



Governing Body

349th Session, Geneva, 30 October–9 November 2023

Institutional Section

INS

Date: 30 October 2023

Original: Spanish

Nineteenth item on the agenda

Reports of the Officers of the Governing Body

First report: Complaint alleging non-observance by Nicaragua of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), filed by various delegates at the 111th Session of the International Labour Conference (2023) under article 26 of the ILO Constitution

1. By a letter dated 16 June 2023 addressed to the President of the 111th Session of the International Labour Conference, Mr Ali bin Samikh Al Marri, various Employers' delegates filed a complaint against the Government of Nicaragua under article 26 of the ILO Constitution alleging non-observance of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). The letter was signed by 11 titular delegates: Ms Renate Hornung-Draus (Germany), Mr Neil Carberry (United Kingdom of Great Britain and Northern Ireland), Ms Juliana Manrique Sierra (Colombia), Mr Guido Ricci (Guatemala), Mr Armando Urtecho López (Honduras), Mr Juan Antonio Ledezma (Panama), Ms Eloína Pérez (Bolivarian Republic of Venezuela), Mr Juan Mailhos (Uruguay), Mr Blaise Matthey (Switzerland), Mr Akihiro Ichimura (Japan) and

Ms Jacqueline Mugo (Kenya); four advisers and substitute delegates: Mr Pablo Dragun (Argentina), Mr Pablo Bobic (Chile), Mr Fernando Yllanes (Mexico) and Mr Eduardo Ocampo (Mexico); and one adviser, Mr Paul Mackay (New Zealand). The text of the complaint is appended.

2. In the plenary of that session of the Conference, Ms Juliana Manrique Sierra, Employers' delegate from Colombia, informed the Conference of the complaint.¹ The President of the Conference took note of the complaint and indicated 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. The complaint refers to Conventions that have been ratified by Nicaragua and that remain in force in the country. Nicaragua ratified Conventions Nos 87, 98 and 111 on 31 October 1967 and Convention No. 144 on 1 October 1981. Therefore, those Conventions have been in force in the country since 31 October 1968 and 1 October 1982 respectively.
5. On the date of the filing of the complaint, 11 of the signatories were Employers' delegates of their respective countries at the 111th Session of the Conference. Therefore, under article 26(4) of the ILO Constitution, those delegates were entitled to file a complaint if they were not satisfied that Nicaragua had adopted measures to secure the effective observance of these four Conventions.
6. In view of the foregoing, the Officers consider that the complaint is 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.

¹ ILO, [Plenary sitting: Report of the Committee on the Application of Standards](#), ILC.111/Record No. 4C, p. 11.

7. At this stage of the procedure, the Governing Body cannot discuss the merits of the complaint. If a Commission of Inquiry is appointed – a decision which the Governing Body may take in accordance with article 26(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.
8. Irrespective of the question of the receivability of the complaint, it should be recalled that the Committee of Experts on the Application of Conventions and Recommendations has made repeated observations to the Government of Nicaragua regarding the observance of the Conventions referred to in the complaint, and that the Conference Committee on the Application of Standards also recently examined various matters related to the observance in law and practice of Convention No. 87 (in 2022 and 2023) and Convention No. 111 (in 2023).
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 matters raised.
10. In accordance with article 26(5) of the Constitution, the Governing Body shall invite the Government of Nicaragua to appoint a delegate to participate in the discussions of the Governing Body at the future sessions at which this matter is under consideration. When extending this invitation to the Government of Nicaragua, the Director-General should inform it that the Governing Body plans to examine this matter at its 350th Session, which will take place in Geneva in March 2024.

