

Committee on the Application of Standards

Date: 18 May 2025

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 19 May 2025.

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

Eswatini (ratification: 1981)

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)

The Government has provided the following written information as well as a copy of the Resolution of the Labour Advisory Board.

The Government wishes to submit that the Labour Advisory Board (LAB) has recently adopted a Resolution to develop some Rules of Procedure in terms of the provisions of section 25(5) of the Industrial Relations Act, No. 1 of 2000 (as amended), in an effort to strengthen its working methods. Section 25(5) of the Industrial Relations Act provides that “subject to this Section, the Board shall regulate its own procedure”. As previously encapsulated in detail in Article 22 reports, the Industrial Relations Act is the enabling legislation through which the country domesticated the aspirations of the Convention, including all the issues for consultation that are listed in its Article 5(a) to (e). In this regard, reference is made to section 24(1)(c)(i) to (v) of the Industrial Relations Act. Therefore, in law, the country has fully complied with the requirements of the Convention since the Kingdom of Eswatini has domesticated the requirements of the Convention through Part III of the Industrial Relations Act.

In practice, the country has also complied with the requirements of the Convention by periodically appointing the LAB, this being the established mechanism for consultations between Government, employers’ organizations and workers’ organizations on ILO-related matters as listed in Article 5 of the Convention. Over the years, the LAB has been regulating its own procedure, as provided for in section 25(5) of the Industrial Relations Act. The need to formalize the working methods of the LAB in the form of published or gazetted Rules of Procedure became apparent after one of its Constituents, being Business Eswatini (BE), the most representative organization of employers, raised various concerns regarding the working methods of the LAB, some of which were well-established practices of the LAB save only that they were not written down for legal certainty; such as follows:

- (a) the establishment of the “Officers of the LAB” composed of the Chairperson and the two Vice-Chairpersons appointed from the “Most Representative” Organizations of Employers (BE) and Workers (Trade Union Congress of Swaziland (TUCOSWA)) in the country;
- (b) agenda setting processes and scheduling of LAB meetings, which is done by the Chairperson in consultation and agreement with the Officers of the LAB;
- (c) consensus-building processes, which entails side-caucuses during LAB meetings and the referral of deadlocks to the Officers of the LAB to consider concrete unifying proposals, taking into account the views shared by Board members during LAB meetings;
- (d) co-signature by the Officers of the LAB on all Board Resolutions;
- (e) quorum of LAB meetings;
- (f) other well-established principles and practices for regulating LAB meetings and procedures for the adoption of legislative and policy instruments by the LAB, amongst others.

Having been initially established through Part III of the Employment Act No. 5 of 1980 and lately through Part III of the Industrial Relations Act No. 1 of 2000, in both pieces of legislation, the establishment of the LAB is couched in similar although not necessarily the same terms. Although the process of developing written Rules of Procedure had been initiated by the LAB in 2016 culminating to some draft Rules of Procedure in 2018 prepared by the LAB Drafting Committee, the pressing need to formalize and/or gazette the LAB Rules of Procedure had not arisen until very recently when BE raised strong concerns regarding some of the formalities and/or lack thereof in the procedures and management of LAB meetings. It is in that respect that following its special meetings held on Tuesday, 29 April and Monday, 12 May 2025 the LAB resolved as follows, in summary, as quoted verbatim from paragraph 11 of the signed resolution:

11. (a) The concerns raised by BE should be and are considered in a positive spirit for purposes of improving the working methods of the LAB.
- (b) The concerns raised by BE should be implemented in the context of the process that had already been initiated by the LAB a couple of years ago, that of drafting Rules of Procedure for the Labour Advisory Board in terms of Section 25(5) of the Industrial Relations Act, No. 1 of 2000 (as amended).
- (c) The process of drafting Rules of Procedure for the LAB should be re-initiated and driven to finality without any further delays, being informed and/or enhanced by a bench-marking exercise for information sharing on best practices in other jurisdictions; standards set by ILO relevant instruments including ILO Convention No. 144 on Tripartite Consultations (International Labour Standards) Convention, 1976; Comments made by ILO supervisory bodies, etc.
- (d) A Drafting Committee to prepare the draft Rules of Procedure for the LAB be and is hereby appointed from among the members of the LAB - composed of two (2) Government representatives, two (2) Employers’ representatives and two (2) Workers’ representatives, respectively. One of the employers’ representatives will be nominated by Business Eswatini and the second one will be nominated in agreement between the Federation of Eswatini Business Community (FESBC) and the Business Federation of Eswatini (BUFE).
- (e) Nomination of representatives by Constituents should be submitted to the Secretariat by close of business on Wednesday the 14th May, 2025.

(f) The Drafting Committee should build upon the draft Rules of Procedure which had already been developed in a similar process between 2016 and 2018, take into account the proposals made by Business Eswatini, and other relevant information as referred to in paragraph (c) above. To this extent, the Secretariat should immediately circulate to all Board members the draft Rules of Procedure which were developed by the Board between 2016 and 2018.

(g) The Drafting Committee should complete its task of developing draft Rules of Procedure within a period of two months, counting from the date of adoption of this Resolution (12 May, 2025).

(h) The Drafting Committee should ensure that the Rules of Procedure do effectively address all the concerns that are contained in the Preamble to this Resolution. (I) In the discharge of its responsibility, the Drafting Committee should avail itself of ILO's technical assistance, through the Ministry of Labour and Social Security.

12. Pending adoption of the new Rules of Procedure for the conduct of LAB meetings, the current status quo ante as alluded to in Paragraph 9 of this Resolution will remain.

In terms of the LAB Resolution, the process of drafting the LAB Rules of Procedure will simultaneously address some of the observations made by the Committee of Experts when examining the country's Article 22 report on the Convention in 2024, particularly that which relates to the criteria for determining the most representative organizations, especially for the Employers' federations where there is no Memorandum of Understanding. Finally, it is also worth mentioning that the report prepared by the Ad Hoc Tripartite Working Committee on Social Dialogue, which was appointed in agreement with the social partners to undertake an assessment review of the country's social dialogue structures, especially the National Steering Committee on Social Dialogue (NSCSD) and the LAB is now ready for consideration by the LAB. The Social Partners have agreed that this report should be considered and adopted by the LAB as it is a statutory structure (or formal procedure) currently endowed with the mandate contained in Article 2 of the Convention.