



## Governing Body

329th Session, Geneva, 9–24 March 2017

GB.329/INS/15(Rev.)

Institutional Section

INS

Date: 13 March 2017

Original: Spanish

### FIFTEENTH ITEM ON THE AGENDA

## **Complaint concerning 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), made under article 26 of the ILO Constitution by several delegates to the 104th Session (2015) of the International Labour Conference**

#### **Purpose of the document**

This document has been drawn up in response to the Governing Body's decision to consider this matter at its March 2017 session. The document contains the information provided by the Government of the Bolivarian Republic of Venezuela and the social partners on the issues raised in the complaint. It will be for the Governing Body to adopt the necessary decisions as to the procedure to be followed in respect of this complaint.

**Relevant strategic objective:** Promote and realize standards and fundamental principles and rights at work.

**Main relevant outcome/cross-cutting policy driver:** Outcome 2: Ratification and application of international labour standards.

**Policy implications:** None.

**Legal implications:** None.

**Financial implications:** Depending on the decision of the Governing Body.

**Follow-up action required:** Depending on the decision of the Governing Body.

**Author unit:** International Labour Standards Department (NORMES).

**Related documents:** GB.328/INS/12(Rev.); GB.328/PV/Draft.



1. At its 328th Session (November 2016), the Governing Body noted with interest the information provided by the ILO Director-General regarding the commitment of the Government of the Bolivarian Republic of Venezuela to include the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS) in the future socio-economic dialogue table. The Governing Body expressed the firm expectation that before the 329th Session (March 2017) the Government would take appropriate measures to foster an appropriate environment for social dialogue, which would allow the FEDECAMARAS and their member organizations, leaders and affiliated companies, as well as trade unions, to carry out their legitimate activities in accordance with the decisions of the supervisory bodies of the ILO regarding Conventions Nos 26, 87 and 144. The Governing Body requested the Office to provide effective follow-up with respect to the adequate implementation of this decision. In the light of the above, the Governing Body decided to further defer the decision concerning the appointment of a commission of inquiry to its 329th Session (March 2017).
2. In order to provide effective follow-up, the Office contacted the Government in a communication dated 14 December 2016 and indicated that it remained at the Government's disposal to facilitate the implementation of the Governing Body's decision and that it hoped to receive information from the Government in that regard. The communication also stated that any information on progress made should be sent before 20 February 2017 to enable consideration thereof by the Governing Body at its 329th Session. In a communication dated 2 March 2017, the Office reiterated its readiness to the Government to assist in the implementation of the Governing Body decision.
3. Information was received from the Government in a communication dated 17 February 2017, and from the FEDECAMARAS and the International Organisation of Employers (IOE) in a communication dated 19 February 2017. These communications are summarized in the appendix. Their full text is available to constituents.
4. In accordance with article 26 of the ILO Constitution, it is for the Governing Body to take the necessary decisions concerning future action on this complaint.

## Draft decision

5. *Noting that two meetings took place between the Ministry of Labour and FEDECAMARAS but regretting the lack of progress concerning the establishment of a social dialogue table and action plan referred to in the past by the Governing Body, and recalling the recommendations of the high-level tripartite mission to the Bolivarian Republic of Venezuela in January 2014, the Governing Body:*
  - (a) *urges the Government to establish a tripartite round table, with the presence of the ILO, to foster social dialogue and ensure that FEDECAMARAS and their member organizations, leaders and affiliated companies, as well as all trade unions, may develop their legitimate activities in accordance with the decisions of the supervisory bodies of the ILO regarding Conventions Nos 26, 87 and 144;*
  - (b) *requests the Government to avail itself of ILO technical assistance; and*
  - (c) *defers the decision on the appointment of a Commission of Inquiry until its 331st Session (November 2017).*



