

Committee on the Application of Standards

Date: 15 May 2024

Governments appearing on the preliminary list of individual cases have the opportunity, if they so wish, to supply on a purely voluntary basis, written information before 20 May 2024.

► Information on the application of ratified Conventions supplied by governments on the preliminary list of individual cases

Eswatini (ratification: 1978)

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

The Government has provided the following written information.

First of all, it is noted from the report of the Committee of Experts, when examining the country's article 22 report on the Convention, that the Committee of Experts already requested the Government to submit full information in response to the Committee's observations and direct requests outside the normal reporting period (out-of-cycle), this being in 2025.

Secondly, the Committee on Freedom of Association (CFA) has not as yet examined the report of the Independent Investigation Committee that was appointed to investigate the justification for the action of the police denounced by International Trade Union Confederation (ITUC) in relation to the industrial actions of 2018 and 2019. Furthermore, the CFA was still to examine the report of the National Voluntary Conciliation process that was adopted by the Government and the Trade Union Congress of Swaziland (TUCOSWA) on 15 September 2023 in relation to the complaints that were reported to the CFA by the TUCOSWA.

Thirdly, the Government had availed itself and is already receiving ILO technical assistance to address the recommendations contained in the report of the Independent Investigation Committee which was appointed to investigate the justification for the action of the police denounced by the ITUC in relation to the industrial actions of 2018 and 2019 as detailed in the report of the Independent Investigation Committee. In the same vein, the Government had already availed itself and is currently receiving ILO technical assistance to implement the outcomes of the National Voluntary Conciliation report that both the Government and the TUCOSWA agreed to embark upon last year in an effort to resolve a number of complaints that had been reported by the TUCOSWA to the CFA. As could be seen from the covering letter when submitting the report of the National Voluntary Conciliation on 25 September 2023, coupled with the follow-up letter that was submitted by the Government on 25 January 2024, the Government requested the ILO to provide technical assistance in developing a time-bound

implementation plan in order to ensure effective implementation of the outcomes of the National Voluntary Conciliation process. This request was made in the spirit of paragraph 10 (on page 31) of the National Voluntary Conciliation report wherein the Government and the TUCOSWA agreed that the implementation plan should have a monitoring and evaluation structure. The Office agreed to provide the requested technical support to the Government in an endeavour to follow up on the reports of the national bodies and the comments of the Committee of Experts adopted when examining the country's article 22 reports in November–December 2023. In fact, in oral engagements between the Government and the Office, the very reason given why the technical mission which was requested by the Government in September 2023 had to be delayed till February 2024, was strategically to allow the mission to combine its technical assistance by addressing not only the recommendations of the reports of the Independent Investigation Committee and the National Voluntary Conciliation report, but also the comments of the Committee of Experts after examining the country's article 22 reports on Conventions Nos 87 and 98, respectively.

Therefore, from 22 to 23 February 2024, a first technical mission, consisting of four ILO experts, one from the Geneva office and three from the Pretoria-based ILO-DWT, visited the Kingdom of Eswatini. A mission report prepared by the technical mission, together with a table of recommendations (draft implementation or action plan), was submitted to the Government and the TUCOSWA on 2 May 2024. As seen from the mission report, the technical mission met with the parties to the complaints and several other institutions and stakeholders, from among both Government and social partners, who would be involved in the implementation plan. The mission also met the United Nations Resident Coordinator to discuss the country's context and the coordinated support to be provided to the Eswatini Government on issues of common interest. Finally, the mission met with the Minister of Labour and Social Security, the Honourable Phila Buthelezi, to report on the mission's findings. In its report, the mission appreciates the opportunity for frank and open discussion with all interlocutors. The mission report contains an attachment of a summary table of the outstanding issues, together with observations and details of the timetable for the examination by the ILO supervisory bodies and invited the parties to commit to drawing up a time-bound plan for follow-ups. This document would also serve as a road map for resolving outstanding issues on the complaints presented before the CFA. In this respect, the mission recalled that issues relating to legislative reform and acts of anti-union discrimination have also been dealt with by the ILO supervisory bodies, namely the Committee of Experts and the CAS in the past. In its report, the mission is convinced that the road map of action to follow-up on the reports of the national bodies set up in relation to reported complaints will be beneficial to the Government and the stakeholders to take ownership of the policy and regulatory reforms. The mission is also of the opinion that the monitoring of progress relating to compliance with ratified international labour standards will enable all stakeholders to better grasp the interlinkage of these reforms with comments made by the ILO supervisory mechanisms, supported by the Office's technical assistance, towards a peaceful and lasting social dialogue, in conformity with universally recognized freedom of association and collective bargaining rights. Finally, and in view of the magnitude of the tasks and topics that will fall to the Ministry of Labour and Social Security in ensuring a proper follow-up to the road map and report to the ILO supervisory bodies, the mission recommends that the Ministry should set up a specific monitoring team, to this end, as it would benefit from reinforcements from other relevant institutions in order to carry out its mission successfully. The table of recommendations attached to the mission report summarizes the outcomes and recommendations of the national bodies (that is, the Independent Investigation Committee and the report of the National Voluntary Conciliation process) as well as the

comments of the Committee of Experts that were adopted by the Committee in its November–December 2023 session.

