

Committee on the Application of Standards

Date: 16 May 2022

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 16 May 2022.

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

Maldives

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 2013)

The Government has provided the following written information.

The Committee requests the Government to provide its comments on the Maldivian Trade Union Congress (MTUC) observations.

While freedom of association and protection of the right to organize are rights enshrined in the Constitution of the Republic of Maldives, following the outbreak of the COVID-19 pandemic, the Government declared a state of public health emergency under section 33 of Law No. 7/2012 (Public Health Protection Act) and implemented precautionary restrictive measures to contain the spread, which included restrictions on public gatherings in the Greater Male' region. This was to ensure compliance with the Health Protection Agency's (HPA) orders issued under the Public Health Protection Act).

In view of the above and recalling that the Industrial Relations Bill and the Associations Bill have been pending adoption for several years, the Committee expects that they will be adopted without delay, following meaningful consultation with workers' and employers' organizations, and will address all of the Committee's observations below so as to ensure their full conformity with the Convention and contribute to the promotion of freedom of association in the country. The Committee invites the Government to continue to avail itself of the technical assistance of the Office, should it so desire, and requests it to provide a copy of the amended laws once adopted.

A comprehensive study has been conducted to determine whether the current draft Industrial Relations Bill complies with international best practices. The Government is currently working on submitting the Industrial Relations Bill to Parliament before the end of its second session this year. It has also been the current administration's policy to consider public comments on final legislative documents before they are adopted by Parliament. A copy of the amended Industrial Relations Bill will be provided to the Committee once adopted.

President Ibrahim Mohamed Solih on 9 May 2022 ratified the Associations Act (Law No. 03/2022). Parliament passed the Bill at its 32nd sitting of the first session, held on Monday, 18 April 2022. (<https://www.gazette.gov.mv/gazette/6394>). The Act would come into effect six months following ratification. The new law repeals the Associations Act (Act No. 1/2003) with its ratification.

The Act is available in the Dhivehi language.

The Committee expects the proposed legislative amendments to ensure that minors who have attained the legal age of employment will be able to exercise their trade union rights.

Pursuant to section of the Associations Act (Law No: 03/2022), the minimum age to be a member of the executive committee of an association remains at 18 years.

Observing that the Government does not provide any details as to the permitted grounds for rejecting a proposed name under section 34(a) of the Associations Bill, the Committee expects these to be sufficiently restrictive so as to limit the Registrar's discretionary power, ensuring that registration is a mere formality and does not amount to a previous authorization contrary to Article 2 of the Convention.

Pursuant to section 16(c) of the new Associations Act (Law No. 03/2022), the Registrar of Associations is to formulate a regulation that outlines the limits of the Registrar's practice of the discretionary power within six months of the Act's enforcement.

The Committee encourages the Government to take the necessary measures to enable collection of data on the number of workers' and employers' organizations registered in the country, the sectors in which they are active and the number of workers covered, and requests it to provide statistics in this regard.

The Ministry of Youth, Sports and Community Empowerment had a soft launch of the NGO Portal in early 2022. Currently, they are extracting the data from the manual sheets and updating the NGO website. The Committee will be kept apprised of developments and will be provided with a list of workers and employers, once the NGO Portal is fully launched.

The Committee expects the proposed legislative amendments to ensure that minors who have attained the legal age of employment will be able to exercise their trade union rights, including the right to be eligible for trade union office.

Recalling that such restrictions can unduly infringe the right of organizations to elect representatives in full freedom by preventing qualified persons from holding trade union office if they are already engaged in a similar position in another association, the Committee requests the Government to take the necessary measures to review the relevant provisions of the Associations Bill so as to allow persons to hold trade union office in more than one association, subject only to the statutes of the organizations concerned.

The new Associations Act (Law No. 03/2022) was passed with the restriction that a person cannot become a member of the executive committee of an association if they are already an executive committee member of another association.

Observing, however, the Government's statement that sections 5(f) (stipulating that any money or property of the association after its dissolution will be given away to another non-profit association or to a government-approved charity) and 23 (providing detailed instructions on how to address debts of an association) have not been substantively changed, the Committee reiterates its request in this regard.

Section 38(a)(14) of the new Association Act (Law No. 03/2022) states that the governing regulations of every association shall contain the procedures for the transfer of money or property to a non-profit-making organization or a charity, in case the association is wound up.

Section 71 of the new Associations Act (Law No. 03/2022) stipulates that if an association is dissolved by a court ruling, the money and property of the association after the payment of any dues will be given away to another non-profit-making association that is stated in the governing regulations of the association.

Recalling that provisions requiring approval by the authorities of financial assistance from abroad can result in control over the financial management of organizations and restrictions on their right to organize their administration and activities, which control and restrictions are incompatible with Article 3 of the Convention, the Committee expects the Government to ensure that the amendments proposed by the Associations Bill will be fully in line with the Convention.

Section 56(a) of the new Associations Act (Law No. 03/2022) states that if an association receives a donation that is above 500,001 Maldivian Rufiyaa for the activities of that association (or an activity), the association should inform the Registrar (for the purpose of information) the details of the donor, the funded amount, and the purpose of the donation before starting the activities.

Recalling once again that dissolution of a workers' or employers' organization is an extreme measure with serious consequences upon the right to organize which should only be used in limited circumstances, the Committee requests the Government to ensure that the proposed amendments will only allow dissolution of an association following a judicial decision on the basis of precise and predetermined criteria.

Chapter 10 of the new Associations Act (Law No. 03/2022) overhauls the current procedures for dissolution of an association. As such, the Registrar will now be required to follow all the procedures stipulated in the relevant sections and will have to apply to court to obtain an order to dissolve an association.

Observing, however, the MTUC concerns that neither the Government nor the judicial system recognize federations and confederations of unions or international affiliation and further observing the Government's indication that the issue could be considered for inclusion in the draft Industrial Relations Bill, the Committee requests the Government to include in the ongoing reform process the consideration and adoption of any necessary legislative provisions and other measures to ensure that workers' and employers' organizations can, both in law and in practice, form federations and confederations, and affiliate with international organizations.

While there are no legal barriers to forming federations or confederations of trade unions or to affiliate with international organizations, there are also no specific legislative provisions governing the issue. The Government will consider including it in the draft Industrial Relations Bill, after obtaining the relevant policy decisions.

The Committee therefore requests the Government once again to take the necessary measures to repeal section 24(b)(7) of the Freedom of Peaceful Public Assembly Act and amend sections 5, 7, 8 and 11 of the Regulation on dispute resolution, so as to remove undue restrictions on the right of workers' organizations to organize their activities and ensure that all workers covered by the Convention not performing essential services in the strict sense of the term, including those in island resorts, can in practice exercise their right to strike.

The restriction on assembling in resorts, imposed by section 24(b)(7) of Law No. 1/2013 (Freedom of Peaceful Assembly Act), is in place considering the “one island one resort” situation and the strategic importance of the industry to the Maldives. However, the section does not completely prohibit the right to assemble in island resorts, as it allows for the right to be exercised with permission from the Maldives Police Service.

The Industrial Relations Bill intends to amend the procedures stipulated in the Regulation on dispute resolution.