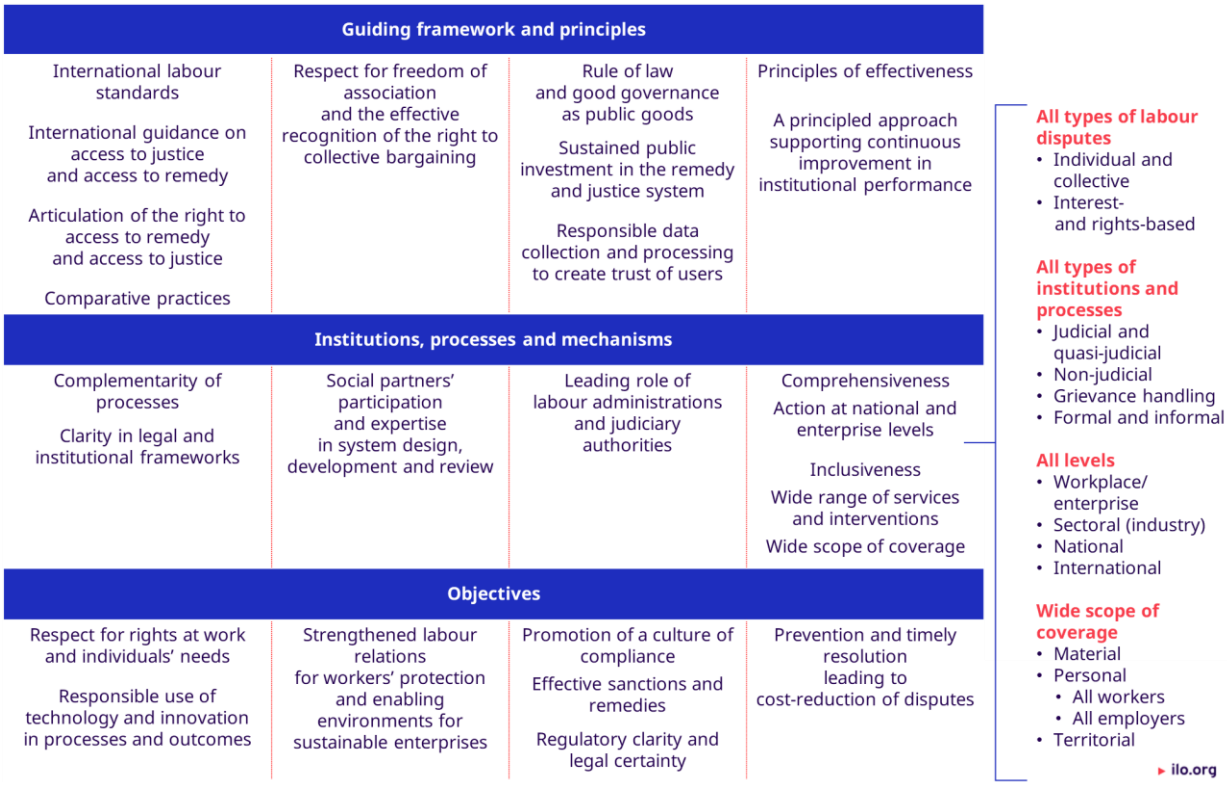
97. Drawing on the various issues addressed by this report, this section identifies the building blocks set out below for discussion, categorized under three broad headings:

- Guiding framework and principles
- Institutions, processes and mechanisms
- Objectives

The subcategories under each heading are interconnected and reinforce each other.

[138] Janine Berg, ed., *Labour Markets, Institutions and Inequality: Building Just Societies in the 21st Century* (Edward Elgar Publishing and ILO, 2015); ILO, *Inequalities and the World of Work*, 2021.

▶ Access to labour justice: Building blocks for effective and human-centred LDPR systems



6.1.1. Guiding framework and principles

98. The first layer or foundation upon which the building blocks for effective and human-centred LDPR systems rest is the guiding framework and principles for access to labour justice, the components of which are set out below.

