Committee on the Application of Standards

Date: 13 May 2022

Governments appearing on the list of individual cases have the opportunity, if they so wish, to supply on a purely voluntary basis, written information before 16 May 2022.

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

Mauritius (ratification: 1969)

Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

The Government has provided the following written information.

(1) Text of the observation adopted in 2021 by the CEACR, published in Report III (Part A), ILC, 110th Session, 2022

The Committee notes the observations made by the Confederation of Free Trade Unions and the State and Other Employees Federation, dated 26 August 2021, concerning matters examined in the present comment.

Legislative developments. In its last comment, the Committee noted the Government's indication that a revision of the Employment Rights Act (2008) and the Employment Relations Act 2008 (ERA 2008) was under way. The Committee takes note of the Government's indication that: (i) the Employment Rights Act (2008) was replaced by the Worker's Rights Act 2019 (WRA) (Act No. 20) and (ii) the ERA 2008 was amended by the Employment Relations (Amendment) Act 2019 (Act No. 21).

In addition, the Committee welcomes the establishment of the National Tripartite Council provided for under section 28(j) of the ERA 2008, as amended in 2019, which aims at promoting social dialogue and consensus building on labour, industrial relations or socio-economic issues of national importance and other related labour and industrial relations issues. ***Observing that the Council shall make recommendations to the Government on issues relating, inter alia, to the review of the operation and enforcement of the labour legislation, the Committee requests the Government to provide information on the recommendations made by the Council in relation to matters covered by the Convention, including as to giving effect to the Committee's comments.***

Information from the Government

The Ministry notes that the ILO welcomes the establishment of the National Tripartite Council provided for under section 28(j) of the ERA 2008, as amended in 2019.

The Ministry wishes to point out that the Council has already been set up in the first week of May 2022 and that the first meeting of the Council is scheduled for end of May 2022.

(2) Text of the observation

Article 1 of the Convention. Adequate protection against acts of anti-union discrimination. In its last comment, the Committee requested the Government to continue to provide statistical data on the number of complaints of anti-union discrimination, their outcome and the number and nature of sanctions imposed or remedies awarded. It also requested it to pursue its efforts, in particular in the export processing zones (EPZs), to ensure that all allegations of anti-union discrimination give rise to expeditious investigations The Committee takes note of the Government's indication that Act No. 21 introduced the following amendments to the ERA to enhance protection of workers against acts of anti-union discrimination:

- new subsection 31(1)(b)(iii) provides that no person shall discriminate against, victimize or otherwise prejudice a worker or an accredited workplace representative on any employment issue on the ground of his trade union activities;
- new subsection (1A) provides for stringent conditions to curb any decision to terminate workers' employment in relation to trade union membership or activities; and
- in section 2 of the ERA, the definition of labour dispute has been broadened to include reinstatement of a worker where the employment is terminated on the grounds specified in section 64(1A) (above-mentioned).

The Committee takes note with ***interest*** of the above-mentioned measures introduced by Act No. 21 to the ERA which complement the protection against acts of anti-union discrimination already provided for in the legislation. ***The Committee requests the Government to indicate the impact in practice of the legislative amendments and to provide statistical data in that regard, including on the number of complaints of anti-union discrimination, including anti-union dismissals, brought before the competent authorities (labour inspectorate and judicial bodies), their outcome and the number and nature of sanctions imposed or remedies awarded.***

Information from the Government

- The Ministry considers that the practical test to measure the impact of the provisions of the labour legislation protecting workers against anti-union discrimination boils down to the prevalence and trend of union discrimination cases.
- Only two cases have been reported to the competent authorities as detailed below.
- The Ministry was, as at 31 May 2021, in presence of two cases of termination of employment on grounds of trade union discrimination in respect of the President of the Union of Post Office Workers and that of the Airport of Mauritius Ltd Employees Union.
- The first case relates to Mr LB who reported a labour dispute against Mauritius Post Limited to the Commission for Conciliation and Mediation (CCM) on 20 July 2020 claiming

reinstatement on the grounds that his employment was terminated on 18 June 2020 on the basis of his trade union activities.

