



## Governing Body

325th Session, Geneva, 29 October–12 November 2015

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Institutional Section

INS

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### SIXTEENTH ITEM ON THE AGENDA

## Reports of the Officers of the Governing Body

### **First report: Complaint concerning the non-observance by the Bolivarian Republic of Venezuela of the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), submitted under article 26 of the Constitution by several delegates to the 104th Session (2015) of the International Labour Conference**

1. At the 104th Session of the International Labour Conference, Ms Ieva Jaunzeme, President of the Conference, received a communication, dated 13 June 2015, signed by the following Employers' delegates: Ms Renate Hornung-Draus (delegate) and Mr Max Conzemius (substitute delegate), both from Germany; Mr Mthunzi Mdwaba (delegate, South Africa); Ms Ronnie Goldberg (delegate, United States); Mr El Mahfoudh Megateli (delegate, Algeria); Mr Terence Darko (delegate, Ghana); Ms Jacqueline Mugo (delegate, Kenya); Ms Lidija Horvatić (delegate, Croatia); Mr U.D. Choubey (delegate, India); Mr Khalifa Khamis Mattar (delegate, United Arab Emirates); Mr Kris De Meester (delegate, Belgium); Mr Christopher Syder (delegate, United Kingdom); Ms Sonia Regenbogen (delegate, Canada); Mr Dick Grozier (delegate, Australia); Mr Alexander Frimpong (substitute delegate, Ghana); Ms Alessandra D'Amico (delegate, Cambodia); Ms Bonsiwe Ntando (delegate, Swaziland); Mr Hiroshi Tokumaru (delegate, Japan); Mr Tapan Chowdhury (delegate) and Mr Kamran Tanvirur Rahman (substitute delegate) both from Bangladesh; Ms Stefania Rossi (delegate, Italy); Mr Flemming Dreesen (delegate, Denmark); Mr José María Lacasa Aso (delegate, Spain); Mr Pablo Carrasco Quintana (delegate, Plurinational State of Bolivia); Mr Clésio Soares De Andrade (delegate, Brazil); Mr Alberto Echevarría (delegate, Colombia); Mr Héctor Humeres (substitute delegate, Chile); Ms Gabriela Díaz Chanto (delegate, Costa Rica); Mr Guido Ricci (delegate,

Guatemala); Mr Roberto Arnoldo Jiménez Aguilera (delegate, El Salvador); Mr Octavio Carvajal Bustamante (substitute delegate, Mexico); Ms Elisa Suárez (delegate, Panama); Mr Julio César Barrenechea-Calderón (delegate, Peru); Ms Lina José Mejía Galo (substitute delegate, Honduras); Mr Endris Tadele Yimer (delegate, Ethiopia); Mr Juan Mailhos (delegate, Uruguay); Mr Henrik Munthe (delegate, Norway); and Ms Eloina Pérez Di Giacomo (delegate, Bolivarian Republic of Venezuela). The communication was also signed by one adviser to the Employers' delegate of Argentina, Ms María Victoria Giulietti. The communication was to the effect of submitting a complaint against the Government of the Bolivarian Republic of Venezuela under article 26 of the ILO Constitution for non-observance of the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). The text of the complaint is attached in the appendix.