► Draft decision

11. **Taking into account that the conditions established in article 26 of the ILO Constitution have been fulfilled, the Officers of the Governing Body considered that the complaint is receivable and recommended that the Governing Body:**
 - (a) **request the Director-General to forward the complaint to the Government of Nicaragua, inviting it to communicate its observations on the complaint by 15 January 2024 and to appoint a delegate to participate in the discussions of the Governing Body on this matter, and informing it that the Governing Body plans to examine this matter at its 350th Session (March 2024);**
 - (b) **include this item on the agenda of the 350th Session (March 2024) of the Governing Body.**

► Appendix

Complaint

Mr Ali bin Samikh Al Marri,
President of the 111th Session
International Labour Conference

16 June 2023

Re: Complaint filed under article 26 of the ILO Constitution against the Government of Nicaragua for violation of ILO Conventions Nos 87, 98, 111 and 144

We, the undersigned, 11 Employers' delegates accredited to the 111th Session of the International Labour Conference, whose names are included at the bottom of this document, hereby submit a complaint to this Conference under article 26 of the Constitution of the International Labour Organization (ILO) against the Government of Nicaragua for persistent and continuous violations of the following four Conventions:

- Freedom of Association and Protection of the Right to Organise Convention (No. 87)
- Right to Organise and Collective Bargaining Convention (No. 98)
- Discrimination (Employment and Occupation) Convention (No. 111)
- Tripartite Consultation (International Labour Standards) Convention (No. 144)

Nicaragua ratified the first three instruments on 31 October 1967 and the latter on 1 October 1981 respectively.

I. Allegations

The most representative employers' organization of Nicaragua is Consejo Superior de la Empresa Privada Nicaragua (COSEP), which was founded in 1978. Until 6 March 2023, COSEP was recognized as the most representative organization of employers enjoying the right of freedom of association in the sense of Article 1 of Convention No. 144.

The main allegations include the following:

- Harassment, physical attacks, arbitrary detention and arrest of COSEP Presidents Mr Jose Adan Aguerri, Mr Michael Healy and COSEP Vice-President Mr Alvaro Vargas;
- Exclusion of COSEP in the national social dialogue processes;
- Complete absence of tripartite consultation with COSEP for the past five years on matters concerning employers, including the approval of minimum wage increases;
- Arbitrary revocation of the legal status and dissolution of COSEP and its 18 affiliated organizations;
- Discrediting campaigns, verbal aggressions and promotion of a hostile environment by government officials against COSEP and its affiliated organizations;
- Confiscation of the assets of COSEP and of its leaders;

- Revocation of national citizenship of former leaders of COSEP.

II. ILO Supervisory bodies

The Government of Nicaragua has repeatedly violated ILO Convention Nos 87, 98, 111 and 144 according to the reports of the various ILO supervisory bodies. In fact, the Conference Committee on the Application of Standards (CAS), and the Committee of Experts on the Application of Conventions and Recommendations (CEACR) have altogether examined and discussed on numerous occasions the lack of tripartite consultation, aggression, intimidation by the Government of Nicaragua against Nicaraguan Employers.

The CEACR has provided numerous observations on the applications of these instruments. For Convention No. 87, it has provided 18 observations in 1991, 1992, 1993, 1994, 1995, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2009, 2010, 2014, 2017, 2021, 2022. As for applications of Convention No. 98, the CEACR has issued observations 12 times in 1991, 1992, 1994, 1995, 2004, 2006, 2008, 2009, 2010, 2014, 2017, 2021.

Concerning application of Convention No.111, the CEACR has provided five observations in 2005, 2011, 2012, 2013, 2022. Regarding application of Convention No. 144, the CEACR has provided nine observations in 1990, 1991, 1992, 1993, 1995, 2006, 2009, 2010, 2022.

This year, the CAS discussed the non-application of Convention Nos 87 and 111 by Nicaragua, which the Committee of Experts had identified as "double-footnoted" due to their upmost serious and persistence nature.

The CAS has already discussed the application of Convention No. 87 by Nicaragua on three occasions in 1987, 1989 and 2022.

This year, the CAS adopted the following conclusions for Nicaragua on Convention No. 87:

The Committee noted with deep concern the persistent climate of intimidation and harassment of independent workers' and employers' organizations.