- As the dispute could not be resolved, the CCM referred the matter to the Employment Relations Tribunal (ERT) on 7 October 2020.
- In an award (ERT/RN 105/2020) delivered on 22 September 2021 the ERT, after having considered the evidence adduced by both parties, concluded that it "cannot reasonably come to the conclusion that Mr LB's employment was terminated by reason of his participating in trade union activities".
- The second case relates to Mr SDS who reported a labour dispute against Airport of Mauritius Ltd to the CCM on 7 September 2020 claiming reinstatement on the grounds that his employment was terminated on 25 July 2020 on the basis of his trade union activities. As the dispute could not be resolved, the CCM referred the matter to the ERT on 21 September 2020.
- In an award (ERT/RN 97/20) delivered on 22 October 2020 the ERT, after considering that Mr SDS has not adduced any evidence to show that the charges levelled against him would relate to protection against union discrimination granted under section 31(1)(b)(ii) of the Employment Relations Act. The Tribunal found that "the Disputant has not shown on a balance of probabilities that he should be reinstated and the dispute is thus set aside".
- So far, no case of anti-union discrimination in the EPZ sector has been reported.
- Although there might be a perception of anti-union discrimination, there has been no objective evidence to that effect up to now.
- The Ministry would continue to include relevant statistics in its reports of ratified ILO Conventions during their respective reporting cycle.
- In our last report, the Ministry submitted information on the statutory time frame for completion of proceedings by the CCM (45 days) and the ERT (90 days).

(3) Text of the observation

In its last comment, the Committee invited the Government to engage in a dialogue with the national social partners with a view to identifying possible adjustments to improve the rapidity and efficiency of the conciliation proceedings. The Committee takes note that the Government indicates that section 69 of the ERA, as amended in 2019, provides for a time frame for the expeditious resolution of disputes involving anti-union discrimination: 45 days at the Commission for Conciliation and Mediation (CCM) and, if no agreement is reached, the Employment Relations Tribunal (ERT) (an arbitration tribunal) must make an award within 90 days. ***The Committee also observes that section 87(2) of the ERA, as amended in 2019, has doubled the number of the CCM members and expresses the firm hope that this will contribute to improving the rapidity and efficiency of the conciliation procedures.***

Information from the Government

The Government takes note of same.

(4) Text of the observation

Having taken note of allegations made by social partners concerning the excessive length of judicial proceedings in rights disputes (six to seven years), the Committee had requested

the Government to take measures with a view to accelerating relevant judicial proceedings and to provide statistical data on their average duration. ***Regretting that no information was provided in this regard, the Committee requests the Government once again to take measures with a view to accelerating relevant judicial proceedings and to provide statistical data on their average duration, including with respect to cases that may arise in EPZs.***

Information from the Government

Judiciary proceedings rest on a case-to-case basis and, among others, on the complexities of the cases and quite often on the availability of legal persons representing the interests of either party.

It is to be noted that the Ministry, on its part, endeavours to promptly initiate court action on unresolved cases.

(5) Text of the observation

Article 4. Promotion of collective bargaining. The Committee takes note of the Government's indication that Act No. 21 introduced the following amendments to the ERA concerning collective bargaining:

- Section 51(1)–(4) of the ERA was amended to facilitate the process of collective bargaining by drawing up a procedure agreement in view of signing a collective agreement. According to the Government, this will further encourage the union and management to proceed with the negotiations keeping abreast good faith at all times with a view to reaching a collective agreement.
- Section 88(4)(e) of the ERA was amended to widen the scope of the CCM with the aim at reinforcing the mutual trust between employer and employees.
- Section 69 of the ERA was amended to promote the settlement of labour disputes. Section 69(3) has been specifically introduced to make the recommendation of the President of the CCM binding should both parties to a labour dispute agree to confer upon the President such power. The Government indicates that this provision was added to provide a speedy solution to break the deadlock between the parties instead of having recourse to the Tribunal, thus saving time, which is crucial in industrial matter.
- Section 69(9)(b) was amended to enable both the union or the employer to request the CCM to refer a labour dispute to the ERT (arbitration tribunal) once the conciliation attempt has failed. The Government indicates that prior to the amendment; the CCM could only refer to the ERT cases brought by an individual worker. The Committee observes that, while section 63 of the ERA provides that the parties may jointly refer a dispute for voluntary arbitration, section 69(9)(b), as amended, concerns the referral of a dispute to an arbitration tribunal at the request of one of the parties. ***Recalling that compulsory arbitration in the case that the parties have not reached agreement is generally contrary to the principles of collective bargaining, the Committee requests the Government to clarify whether the revised section 69(9)(b) does allow for compulsory arbitration at the request of one party.***