(a) **International labour standards and other international guidance on access to justice and access to remedy.** The guiding framework for effective and human-centred LDPR systems includes first of all the international labour standards, in particular the foundational elements of access to labour justice presented in section 3.3.3 above. This guiding framework also comprises the guidance provided by international and regional human rights instruments and their respective monitoring bodies on access to justice in general (see section 3.1 above). It also includes the international principles on access to remedy derived from the Guiding Principles on Business and Human Rights and the ILO's MNE Declaration, among others (see section 3.2 above), including the articulation of the right to access to remedy with access to justice. In addition, various International Labour Conference resolutions and conclusions (see section 1.2. above), as well as comparative law and practices, point to the diversity of LDPR mechanisms, while a number of elementary practices common to a wide range of countries also help in framing effective and human-centred LDPR systems (see section 4 above).

(b) **Rule of law and good governance, responsible data collection and processing.** The Declaration of the high-level meeting of the General Assembly on the rule of law at the national and international levels clearly places the rule of law in the context of substantial adherence to principles of accountability, justice and equality, going well beyond formalistic

notions [139] (see section 3.1 above). The close link between access to justice and the rule of law was recently recalled in a 2024 report on the evaluation of the effectiveness of European judicial systems, which established that "the more progress a State makes towards making justice accessible, the more confidence individuals have in the legal and judicial process, and the stronger the rule of law becomes at national and European level". [140] Access to labour justice therefore requires sustained public investment in the remedy and justice system. Creating trust and confidence of users in the LDPR system also requires responsible data collection and processing by and for LDPR systems (see section 5.3 above). In this respect, the UN Secretary-General's Data Strategy (priority 6) calls for the implementation of "data policies that advance the responsible human-rights-based use of data and drive innovation for people and planet". [141]

(c) **Freedom of association and the effective recognition of the right to collective bargaining.** As noted in section 2.1.1 above, the freedom of association and the effective recognition of the right to collective bargaining are enabling rights for all other rights at work [142] that promote sound industrial relations and consequently, frame employer-employee relationships. Therefore, they should be recognized as an essential component of the guiding framework and principles underlying effective and human-centred LDPR systems, without which access to justice in the world of work may remain inoperative.

(d) **Principles of effectiveness**. Finally, the set of generally accepted principles of effectiveness to support the continuous improvement in performance and delivery of LDPR institutions forms a key component of the guiding framework of LDPR systems. As described in section 5.1 above, these principles derive from the international labour standards and comparative law and practice. While important in their application to LDPR institutions, a number of these principles are equally applicable to the broader LDPR system.

6.1.2. Institutions, processes and mechanisms

99. The second layer of building blocks for the establishment and strengthening of effective and human-centred LDPR systems relate to the nature and functioning of the institutions, processes and mechanisms that comprise the system. These are set out below.

(a) **Complementarity of processes.** Access to labour justice is a continuum in the sense that only if all the institutions, processes and mechanisms encompassed by the system are in place and functioning effectively can a worker or an employer access the system with the confidence that he/she is entering a process that guarantees fairness and equality throughout. To be effective and human-centred, LDPR systems must have a wide scope of coverage, as well as a wide range of services and interventions at different levels, including state-based and non-state-based mechanisms, judicial and non-judicial, formal and informal processes, for different types of labour disputes. These range from workplace-level grievance handling and national or sectoral-level LDPR processes to transnational mechanisms for LDPR. The overall effectiveness of a labour justice system is intrinsically related to the clarity of the legal and institutional framework and the complementarity between the different

[139] UN General Assembly, resolution 67/1, Declaration of the high-level meeting of the General Assembly on the rule of law at the national and international levels.

[140] European Commission for the Efficiency of Justice, 106.

[141] UN, "Secretary-General's Data Strategy", Full Strategy, 20.

[142] ILO, *ILO Integrated Strategy for the Promotion and Implementation of the Right to Collective Bargaining*, para 2.

dispute-resolution avenues, as well as the extent to which they together form a "remedial ecosystem". Providing linkages between all of these levels – in particular, linking company-level grievance handling with state-based ADR and judicial processes – is very important for the delivery of effective remedies.

