

# Alternative Disputes Resolution

Overview of different mechanisms



# Summary: ADR - Overview of different mechanisms

- ILO
- Basic elements of conciliation and arbitration
- Experience from various countries
  - Europe
  - East Africa

# CONCILIATION AND ARBITRATION

## ILO definition

- **Conciliation and mediation** - a third party provides assistance to the parties in the course of negotiations, or when negotiations have reached an impasse, with a view to helping them to reach an agreement.
- **Arbitration** - a third party, not acting as a court of law, is empowered to take a decision which disposes of the dispute.
- **Specialised labour adjudication** - ordinary courts or special labour courts settle finally any disputes over rights and obligations.

# ILO - Recommendation , 1951

## Voluntary Conciliation and Arbitration

### I. Voluntary Conciliation

1. Voluntary conciliation machinery, appropriate to national conditions, should be made available
2. It should include equal representation of employers and workers.
3. Free of charge
4. Strikes or lockouts should be avoided during voluntary conciliation.
5. All agreements which the parties may reach during conciliation should be drawn up in writing and be regarded as equivalent to agreements concluded in the usual manner.

# ILO - Recommendation , 1951

## Voluntary Conciliation and Arbitration

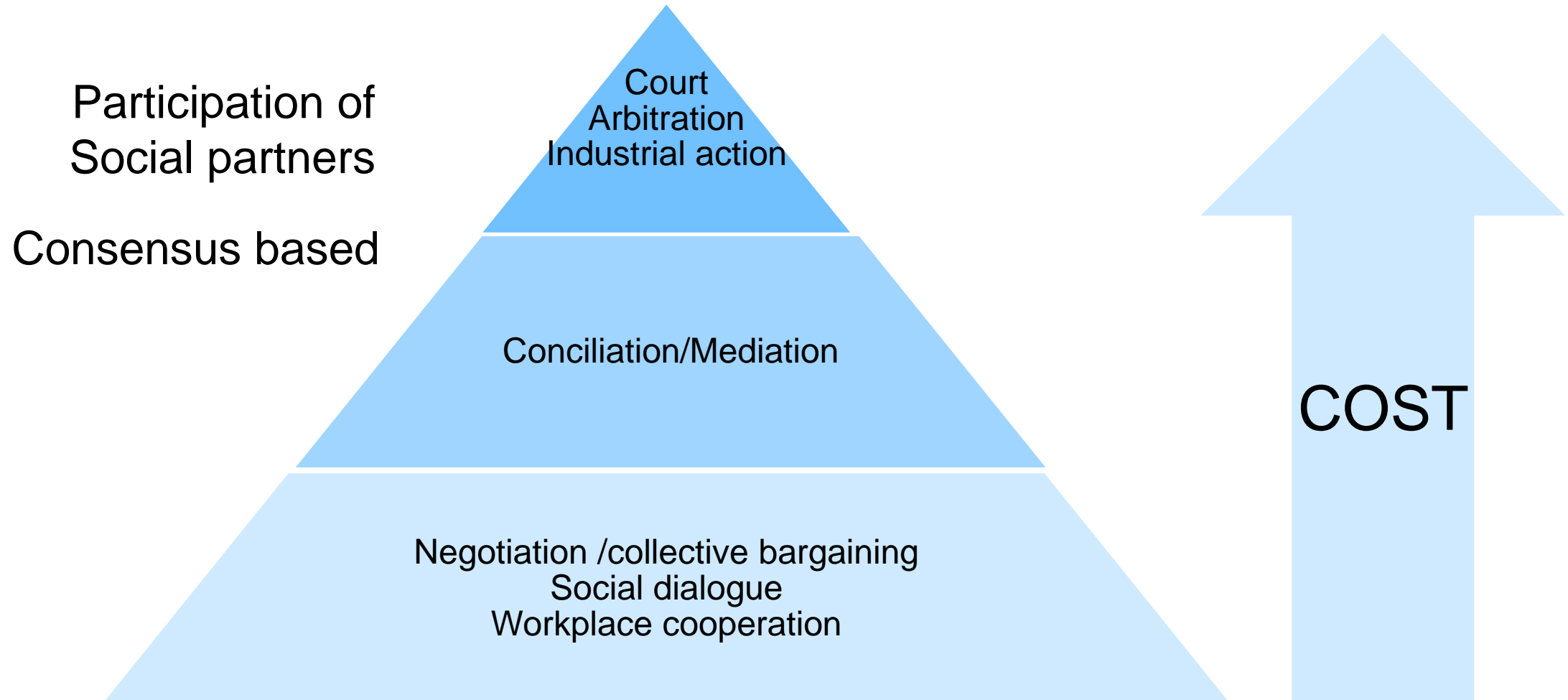
### **II. Voluntary Arbitration**

6. Strikes or lockouts should be avoided during voluntary Arbitration.

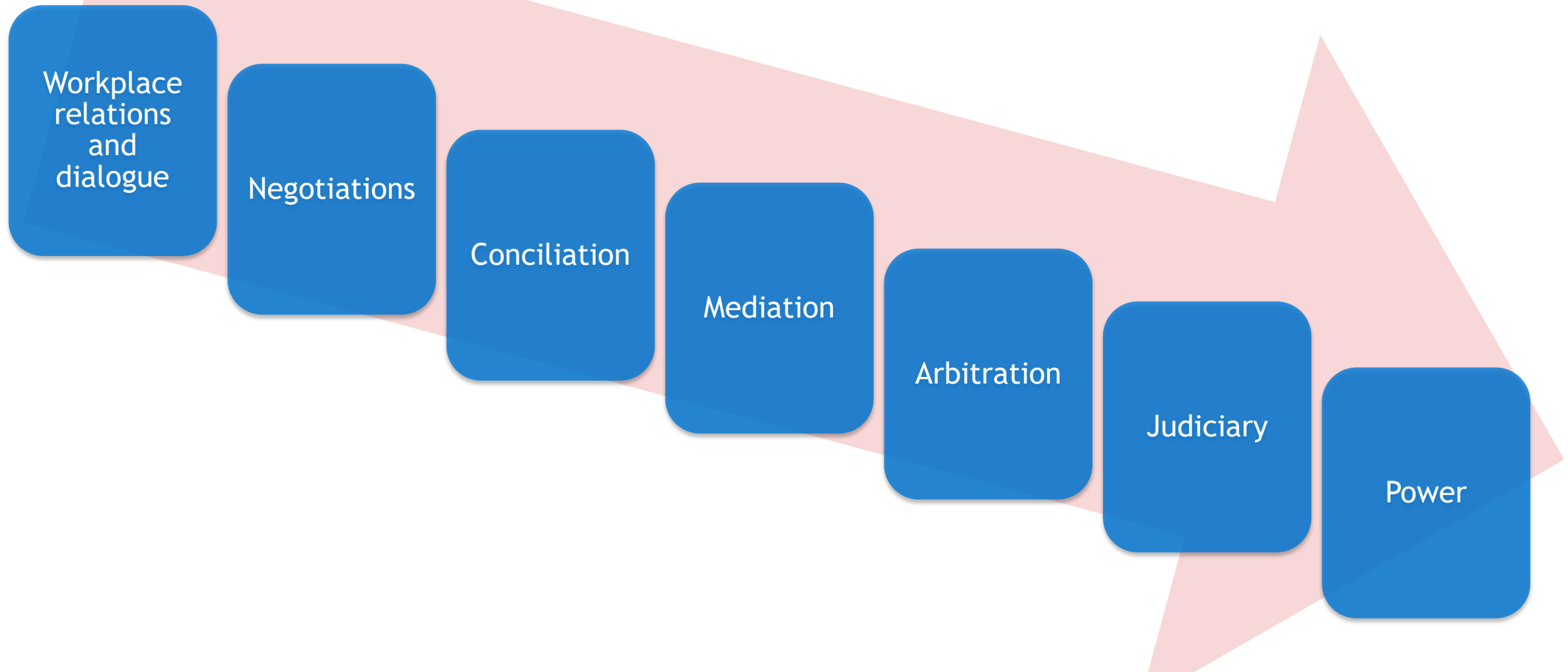
### **III. General**

7. This Recommendation may not be interpreted as limiting, in any way whatsoever, the right to strike.

# An effective disputes resolution system



# Workplace social partners are losing control



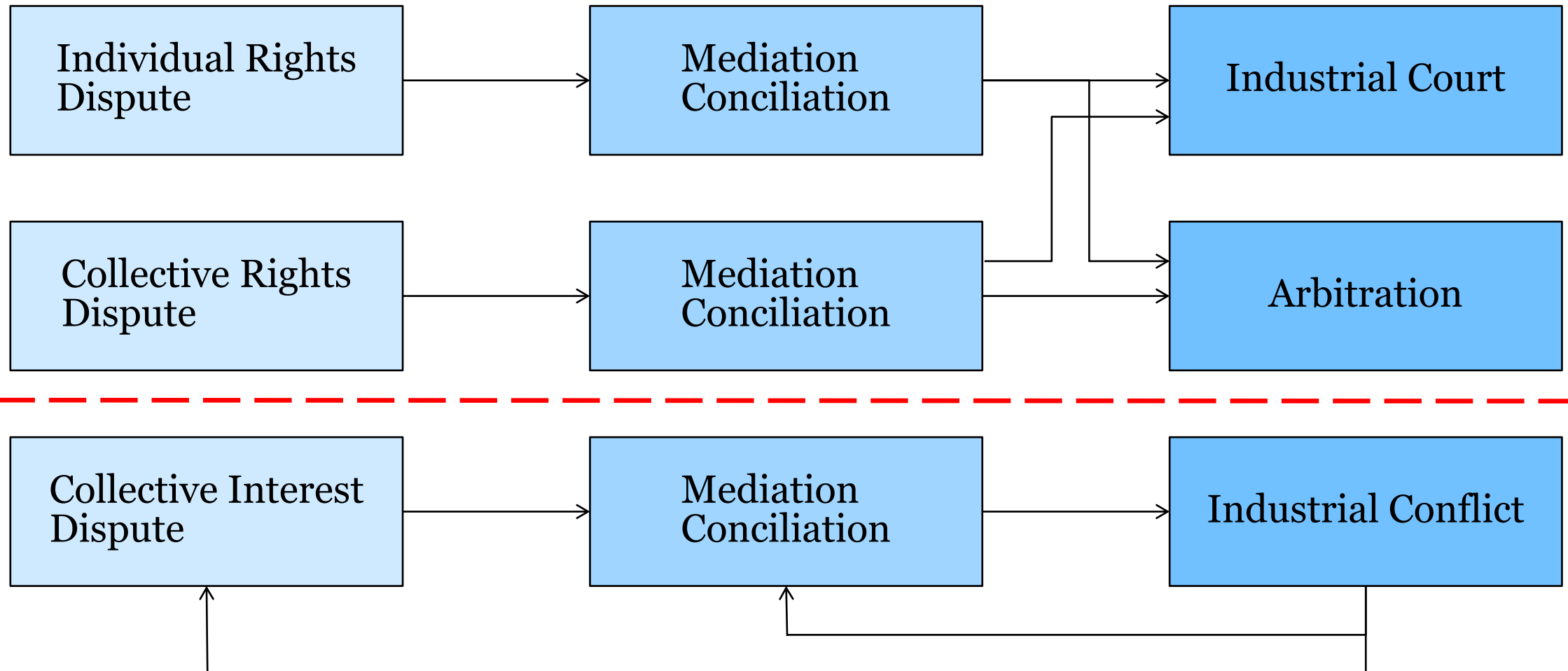
## What are the results?

- Mediation - Conciliation
    - Individual Disputes
    - Collective Disputes
      - Rights disputes
      - Interest disputes

*Different solutions for different types*

  - Return to conflict - possibly followed by agreement
- Arbitration
  - Award
  - Jurisprudence

## Process for different types of conflict



## Alternative disputes resolution process

- Industrial courts are overburdened and slow
- Disputes at enterprise levels are not resolved, and the problems fester
- The national federations of trade unions and employers are prepared to act on the issue
- A Memorandum of Understanding is necessary setting up the necessary body - a Bipartite Committee

# Who are the relevant parties for the Bipartite Committee?

- Workplace level
  - Employer
  - Worker
  - Union representative
- National level
  - Federation of Employers
  - Competing companies in same sector
  - Federation of Trade Unions
  - National union
  - Impartial person - mediator
- Outside the process
  - Ministry of Labour
  - Industrial court

## Bipartisan Committee

- Partisan organ
  - Both opposing parties - employer and employee - are represented
- BC members are representing the parties in the conflict - but are not the conflict owners
  - The HR- or general management and Union chairman or secretary are not in the Disputes Resolutions Committee
- Outside the normal legal system
  - The solution does not have to be what the law says

## Representing the parties

- The solutions depends on the acceptance of the parties to the conflict
- The interests of the parties must be taken into account
- How will the parties to the conflict participate

## Timing of mediation

- For conflicts of right, mediation early in the process will prevent the dispute from getting entrenched
- For conflicts of interest, mediation has to be timed, so the parties can make a real effort to solve the negotiation themselves.