## Appendix

### Summary of communications received

#### *Government of the Bolivarian Republic of Venezuela*

1. In its communication dated 17 February 2017, the Government reports, in response to the Governing Body decision of November 2016, that it is strengthening social dialogue with the FEDECAMARAS, as illustrated by two meetings held with that organization on 11 and 31 January 2017, following invitations sent to the FEDECAMARAS on 9 and 30 January 2017.
2. On 11 January 2017, a meeting was held between the People's Ministry for the Social Process of Labour and the FEDECAMARAS, which was attended, on behalf of the Government, by the People's Minister for the Social Process of Labour, the Deputy Minister for the Integrated Labour Inspection and Social Welfare System and the Director of International Relations and, on behalf of the FEDECAMARAS, by its President, its legal adviser and other advisers. At that meeting, the minister expressed the Government's willingness to engage in dialogue with the FEDECAMARAS and to forge new relations with the business community with a view to boosting national production. The meeting dealt with issues relating to minimum wage increases and tripartite consultation, the status of the complaint under examination at the ILO and a possible work agenda. A number of documents were received from the FEDECAMARAS.
3. On 31 January 2017, a second meeting took place, which was attended, on behalf of the Government, by the Deputy Minister for the Integrated Labour Inspection and Social Welfare System and the Director of International Relations and, on behalf of the FEDECAMARAS, by its President, its legal adviser and other advisers. The meeting focused primarily on reviewing the complaint contained in Case No. 2254, which is currently before the Committee on Freedom of Association (concerning the same arguments contained in the complaint made under article 26 of the ILO Constitution), and on addressing issues relating to private-sector wage scales, immunity from dismissal, the dismissal review process, and outsourcing (it was agreed that the Government would share with the FEDECAMARAS the parameters used to define outsourcing). With regard to Case No. 2254, the Government indicates that the FEDECAMARAS representatives welcomed the interest shown by the Government and acknowledged that some of the allegations in the case had already been addressed or were no longer current. It was agreed to review the complaint and work on a document itemizing the allegations and the action to be taken to address them.
4. The Ministry and the FEDECAMARAS also exchanged views and positions through the following written communications: (i) communication from the FEDECAMARAS dated 24 January 2017, expressing satisfaction at the 11 January 2017 meeting and reiterating the commitment and willingness to initiate a tripartite dialogue in line with ILO principles and to set aside differences in order to focus on the interests of the country and the needs of the people; (ii) communication from the FEDECAMARAS dated 3 February 2017, suggesting that consultations be held with the Ministry on the scope and demarcation of outsourcing; and (iii) communication dated 14 February 2017 from the Deputy Minister for the Integrated Labour Inspection and Social Welfare System, in response to the query from the FEDECAMARAS on outsourcing in accordance with the Basic Act on labour and men and women workers (LOTTT).
5. The Government also indicates that on 14 February 2017 the People's Minister for the Social Process of Labour sent a communication to the FEDECAMARAS seeking its opinion on adjusting the national minimum wage – in line with the provisions of ILO Convention No. 26.

6. The Government emphasizes that this broad and constructive dialogue has received significant media coverage, forwarding and citing several press releases (in which reference is made to the first high-level meetings between the Government and the FEDECAMARAS to begin discussions on important topics relating to labour issues and wage increases).
7. The Government adds that meetings and dialogue are continuing within the National Council on the Productive Economy, with meetings between representatives of the Government and of the public and private sector, attended by representatives of companies and chambers of commerce affiliated to the FEDECAMARAS. The Government also reports on the “Venezuela: Land of Opportunities” 2nd Business Summit held on 27 and 28 January 2017, and indicates that several publications have referred to projections of prosperity for the Bolivarian Republic of Venezuela.

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8. The Government states that it has maintained the Venezuelan State’s observance of ILO Conventions Nos 26, 87 and 144, sustained the progress made, demonstrated sincere and abundant willingness to engage in dialogue, and promoted respect and understanding vis-à-vis the country’s entrepreneurs and employers. The Government reiterates its commitment to maintaining strict observance of these and all other ILO Conventions ratified by the Bolivarian Republic of Venezuela, and to continuing its efforts to maintain and strengthen broad, inclusive social dialogue.

### ***The FEDECAMARAS and the IOE***

9. In their communication of 19 February 2017, the FEDECAMARAS and the IOE report that the Government has persisted in its violations of Conventions Nos 26, 87 and 144, while emphasizing that the dialogue processes that had been announced have not come to fruition (the plan of action on social dialogue referred to in March 2016 was not implemented, and the FEDECAMARAS was not included in the socio-economic round table as part of the dialogue process sponsored by the Holy See – the process has been suspended and the round table has not been convened).
10. The IOE and the FEDECAMARAS denounce the continued attacks against the FEDECAMARAS, its leaders, and the business sector, by spokespersons for or linked to the Government, which have served to intensify the smear campaign in the media that seeks to hold the employers’ organization responsible for the serious economic crisis in the country. They provide detailed examples of accusations and threats disseminated through the media by, among others, the deputy chairman of the governing party, a member of parliament who was appointed to the Government as co-leader of the National Anti-Coup Committee for Peace and Sovereignty. In addition, they allege attacks on the employers by the government authorities, including aggression against and detention of leaders, employees and shareholders, accusing them of corruption or economic destabilization and subjecting them to public ridicule without guaranteeing due process or their right of defence; they refer, in particular, to the imposition of orders to reduce prices (with the detention of employees), and the confiscation of goods (combined with threats to initiate criminal proceedings against the President of the FEDECAMARAS, alleging that the latter described one of the cases of confiscation as theft, which is untrue), looting in the stores of the State of Bolívar, and the detention and referral for trial before the military courts of representatives of the leading credit card transaction company, in relation to faults in the operation of the system (accusing them of treason).
11. The IOE and the FEDECAMARAS allege that, on 9 January 2017, a 50 per cent increase in the minimum wage was approved, making a total of 13 increases without due tripartite consultation since April 2014. They also allege that government measures that affect business performance have been approved without consultation – in particular, the measure enabling the Government to purchase up to 50 per cent of agro-industrial production and the