(b) **Social partners' participation and expertise.** As elaborated in section 4.2 above, employers and workers and their respective organizations are at the heart of effective labour justice systems. The social partners not only contribute to individual and collective labour dispute prevention in various ways but they can also play a central role in dispute resolution by representing their members, establishing grievance-handling mechanisms or more formally by performing the function of lay judges. The role of collective bargaining and other forms of cooperation is particularly important, not only for preventing disputes from breaking out or escalating but also for establishing settlement procedures to resolve them when they do occur. Ensuring the participation of and reliance on the expertise of the social partners in the design, development and review of LDPR systems is therefore critical for these institutions, processes and mechanisms to operate effectively.

(c) **Leading role of labour administrations and judicial authorities.** Access to labour justice requires the involvement of a range of public authorities, alongside non-government actors. The relevant ministries may vary by country but typically include two ministries that are mostly concerned with labour disputes, namely the ministry of labour (or its functional equivalents) with respect to non-judicial, social dialogue processes and the ministry of justice for judicial ones. Effective LDPR systems therefore require the leadership of labour administrations and judiciary authorities in a coordinated way to strengthen policy coherence and good governance, optimize resources and the provision of services, and have the maximum impact for workers, businesses and societies at large.

(d) **Comprehensiveness and inclusiveness.** Finally, human-centred access to labour justice requires comprehensive and inclusive LDPR systems based on processes and mechanisms that are available at different levels, in particular at the national and workplace/enterprise levels. The inclusiveness of the system needs to be ensured through the wide scope and coverage of LDPR processes and institutions – material, territorial and personal – ensuring equality of access and treatment for all workers and employers without distinction. As noted in sections 2 and 4 above, specific attention should be given to certain categories of workers and employers that may be excluded from the scope of labour laws, as well as groups in vulnerable situations, in particular those in the informal economy. The specific challenges of labour justice in the informal economy need to be considered, including the fact that employment formalization may in itself give rise to legal claims for the employers and workers concerned. Strengthening the inclusiveness of LDPR systems will require revising regulatory frameworks and streamlining procedures and also developing new types of interventions. Inspiration may be drawn from good practice and innovation in addressing gender discrimination across the justice chain (for example, Brazil's 2021 Protocol for Judging with a Gender Perspective) or in providing dispute-resolution services in remote areas via digital platforms, no-cost training and assistance, or "roving judge" schemes to relocate dispute-resolution services across the country.

6.1.3. Objectives

100. Finally and based on the findings of this report, the third layer of building blocks for developing comprehensive access to labour justice comprises the objectives around which effective and human-centred LDPR systems may be structured. These are set out below.

(a) **Respect for rights at work and individuals' needs/Responsible use of technology and innovation.** A human-centred LDPR system requires as an objective to ensure respect for rights at work and individuals' needs, as well as the responsible use of technology and innovation, in both processes and outcomes. Access to justice is based on the individual's right to comprehend and use the legal system to defend their rights and advance their interests. An effective LDPR system must not be limited to setting up institutions and processes but must ensure that the rights and needs of all those involved are duly taken into account at all stages. When the legal system fails to safeguard labour rights and basic freedoms at work, groups in situations of vulnerability are the most at risk of injustice. A human-centred approach also requires ensuring the responsible use of and reliance on technology and innovation, whereby the challenges and opportunities are properly balanced in the light of the rights and freedoms at stake.

(b) **Prevention and timely resolution of labour disputes.** The guiding thread in this report is that the overall effectiveness of labour justice processes and institutions contributes to preventing the occurrence and escalation of labour disputes, in the interest of employers, businesses, workers and societies at large. This in turn contributes to enhancing stable labour relations and enabling business environments. Specifically, ADR mechanisms have been identified as a major driver of dispute prevention. The prevention and timely resolution of labour disputes should therefore be a central objective of effective and human-centred LDPR systems.

(c) **Promotion of a culture of compliance.** A labour market environment in which the rule of law is respected and regulations are broadly observed requires a certain level of clarity in the rules and procedures governing the LDPR system in order to allow for predictability and limit the risks of legal uncertainty. It also requires the provision of effective sanctions and remedies, as well as effective enforcement mechanisms, in order to strengthen the overall effectiveness of the system and the confidence of users. This in turn encourages people to come forward with requests for LDPR interventions, with spillover effects that ensure a broader culture of regulatory compliance.