2. In the plenary of the Conference session, the Employers' delegate of the Bolivarian Republic of Venezuela, in her name and on behalf of another 35 Employers' delegates, provided information regarding the complaint in question. The President of the Conference took note of the complaint and stated that it would be referred to the Officers of the Governing Body.
3. Article 26 of the ILO Constitution reads as follows:
  1. Any of the Members shall have the right to file a complaint with the International Labour Office if it is not satisfied that any other Member is securing the effective observance of any Convention which both have ratified in accordance with the foregoing articles.
  2. The Governing Body may, if it thinks fit, before referring such a complaint to a Commission of Inquiry, as hereinafter provided for, communicate with the government in question in the manner described in article 24.
  3. If the Governing Body does not think it necessary to communicate the complaint to the government in question, or if, when it has made such communication, no statement in reply has been received within a reasonable time which the Governing Body considers to be satisfactory, the Governing Body may appoint a Commission of Inquiry to consider the complaint and to report thereon.
  4. The Governing Body may adopt the same procedure either of its own motion or on receipt of a complaint from a delegate to the Conference.
  5. When any matter arising out of article 25 or 26 is being considered by the Governing Body, the government in question shall, if not already represented thereon, be entitled to send a representative to take part in the proceedings of the Governing Body while the matter is under consideration. Adequate notice of the date on which the matter will be considered shall be given to the government in question.
4. Conventions Nos 26, 87 and 144 were ratified by the Bolivarian Republic of Venezuela on 6 June 1933, 20 September 1982 and 17 June 1983 respectively, and have been in force in the country since 6 June 1934, 20 September 1983 and 17 June 1985 respectively. On the date of the complaint, all but one signatory were Employers' delegates of their respective countries to the 104th Session of the Conference. Therefore, under article 26, paragraph 4, of the ILO Constitution, those delegates had the right to file a complaint if they were not satisfied that the Bolivarian Republic of Venezuela had adopted measures to secure the effective observance of these three Conventions.
5. At this stage of the procedure, the merits of the complaint cannot be discussed in the Governing Body. If a Commission of Inquiry is appointed (a decision which the Governing Body may take in accordance with article 26, paragraph 4, of the Constitution), the Governing Body will only be requested to take measures once the Commission of Inquiry has submitted a report on the merits of the complaint.

6. The Officers accordingly consider the complaint to be receivable in accordance with article 26 of the ILO Constitution and, without entering into the substance of the complaint, have agreed to refer the matter to the Governing Body.
7. Irrespective of the question of receivability of the complaint, it should be recalled that the Committee on Freedom of Association has, on numerous occasions, considered a complaint submitted on 17 March 2003 (Case No. 2254) and broadened year after year by two employers' organizations, in which it is alleged that the freedom of association of Venezuelan employers is being violated. Ever since, the Governing Body has approved the Committee's interim conclusions in this case. Since March 2009, the Committee on Freedom of Association has categorized this case as extremely urgent and serious. It should also be recalled that, in its November–December 2014 meeting, the Committee of Experts on the Application of Conventions and Recommendations provided comments to the Government of the Bolivarian Republic of Venezuela relating to the application of the Conventions (Nos 26, 87 and 144) referred to in the complaint submitted under article 26 of the ILO Constitution, and that on several occasions the Conference Committee on the Application of Standards discussed the application by the Bolivarian Republic of Venezuela of Convention No. 87 (most recently in June 2015). The Bolivarian Republic of Venezuela's application of Convention No. 26 was also discussed in 2014.
8. In addition, it should be recalled that on 17 June 2004, several Employers' delegates submitted a complaint relating to the non-observance of Convention No. 87 under article 26 of the ILO Constitution against the Government of the Bolivarian Republic of Venezuela, which was considered receivable by the Governing Body but for which a Commission of Inquiry was not appointed, and other measures were taken instead. Lastly, in March 2011 the Governing Body decided: (a) that the complaint presented originally in 2004 would not be referred to a Commission of Inquiry; (b) to request the Director-General to send a high-level tripartite mission to the Bolivarian Republic of Venezuela to address all the issues before the Governing Body related to Case No. 2254 as well as technical cooperation matters, and to provide a full report to the Governing Body at its 312th Session (November 2011); and (c) that, as a result of this decision, the procedure filed under article 26 of the ILO Constitution in June 2004 was closed. This high-level tripartite mission, which took place from 27 to 31 January 2014, designed an action plan to be implemented which was ratified by the Governing Body in March 2014.
9. In accordance with established practice, when the Governing Body appoints a Commission of Inquiry, the relevant matters before the various ILO supervisory bodies are referred to this Commission. Until a Commission of Inquiry is appointed, the supervisory bodies remain competent to consider the issues raised.
10. In accordance with article 26, paragraph 5, of the Constitution, since the Government concerned is represented on the Governing Body, it is not necessary to extend an invitation regarding its right to appoint a delegate to participate in the discussions of the Governing Body.
11. ***Taking into account the fulfilment of the conditions established in article 26 of the ILO Constitution, the Officers of the Governing Body consider the complaint to be receivable and recommend the Governing Body to:***
  - (a) ***request the Director-General to transmit the complaint to the Government of the Bolivarian Republic of Venezuela inviting it to communicate its observations on the complaint by 10 January 2016 at the latest;***
  - (b) ***place this item on the agenda of the 326th Session of the Governing Body (March 2016).***