creation of workers' production boards (with three employees' representatives from the enterprise and four from the State, which constitutes an additional mechanism for state interference, with a military presence). They also stress that heavy state interventionism and interference limits the operational capacity of employers and could lead to a decrease in the number of enterprises and the consequent loss of decent jobs – largely because of the absence of social dialogue with the most representative actors in the country in relation to the adoption of macroeconomic measures and of policies that ensure the sustainability of enterprises and jobs.

12. The IOE and the FEDECAMARAS refer to two meetings held with the Government. At the first meeting, on 11 January 2017, the Minister: (i) expressed the Government's willingness to create a forum for dialogue with the FEDECAMARAS and put aside the rhetoric relating to past events in order to reach out to the business community; and (ii) acknowledged that the FEDECAMARAS was not consulted about the wage increase of 9 January 2017 but expressed the wish to include it in the discussion of the "wage overlap" that affects workers with wages higher than the minimum who do not receive proportional increases. Recalling that it is the most representative employers' organization, the FEDECAMARAS: (i) emphasized that it should be included in agreements with the sector and reiterated its willingness to revive tripartite dialogue; (ii) recalled the reasons why the minimum wage increases did not satisfy ILO requirements (on account of the conditions in which they were carried out and the non-participation of the FEDECAMARAS), explained that the measures to increase wages, adopted in isolation, could not solve the problem of maintaining purchasing power, and pledged to provide its opinion on the "wage overlap" and to put forward proposals to combat inflation; and (iii) recalled the failure to honour commitments relating to social dialogue made at the ILO in March and November 2016 (whereupon it drew the Government's attention in writing to the continuing non-observance of Conventions Nos 26, 87 and 144), and proposed other matters for discussion while agreeing to move forward with regular dialogue.
13. In the second meeting at the Ministry, on 31 January 2017, the Deputy Minister indicated that there was a need for further information on the "wage overlap" and that, in view of the fact that the dialogue sponsored by the Holy See had been unproductive, the Ministry had decided to hold these meetings directly with the FEDECAMARAS. For its part, the FEDECAMARAS: (i) indicated that topics should be addressed on the basis of technical criteria; (ii) asked the Government, in view of the recurring violations, to put a stop to the intimidatory attacks by spokespersons linked to the Government (the Ministry indicated that it could not control spokespersons who were not in the Government – and the FEDECAMARAS recalled that the media campaign against it did not contribute to the dialogue and that the aforementioned spokespersons occupy positions in the governing party or perform government duties); (iii) proposed that the FEDECAMARAS should be invited as an institution to participate in the National Council on the Productive Economy and highlighted the importance of achieving prompt and specific results, while also proposing an evaluation of the dismissal review process and immunity from dismissal, and of difficulties regarding interpretation of the regulations on outsourcing (the Ministry indicated that it would hold internal consultations on macroeconomic matters, organize a meeting with the competent authority regarding immunity from dismissal, and share criteria for interpretation of the regulations on outsourcing – which were subsequently sent in writing); and (iv) underlined the importance of tripartite dialogue and of including the independent trade union sector. On 14 February 2017, the Minister wrote to the FEDECAMARAS requesting its proposals on the policy for increasing the minimum wage for 2017 (the FEDECAMARAS indicates that it is in the process of drafting its position on the wage policy and the anti-inflation measures, and this will be sent to the Ministry shortly).

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14. The FEDECAMARAS and the IOE conclude by indicating that, while it is true that two meetings with the Ministry were held on 11 and 31 January 2017, they took place alongside a series of intimidatory attacks against the FEDECAMARAS and its leaders that occurred

in December and January (even the invitations to attend these meetings were couched in intimidatory terms by the Minister in the media). Moreover, they occurred against the background of countless excesses in the application of administrative controls by the State against private companies, in violation of the right of defence and due process, and of the adoption of various measures by the Government without consultation, which hindered business development. Consequently, in this climate of defencelessness and uncertainty, although the meetings were held in an atmosphere of institutional respect, they did not take place within the structured dialogue mechanisms advocated by the ILO, or in a climate of sufficient trust between the parties to support the realization of effective dialogue. The FEDECAMARAS and the IOE consider that these formal meetings with the Government should not be used to evade or dilute the decisions that it is for the Governing Body to adopt, including with respect to the appointment of a commission of inquiry, in view of the serious situation of non-observance which persists and the lack of success to date in the dialogue processes that are claimed to have been initiated.