Information from the Government

The Ministry is of the view that the revised section 69(9)(b) is not tantamount to compulsory arbitration inasmuch as –

- the principle of meaningful and good faith negotiation, fair resolution of dispute and harmonious industrial relations characterize our process of collective bargaining.
- it has been observed that in a number of disputes referred to the CCM, settlement could not be reached nor joint referral could be made to the ERT due to the conservative culture and unwillingness of some employers.

In these circumstances, where there is a dead lock and the dispute is bona fide:

- the dispute of the worker remains unresolved;
- very often, due to an unequal balance of power, the trade union cannot resort to strike action. Similarly, the dispute remains unresolved.

This situation cannot be considered to be conducive to good and harmonious industrial relations, contrary to the Basic Employment Relations Principles set out in the Code of Practice in the Fourth Schedule of the Employment Relations Act.

Section 69(9)(b) of the Act is, therefore, aimed at addressing this anomalous situation and providing an alternate avenue for dispute resolution for bona fide cases.

(6) Text of the observation

– Section 87(2) was amended to reinforce the human resource of the CCM. The Committee recalls that in its previous comments it had noted allegations in relation to the lack of human resources at the CCM. As mentioned in the present comment under *Article 1* of the Convention, it appreciates that the revised section 87(2) has doubled the number of its members. The Committee regrets to note, however, that the revised section 87(2) has removed the requirement for the Minister to hold consultations with the most representative organizations of workers and employers in relation to the appointment of conciliators or mediators. ***The Committee requests the Government to clarify the rationale behind the removal of consultations to social partners under this section.***

The Committee takes due note of the above-mentioned amendments and expresses the hope that, as indicated by the Government, they will contribute to facilitating collective bargaining. The Committee requests the Government to indicate the impact of the legislative amendments in practice.

Information from the Government

- The Government takes note of the observation
- Conciliators and mediators would be from among public officials and on the permanent establishment of the Commission to carry out scheduled duties.
- With regards to the members to be appointed on the Commission by the Minister, the request is being considered.
- The new structure of the CCM has not yet been established.

(7) Text of the observation

In its previous comment, the Committee expressed its expectation that the Government would continue to carry out and strengthen inspections and sensitization activities with respect to collective bargaining. The Committee notes the Government's indication that: (i) 132 sensitization activities carried out between 2017 and 2021 benefited 2,660 workers in the EPZ/textile sector;

and (ii) 161 inspection visits carried out in the EPZ sector covered 21,273 local workers and 1,284 inspection visits in undertakings in the manufacturing sector covered 231,793 migrant workers. The Committee notes that 64 collective agreements have been registered with the Ministry of Labour from 2017 to 2020 and that neither of them pertains to the EPZ sector. The Committee also notes the Government's indication that the COVID-19 pandemic has somehow affected the activities of the Ministry. ***The Committee takes note of the information provided and requests the Government, in consultation with the social partners, to strengthen these activities, in particular in the EPZs, textile sector, sugar industry, manufacturing sector and other sectors employing migrant workers. It also requests the Government to continue to supply statistics on the functioning of collective bargaining in practice (number of collective agreements concluded in the private sector, especially in EPZs; branches and number of workers covered).***

Information from the Government

- The Government has taken note of the observation and will continue to provide the required statistics to the ILO.
- It is to be noted that for period from January 2020 to December 2021, out of the 30 collective agreements registered at the Ministry, two collective agreements relate to the EPZ sector.
- The Government has also taken note of the fact that the ILO reckoned a decreased in a number of activities of the Ministry on account of the Covid-19 pandemic.