## Appendix

### **Complaint submitted in accordance with article 26 of the ILO Constitution against the Government of the Bolivarian Republic of Venezuela by the Employers' delegates to the 104th Session of the International Labour Conference, 13 June 2015**

Geneva, 13 June 2015

Ms Ieva Jaunzeme  
President of the  
104th International  
Labour Conference

cc Guy Ryder  
ILO Director-General

Dear Ms Jaunzeme,

#### **Complaint under article 26 of the ILO Constitution against the Government of the Bolivarian Republic of Venezuela for violation of ILO Conventions Nos 26, 87 and 144**

We the undersigned, Employers' delegates to the 104th Session of the International Labour Conference (2015), whose names are included at the end of this request, have decided to submit formally, by means of this document, a complaint, in accordance with article 26 of the International Labour Organization (ILO) Constitution, against the Government of the Bolivarian Republic of Venezuela (Government of Venezuela) for permanent and continuous violation of the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), ratified by the Bolivarian Republic of Venezuela in 1994, 1982 and 1983, respectively.

The Government of Venezuela has committed violations of ILO Conventions Nos 26, 87 and 144 on many occasions, according to the reports of various ILO supervisory bodies. The Committee on Freedom of Association and the Governing Body in plenary, as well as the Conference Committee on the Application of Standards and the Committee of Experts on the Application of Conventions and Recommendations have considered and discussed the cases of lack of consultation, aggression, intimidation and stigmatization by the Government of Venezuela against the most representative employers' organization in the Bolivarian Republic of Venezuela, the Venezuelan Federation of Chambers of Commerce and Manufacturers' Associations (FEDECAMARAS).

The main allegations are as follows:

- Personal attacks on FEDECAMARAS leaders and physical attacks on its headquarters (explosives and vandalism, gunshots and other acts of violence).
- Exclusion of FEDECAMARAS from social dialogue processes.
- Total lack of consultation with FEDECAMARAS regarding laws that affect the economic and labour market of employers, particularly several laws issued directly by the President of the Republic, by way of enabling delegation of the legislative body.

- Adoption, without tripartite consultation, of increases to the minimum wage. The Government has not held effective consultations or meetings with FEDECAMARAS to discuss this issue in 16 years.
- Smear campaigns, verbal attacks and the creation of a hostile environment by government officials for FEDECAMARAS and its affiliated organizations, such as the National Commerce and Services Council (CONSECOMERCIO) and the Venezuelan Confederation of Industrialists (CONINDUSTRIA).
- Dispossession of land from former leaders of FEDECAMARAS or of organizations affiliated with it.

To date, the Committee on Freedom of Association has considered the complaints arising from violations of Conventions Nos 87 and 144 contained in Complaint No. 2254 on 13 occasions.

This year, the Committee of Experts on the Application of Conventions and Recommendations is issuing, with two footnotes, its twenty-second observation (2015, 2014, 2013, 2011, 2010, 2009, 2008, 2007, 2006, 2005, 2004, 2003, 2002, 2001, 2000, 1999, 1998, 1997, 1996, 1995, 1994 and 1991), in its Annual Report in relation to the serious issues surrounding the application of Convention No. 87 in Venezuela.

This year, the International Labour Conference Committee on the Application of Standards discussed on a tripartite basis the non-application of Convention No. 87 in Venezuela and adopted firm conclusions. The Committee had discussed this case on 13 previous occasions (2010, 2009, 2007, 2005, 2004, 2003, 2002, 2001, 2000, 1999, 1997, 1996 and 1995). In 2014, the Committee on the Application of Standards discussed the issues surrounding the application of Convention No. 26 in Venezuela.