The Committee noted with deep concern the allegations of the arrest and detention of employer leaders and the further deterioration of the situation.

The Committee also noted with deep concern the absence of any progress and cooperation on the part of the Government since last year.

Taking into account the discussion, the Committee urges the Government to:

- Ensure that workers and employers can establish their own organizations and operate without interference, including COSEP;
- immediately cease all acts of violence, threats, persecution, stigmatization, intimidation or any other form of aggression against individuals or organizations in connection with both the exercise of legitimate trade union activities and the activities of employers' organizations, including COSEP, and adopt measures to ensure that such acts are not repeated including the return of the Nicaraguan nationality of those who have been deprived of it for this reason;
- immediately release any employer or trade union member who may be imprisoned in connection with the exercise of the legitimate activities of their organizations and provide information on all the measures taken in that regard;
- promote social dialogue without further delay through the establishment of a tripartite dialogue round table under the auspices of the /LO, that is presided over by an independent chairperson who has the trust of all sectors, that duly respects the representativeness of employers' and workers' organizations in its composition and that meets periodically, as recommended by the Conference Committee in 2022; and

- repeal Law No. 1040 on the regulation of foreign agents, the Special Law on Cybercrimes, and Law No. 1055 on the Defence of the Rights of the People to Independence, Sovereignty and Self-determination for Peace, which limit the exercise of freedom of association and freedom of expression.

The Committee urges the Government to avail itself of ILO technical assistance to ensure full compliance with its obligations under the Convention in law and in practice.

This year, the CAS adopted the following conclusions for Nicaragua on Convention No. 111:

The Committee took note of the written and oral information provided by the Government and the discussion that followed.

The Committee noted with deep concern the climate of violence, insecurity and intimidation in the country, which is propitious for acts of discrimination in employment and occupation based on political opinion.

It also noted the arbitrary detentions and the continuing reports of human rights violations and abuses, including gender-based discrimination.

Taking into account the discussion, the Committee urges the Government, in consultation with the social partners, to:

- take immediate measures to end the climate of violence, insecurity and intimidation in the country;
- adopt the necessary measures to eliminate discrimination in employment and occupation and provide adequate protection for workers in the event of discrimination on the basis of political opinion;
- refrain from discrimination on political grounds, ensure that no penalties are imposed and provide adequate protection in the event of discrimination on the basis of political opinion;
- provide adequate remedies including the restoration of citizenship and the return of seized assets to those who have been discriminated against on the grounds of political opinion;
- provide information on any additional measure taken to eliminate discrimination on political grounds and on the outcome of any investigation conducted into complaints made to the administrative or judicial authorities for acts of discrimination on the basis of political opinion;
- indicate the extent to which the provision of the Labour Code (section II(p)) also covers the "hostile work environment"; and
- provide details of any administrative complaint or legal action filed with the labour or criminal courts under the provisions of the Labour Code or Criminal Code in respect of sexual and quid pro quo harassment; as well as of the penalties imposed where complaints submitted to the Ministry of Labour are upheld and identified as acts of sexual harassment.

The Committee also requests the Government to continue to:

- take all measures to ensure in practice the elimination of violence and harassment in the world of work and to provide information to the Committee of Experts on all measures adopted regarding sexual harassment, including awareness-raising and prevention;
- take specific measures in practice to protect indigenous and Afro-descendant peoples against racial discrimination in employment and occupation and provide information on all measures adopted or envisaged to protect indigenous and Afro-descendant peoples against racial discrimination in employment and occupation;
- provide information on the outcomes of the many actions taken relating to the national policy of equality of opportunity and treatment; and
- provide information on the type of violations identified relating to the application of the Convention, the corrective measures introduced and the penalties imposed.

The Committee reminds the Government that it can avail itself of ILO technical assistance if needed.