The parties (the Government and the TUCOSWA) have since arranged a meeting for Friday, 17 May 2024 for the purposes of discussing the first technical mission report. Suffice it to underscore that this is the first technical mission activity which was understood by the parties (the Government and the TUCOSWA) would be followed by a second technical mission to finalize and validate the implementation plan. The second technical mission will involve all those institutions that have a role to play in the implementation plan, plus strategic political figures in order to obtain political support, including the Cabinet and the Parliamentary Portfolio Committees for the Ministry of Labour and Social Security.

Moreover, it suffices also to recall that both national processes were pitched at the highest level by Government as demonstrated by the fact that the Independent Investigation Committee was chaired by a Principal Magistrate, sitting with a panel of experienced industrial relations practitioners. The Government treats the findings of the Independent Investigation Committee in a very serious light and is committed to implementing them fully. On the other hand, the National Voluntary Conciliation process was chaired by the Judge President of the Industrial Court of Appeal who was selected by agreement of both parties (the Government and the TUCOSWA); sitting with him were two senior Commissioners of the Conciliation, Mediation and Arbitration Commission (CMAC) including the Executive Director of CMAC. The Government provided full financial support, including travel, subsistence and hotel accommodation expenses to all members involved in the above-mentioned national processes, including the members of the National Voluntary Conciliation process which was composed of seven officials or representatives from each side (that is, seven Government members and seven TUCOSWA members), the panel of Commissioners as well as the secretariat (amounting to a total of 22 officials).

On the aspect of civil liberties and trade union rights, it was reported in the information supplied to the Committee of Experts in December 2023 that police investigations are ongoing into the perpetrators of the civil unrests which started in June 2021 and continued up to 2023, and the brutal killing of civilians, a senior Prince from the royal family (who was brutally murdered and videotaped live pleading for mercy from his killers), police and public officers, and traditional leaders that occurred during these unrests, including that of Mr Thulani Maseko. The Government submits that investigations are continuing earnestly, and the net is closing in on those perpetrators. By any yardstick, the investigations are credible and transparent. It is very unfortunate that in some matters, in particular that of Mr Maseko, police investigations and requests for interviews with people who are reasonably considered could have some information to assist the investigations or who are in possession of electronic gadgets which are reasonably suspected could contain vital information which can assist in the investigations, are hampered by strong hostilities and non-cooperation by potential witnesses which include very close family members of the deceased (Mr Maseko). Nonetheless, the police investigations will not be dampened by the very strange tendencies and hostilities coming even from people from whom the highest level of cooperation was anticipated, especially because the Government's reputational image continues to be tainted by the unfounded and disparaging theories circulating on various platforms, especially in social media. The outcome of these investigations will be furnished to the Committee of Experts in 2025, as requested.

On the issue of harassment in the education sector, which involves Mr Mbongwa Dlamini, the Government submits that this matter remains pending between the employee (Mr Dlamini) and the Teaching Service Commission (employer) in light of the judgment delivered by the Industrial Court on 21 March 2024 which declared his purported dismissal from the teaching

service to be null and void and set it aside. The Court ordered the Teaching Service Commission (TSC) to start the disciplinary process afresh. The Government maintains that this is a pure disciplinary process on allegations of misconduct on the part of the Worker, being alleged unauthorised absenteeism for a prolonged period of time by the employee. This has nothing to do with Mr Dlamini's role as a leader of the Swaziland National Association of Teachers (SNAT). It should be recalled that the SNAT is one of the oldest trade unions in the country which has a recognition agreement with the Government dating back to over 40 years. The social partnership between Government and the SNAT has weathered so many storms that it can now be assumed that a mere disciplinary process against a SNAT official is an act of union bashing which seeks to derecognize the SNAT. Once finalized, the Committee of Experts will be furnished with the outcome of the judicial appeals.

In respect of Article 3 of the Convention, the Government confirms that the ILO technical mission held in February 2024 was able to interview officials from the Ministry of Housing and Urban Development as well as Chief Executive Officers (CEOs) from the country's Municipal Councils. Gatherings continue to be convened in the country by interested organizations (including trade unions) in terms of the Public Order Act of 2017 as read together with the supporting Codes of Good Practice, without any impediment whatsoever, the latest example being the 1 May 2024 Workers' Day mass gatherings to which Government was also invited and it did attend the May Day celebrations convened by the TUCOSWA in Mbabane, the capital city of Eswatini, and the Federation of Swaziland Trade Unions (FESWATU) in Simunye town, respectively. Countless other gatherings and protest marches to deliver petitions in Government ministries have been held by trade unions in the country post the civil unrests without being denied their right to gather and associate. In respect of ongoing law reforms, in particular the Industrial Relations Amendment Bill, the Government is pleased to report that the ILO succeeded in finalizing its review of the Amendment Bill and submitted its Memorandum of Technical Comments in November 2023. Social dialogue discussions of the Office's Memorandum of Technical Comments are ongoing at the Labour Advisory Board (LAB). In this regard, Government has availed itself of the ILO's financial and technical support which has been granted by the Office. A three-day residential meeting of the LAB has already been approved by the officers of the LAB, to be scheduled for 19 to 21 June 2024. The outcome of this process will be provided to the Committee of Experts in 2025.

We therefore appeal to all concerned that Eswatini be given a chance to implement the recommendations that have been made by the national bodies (that is, the Independent Investigation Committee and the National Voluntary Conciliation report) as well as those made by the Committee of Experts and report progress in 2025 as requested by the Committee of Experts. The country has already availed itself and is receiving ILO technical support in this regard.