Furthermore, in 2006, an ILO technical assistance mission visited the country, with a view to strengthening the tripartite social dialogue. Years later, in March 2011, in view of the fact that the situation in the country regarding respect for freedom of association and tripartite consultation was getting worse, the Governing Body agreed to send a high-level tripartite mission to Venezuela to investigate the complaints, to which the Government eventually agreed in December 2013.

The high-level tripartite mission visited Venezuela in January 2014, and its report was adopted by the Governing Body at its session in March of that year. The main conclusions of the report contain the following recommendations to the Government of Venezuela:

- (a) To put an end to the acts of violence and intimidation, threats and excessive language aimed at FEDECAMARAS in order to ensure its full enjoyment of trade union rights and freedom of association. The mission also indicated that, in light of the organization's level of representativeness of employers in the country and in view of the time that had elapsed since 2002, as well as the change in the leadership of FEDECAMARAS and its statements of respect for the Constitution of the Bolivarian Republic of Venezuela, the dialogue with FEDECAMARAS should be re-established, and the organization should not be subjected to discrimination and should be consulted on draft legislation concerning labour, social or economic matters (paragraphs 44 and 49 of the report).
- (b) Create the conditions necessary for establishing and setting up *structured* tripartite social dialogue bodies with the most representative employers' and workers' organizations, which require constructive spirit, good faith, mutual respect and respect for freedom of association and independence, in order to find, as far as possible, shared solutions. To that end, the mission requested the Government to devise a **plan of action** that includes: (1) a round table between the Government and FEDECAMARAS, with the presence of the ILO, to discuss the matters referred to in the complaints; (2) a tripartite round table, with the participation of the ILO, with an independent chairperson who has the trust of all the sectors, that respects the

representative nature of employers' and workers' organizations, that meets periodically to deal with all matters relating to industrial relations between the parties, and that includes the holding of consultations on new legislation that is envisaged concerning labour, social or economic matters (including within the framework of the Enabling Act) among its main objectives; (3) the discussion of laws, bills, other regulations and socio-economic policy at the round table, with a view to bringing domestic legislation into conformity with the ILO Conventions. The mission believed that it was important for the Government to avail itself of the technical assistance of the ILO to that end (paragraphs 52 and 54 of the report).

- (c) With regard to the confiscation of property from leaders of employers' organizations, the mission highlighted how important it was for the Government to take measures to avoid any kind of discretion or discrimination in the legal mechanisms governing the expropriation or recovery of land, or other mechanisms that affect the right to own property. It also indicated that the bill governing land announced by the Government should be the subject of full consultations with representative workers' and employers' organizations (paragraph 47 of the report).

To date, the Government of Venezuela has not implemented any of the recommendations contained in the 2014 report of the ILO high-level tripartite mission or the observations, conclusions or recommendations issued by the various ILO supervisory bodies (Committee of Experts, Committee on the Application of Standards and Committee on Freedom of Association). At present, there is escalation in acts of intimidation, aggression and stigmatization by the Government against FEDECAMARAS and its affiliated organizations, according to new complaints that have been filed with the ILO, which include:

- The President of the Republic and public officials issue public messages that attack FEDECAMARAS, accusing it of waging an alleged economic war of conspiracy against the Government.
- Pro-Government groups have held demonstrations in front of FEDECAMARAS headquarters. Moreover, the state intelligence service has been following the President of FEDECAMARAS to meetings outside its headquarters, including meetings in the country's interior, and his work agenda has been exposed in the media. (These events were reported to the Ministry of Popular Power for the Interior, Justice and Peace in November 2014.)
- In September 2014, the state intelligence service detained the President of CONINDUSTRIA.
- In February 2015, more than 15 association and business leaders, including the Presidents of the Venezuelan Association of Private Clinics and Hospitals and the National Association of Supermarkets and Self-Services, were detained.
- In May, the President of the Republic stated that the Government would not issue foreign currencies (under an exchange control regime) to FEDECAMARAS; made new threats of imprisonment; and issued various calls to the people inciting hatred against FEDECAMARAS.