(8) Text of the observation

Interference in collective bargaining. In its previous comment the Committee expressed the hope that the Government would continue to refrain from unduly interfering in and give priority to collective bargaining of a voluntary nature as the means of determining terms and conditions of employment in the sugar sector in particular and in the private sector in general. The Committee also requested the Government to provide its comments on observations made by Business Mauritius that the Remuneration Orders of the National Remuneration Board (NRB) were so elaborated and prescriptive that they acted as a disincentive to collective bargaining. The Committee notes that the Government states that: (i) as from 24 October 2019, the core conditions of employment of workers under Remuneration Orders (ROs) have been harmonized with the adoption of the WRA; (ii) the ROs have been repealed and replaced by 32 Remuneration Regulations, which provide for conditions of employment specific to the sector; (iii) a National Minimum Wage (NMW) was introduced as from January 2018 and was last reviewed in January 2020 and (iv) payments of additional remuneration continue to be made following recommendations by a national tripartite forum, chaired by the Prime Minister. ***The Committee expresses the firm hope that these developments will contribute to prioritizing bipartite collective bargaining of a voluntary nature as the means of determining terms and conditions of employment in the private sector in general.***

Information from the Government

The Government takes note of the general observation of the ILO.

The different legislation referred to set the floor for collective bargaining in a more structured manner.

(9) Text of the observation

Article 6. Collective bargaining in the public sector. In its previous comments, the Committee invited the Government, together with the professional organizations concerned, to study ways in which the current system could be developed to effectively recognize the right to collective bargaining of public servants who are not engaged in the administration of the State. The Committee notes that the Government states that: (i) salary determination in the private sector is completely different than in the public sector; (ii) in the private sector, the wage fixing institution establishes a floor wage and this eventually gives room to collective bargaining; and (iii) this system cannot be imported to the public sector as the Pay Research Bureau (PRB) establishes a ceiling wage for public sector employees. The Committee notes that the Confederation of Free Trade Unions and the State and Other Employees Federation precisely highlight that collective bargaining does not exist in the public service since the setting up of the PRB. The Committee takes note that the Government states that with a view to promoting social dialogue in the public service, an Employment Relations Committee (ERC) is being set up by the Ministry of Public Service, Administrative and Institutional Reforms comprising representatives from Management and the four most representative federations of the Civil Service. Such Committee would, inter alia, consider any matter relating to or arising out of the course of employment of public officers and would make recommendation to appropriate instances. The draft regulation has been finalized after consultations with different stakeholders and is presently at the level of the Attorney-General's Office for vetting. ***The Committee welcomes these developments, which aim at promoting social dialogue in the public service. It requests the Government to transmit a copy of the ERC once it has been adopted.*** The Committee must recall, however, that, pursuant to *Article 6* of the Convention, all public servants, other than those engaged in the administration of the State, should enjoy collective bargaining rights, and that, under the Convention, the establishment of simple consultation procedures for public servants who are not engaged in the administration of the State (such as employees in public enterprises, employees in municipal services, public sector teachers, etc.), instead of real collective bargaining procedures, is not sufficient. ***The Committee therefore invites once again the Government, together with the professional organizations concerned, to take the necessary measures to effectively recognize the right to collective bargaining of public servants who are not engaged in the administration of the State.***

The Committee reminds the Government that it may avail itself of technical assistance from the Office with respect to all issues raised in its present comments.

Information from the Government

- The Government has taken note of the request of the Committee.
- The Ministry of Public Service, Administrative and Institutional Reforms has highlighted some key elements of the collective bargaining process which already exist in the public service.
- For example:

  (i) The scheme of service of public officers, which is a legal document providing for salary, qualification, mode of appointment and duties to be performed by incumbents of the post, are subject to consultation with the departmental staff associations and their respective federations.

(ii) Prior to the publication of the PRB report, consultations are held with departmental staff associations and their respective federations. In 2021, the PRB held some 800 consultations meetings with the trade union organizations.

- Furthermore, the proposed Employment Relations Committee to replace the present Central Whitley Council aims at providing a more structured approach for discussions with trade union organizations.
- The trade union organizations were invited to submit their views on the amended draft regulations, which is presently being examined by the Attorney-General's Office.