(d) **Strengthened labour relations.** The close relationship between LDPR processes and the broader industrial relations and legal systems in which they operate was acknowledged at the very outset of the report (see sections 2.1.1 and 4.2.1 above). An important objective of labour justice systems is ensuring that both employers and workers have fair and efficient means to resolve disputes, which contributes to both enhancing workers' protection and fostering enabling environments for the growth of sustainable enterprises. Overall, efficient, fair and accessible LDPR systems are an essential element of a well-functioning industrial relations system. [143]

6.2. Conclusion

101. In conclusion, this report has demonstrated that access to justice is a basic principle of the rule of law enshrined in SDG 16. Both the right to an effective remedy and the right to justice, at least in a procedural sense, are recognized human rights. Furthermore, access to justice is itself a requirement for facilitating the enforcement of other rights. Insofar as the ILO's work in this area

[143] ILO, *Social Dialogue: Recurrent Discussion under the ILO Declaration on Social Justice for a Fair Globalization*, ILC.102/VI, 2013, paras 138–139.

is concerned, access to labour justice forms a part of the ILO's normative framework consisting of the international labour standards.

102. Yet, although a number of international labour standards cover different aspects of access to justice, there is a lack of systemic perspective. New and emerging trends in the world of work, as well as the evolution and application of new technologies to LDPR, may call for a renewed approach to the issue. While the right to access to labour justice for all workers and employers is often partially covered through a thematic lens across various ILO standards, the international labour standards do not articulate a corresponding obligation for Member States to ensure access to labour justice for all. Moreover, there have been no consolidated efforts to examine LDPR in a systems approach or to do so with an explicitly human-centred focus.

103. As highlighted in this report, a number of UN and other international agencies have been actively working in this area. The importance of access to justice for sustainable development, inclusive growth and peaceful, just and inclusive societies was reaffirmed in action 7 of The Pact for the Future recently adopted by the UN General Assembly. The work of UNDP on access to justice is based on the idea that "[p]eople-centred justice focuses on better understanding people's 'everyday' justice problems", including employment disputes, which makes it essential to understand trends in rising labour disputes. [144] Other efforts, such as those by the OECD, regional economic communities such as SADC and other international multi-stakeholders (such as the Pathfinders) have been highlighted throughout this report.

104. In a 2024 report to the International Labour Conference, the Director-General explicitly stated that "inadequate access to labour justice persists for a significant portion of the global workforce, highlighting the need for our social contract to invest in this dimension of social justice". [145] Overall, the social impact of access to labour justice is also gaining increased importance in the environmental, social and governance framework. [146]

105. Access to justice and the strengthening of the rule of law is therefore a part of the ILO's mandate. In the light of the discussion above and the work being undertaken by other international agencies, the time is ripe for the ILO to scale up its action to realize this mandate. The ILO, as the prime UN agency dealing with labour and employment issues and the only tripartite agency that gives an equal voice to employers, workers and governments, is increasingly expected to play a leading role in strengthening a shared understanding of LDPR in the world of work – with a view to better integrating SDGs Nos. 16, 8 and 10.

106. The 2025 Tripartite Technical Meeting on Access to Labour Justice for All will be the first in the history of the Organization to be devoted entirely to the subject of access to labour justice. This report has mapped out the scope of access to labour justice and the range of dimensions to be considered. It has also reviewed the ILO's related work, guidance, tools and activities developed over the past decades and has identified several areas that warrant further tripartite attention and guidance. Section 6.1 above formulates a number of proposals for key building blocks for effective and human-centred LDPR systems, for the consideration of and discussion by constituents. It recognizes that the path to effective and human-centred LDPR and to achieving access to labour justice for all depends first and foremost on the decisive support of the ILO tripartite constituents. Collaboration and partnerships with other relevant regional and international actors will also be needed. Coordinated efforts at the international level, including

[144] UNDP, *Beyond the Pandemic: The Justice Emergency*, 2022, 10.

[145] ILO, *Towards a Renewed Social Contract*, para. 32.

[146] UN Human Rights Council, *Investors, Environmental, Social and Governance Approaches and Human Rights: Report of the Working Group on the Issue of Human Rights and transnational corporations and Other Business Enterprises*, A/HRC/56/55, 2024.

through the ILO, will be indispensable for ensuring that justice is realized and delivered, not merely as a procedure but as an outcome, for workers, employers and societies more broadly.