



Confédération des Travailleurs des Secteurs Public et Privé

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Mr. Gilbert F. Houngbo
The Director
International Labour Organization
4, Route des Morillons
CH-1211, Geneva 22
Switzerland

Dear Director General,

We thank you for your letter to all ILO Member States dated 31 August that was brought to our attention. In this letter you confirmed that you have received the request from the ILO Workers' group of 12 July 2023 for the urgent referral of the dispute over the interpretation of the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No 87) (C.87) in relation to the right to strike to the International Court of Justice (ICJ) for decision, in accordance with article 37(1) of the ILO Constitution. The Workers' group also requested this matter to be put urgently on the agenda of the Governing Body for decision. This request has in the meantime received support from 36 Governments from different regions, recognising the importance of legal certainty on this issue for all constituents.

We also express our appreciation for the background report that was prepared by your Office to inform the decision during the Special Meeting of the Governing Body on 10 November 2023 and welcome your invitation to all Governments and employers' and workers' organisations concerned to send in comments.

Indeed, the right to strike is of the utmost importance for workers in Mauritius and the inability of the ILO to supervise this right, as a consequence of the dispute, in our national context is potentially seriously affecting labour relations in our country.

The absence of an explicit mention of the right to strike in any of the conventions of the ILO, and more particularly in Convention 87, should not be viewed as a deprivation of such a right. In order to give the Convention its true purport, it must be interpreted not from an Originalist standpoint but has to be given a dynamic construction. Its true intent lies in its spirit and not in its letters.

It is obvious that Government and Employers will always be on common ground with respect to any strike action manifested by workers. Whereas for both parties strike remains a threat to their economic and financial interests, workers have looked at strike as the ultimate weapon to bargain for decent work conditions.

The International Labour Organization, as a tripartite body, has placed Government, Employer and Worker on the same pedestal. Within such a balanced structure, it should be a matter of serious concern to workers' organisations when Employers have started questioning the mandate of the Committee of Experts to interpret ILO Convention 87 to the extent of submitting that the Committee is not legally competent to hold that the right to strike is embedded in the Convention.

This Confederation wishes to submit its stand on the dispute:

- (i) That the right conferred on workers' and employers' organisations under Article 3 of Convention 87 has the same weight in each organization and that employers are free to organize the administration of their organization without interference of the other;
- (ii) The right to organize the activities of their organisations is also one that precludes any interference of one party in the affairs of the other party;
- (iii) That a Convention must be permitted to evolve with the needs, exigencies and dynamics of the world of work.
- (iv) In light of (iii) above, the word "activities" should not be construed narrowly to intentionally impair the implicit right to strike as an industrial action as would be the case with an Originalist interpretation but must be given a dynamic interpretation to permit it to adapt to such needs, exigencies and dynamics.
- (v) A number of countries, including Mauritius, have adopted the dynamic interpretation of Convention 87 in the wake of which the Legislative have translated the right under Article 3 into their labour laws so that while workers can have recourse to legally recognized strike, employers can have recourse to lock-out.
- (vi) The labour laws in Mauritius have provided clear legal procedures for workers' and employers' organisations to have recourse to strike and lock-out actions. By not recognizing the implicit element of the right to strike as claimed by employers', the latter are opening the door for the legislative to abrogate the relevant sections of the labour laws with respect to the said actions.
- (vii) This Confederation is of the view that there is no reason as to why the controversy over Convention 87 should not be submitted to the International Court of Justice for an informed decision. The CEACR, in spite of not having the power of adjudication, is the right organ of the ILO for the interpretation and application of Conventions.

We, therefore, wholeheartedly support the request for a referral from our Workers' representatives in the Governing Body and call for an urgent decision by the Governing Body to ensure an immediate referral of the dispute to the ICJ. In addition, since we firmly believe that the right to strike is an essential part of freedom of association and already elaborated by the ILO supervisory bodies, there will be no added value in a protocol complementing the convention to qualify the right to strike. On the contrary, any such attempt would generate a conflict with C.87 already guaranteeing the right to strike as a fundamental principle and right at work. This would further exacerbate the dispute rather than solve it. We are convinced that legal certainty through an advisory opinion of the ICJ that is binding on the ILO is urgently required.

Yours sincerely,



Mr. Reeaz Chuttoo
President - C.T.S. P



Ms. Jane Ragoo
G.Secretary – C.T.S.P