To date, no corrective measures have been taken to address the issue of occupied or expropriated lands. Consultation continues to be overlooked by the Government, and in recent months, more than 50 laws have been issued by the President of the Republic, without due consultation of FEDECAMARAS, under the enabling order granted by the Venezuelan legislative body. Furthermore, various increases to the minimum wage of workers have been adopted without consultation. All of the above is contained in the complaints that have been filed and verified by the Committee on Freedom of Association and constitute new violations of ILO Conventions Nos 26, 87 and 144.

The allegations severely undermine FEDECAMARAS's enjoyment of freedom of association, tripartite consultation and social dialogue, in blatant and grave violation of ILO Conventions Nos 26, 87 and 144 as well as the conclusions and recommendations issued by the various ILO supervisory bodies (Committee of Experts, Committee on the Application of Standards and Committee on Freedom of Association) and the recommendations of the 2014 high-level tripartite mission.

The non-observance by the Government of Venezuela of the provisions of ILO Conventions Nos 26, 87 and 144 is extremely serious and undermines the very existence of FEDECAMARAS, the most representative employers' organization.

The Government of Venezuela must put an end to the constant violations of the aforementioned ILO Conventions and, therefore, in light of the foregoing, we the undersigned, Employers' delegates to the 104th International Labour Conference, formally present this complaint, in accordance with article 26 of the ILO Constitution, for repeated failure to observe ILO Conventions Nos 26, 87 and 144 and we therefore request the ILO to take the appropriate measures with a view to the prompt and timely consideration of this complaint under article 26. We the undersigned reserve the right to provide additional information.

<b>Germany</b>	Max Conzemius Substitute Delegate Renate Hornung-Draus Delegate
<b>South Africa</b>	Mthunzi Mdwaba Delegate
<b>United States</b>	Ronnie Goldberg Delegate
<b>Algeria</b>	El Mahfoudh Megateli Delegate
<b>Ghana</b>	Terence Darko Delegate
<b>Kenya</b>	Jacqueline Mugo Delegate
<b>Croatia</b>	Lidija Horvatić Delegate
<b>India</b>	U.D. Choubey Delegate
<b>United Arab Emirates</b>	Khalifa Mattar Delegate
<b>Belgium</b>	Kris De Meester Delegate
<b>United Kingdom</b>	Christopher Syder Delegate
<b>Canada</b>	Sonia Regenbogen Delegate
<b>Australia</b>	Dick Grozier Delegate
<b>Ghana</b>	Alexander Frimpong Substitute Delegate
<b>Cambodia</b>	Alessandra D'Amico Delegate
<b>Swaziland</b>	Bonsiwe Ntando Delegate

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<b>Japan</b>	Hiroshi Tokumaru Delegate
<b>Bangladesh</b>	Kamran Rahman Substitute Delegate for Tapan Chowdhury Delegate
<b>Italy</b>	Stefania Rossi Delegate
<b>Denmark</b>	Flemming Dreesen Delegate
<b>Spain</b>	José María Lacasa Aso Delegate
<b>Bolivia, Plurinational State of</b>	Pablo Carrasco Delegate
<b>Brazil</b>	Clésio Soares De Andrade Delegate
<b>Colombia</b>	Alberto Echavarría Delegate
<b>Chile</b>	Héctor Humeres Substitute Delegate
<b>Costa Rica</b>	Gabriela Díaz Chanto Delegate
<b>Guatemala</b>	Guido Ricci Delegate
<b>El Salvador</b>	Roberto Arnoldo Jiménez Delegate
<b>Mexico</b>	Octavio Carvajal Delegate
<b>Panama</b>	Elisa Suárez Delegate
<b>Peru</b>	Julio César Barrenechea Delegate
<b>Argentina</b>	María Victoria Giuliatti Substitute Delegate for Juan José Etala Delegate
<b>Honduras</b>	Lina José Mejía Galo Delegate
<b>Ethiopia</b>	Endris Tadele Yimer Delegate
<b>Uruguay</b>	Juan Mailhos Delegate
<b>Norway</b>	Henrik Munthe Delegate
<b>Venezuela, Bolivarian Republic of</b>	Eloína Pérez Di Giácomo Delegate

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