III. Current situation

To date, the Government of Nicaragua has not implemented any of the observations, conclusions and recommendations issued by the various ILO supervisory bodies, nor accepted any technical assistance.

Regrettably, there is another upsurge in the acts of intimidation, aggression and stigmatization by the Government against COSEP and its affiliated organizations. The following events have been reported by news media outlets in the recent months illustrating the severity of the situation:

- On 9 June 2021, COSEP President, Jose Adan Aguerri, was arrested by the National Police and arbitrary detained.¹
- On 25 October 2021, COSEP President Michael Healy and his Vice-President, Alvaro Vargas were abducted by the police.²
- On 9 September 2022, the Government sent to the National Assembly a proposal to reform Law 917 known as the Export Free Zones Law, which was meant to remove the two representatives of COSEP from the National Commission of Free Zones of Nicaragua (CNZF and replace them with two representatives of the private sector that operate under the Free Zone Regime.
- On 19 January 2023, the Ministry of Labour organised negotiations on the minimum wage in the absence of COSEP despite it being the most representative employers' organization in the country. Instead, the Association for the Development and Sustainability of Nicaragua (APRODESNI) was present to represent the private sector.³
- On 4 February 2023, the Ministry of Interior cancelled the legal personality of 17 other NGOs, including the Association of Private Banks of Nicaragua (ASOBANP), member of COSEP.⁴
- On 9 February 2023, the Managua Court of Appeals ordered the "immediate deportation" of 222 political prisoners, who were transferred to the United States. The following day, the Government declared these released persons "traitors of the homeland" and deprived them of their Nicaraguan nationality.⁵
- On 15 February 2023, another 94 people were deprived of their nationality and expelled to the United States of America, including two former presidents and one vice presidents of COSEP.
- On 6 March 2023, the Government cancelled the legal status of COSEP and its 18 associated business chambers of different sectors such as commerce, construction, agriculture, transport, tourism and manufacturing.⁶

¹ The Limited Times, [Jose Adan Aguerri, fifth opposition leader arrested in Nicaragua](#), 9 June 2021.

² Reuters, [As Nicaragua government crackdown continues, police arrest business executives](#), 22 October 2021.

³ Vos TV, Minimum wage negotiation table installed, 19 January 2023.

⁴ Infobae, [El régimen de Nicaragua disolvió la Asociación de Bancos Privados e ilegalizó a otras 16 ONG](#), 4 February 2023.

⁵ Reuters, [Defiant Ortega frees political prisoners in Nicaragua, expels them to U.S.](#), 9 February 2023.

⁶ Republica, [Cacif rechaza cancelación de personería jurídica de cámaras empresariales de Nicaragua](#). 6 de Marzo, 2023. See also, El Pais, [Ortega liquida a su ultimo socio de peso, el sector privado, y refuerza el "totalitarismo" en Nicaragua](#), 7 de Marzo 2023. Prensa Libre, [Guatemalan investments in Nicaragua decrease since 2022 and businessmen fear that commercial exchange will decline](#) {prensalibre.com). 9 Marzo 2023.

- On the same day, COSEP was exposed to confiscation of its assets by the Government under Law 115.⁷
- On 10 March 2023, the ILO Director-General wrote to the Government of Nicaragua denouncing its decision to cancel the legal status of COSEP and its 18 associations and requests the Government for their immediate reinstatement, in line with the provisions under Convention No. 87.

The Nicaraguan Government's failure to comply with the provisions of ILO Convention Nos 87, 98, 111 and 144 is extremely serious as it has eliminated COSEP and its member organizations and threatens the very existence of any independent employers' organization in Nicaragua.

IV. Conclusion

It is imperative that the Government of Nicaragua immediately cease the ongoing violations of the aforementioned ILO Conventions. The undersigned Employer delegates accredited to the 111th Session of the International Labour Conference thereby request the Office to take the appropriate measures to promptly and timely process this present complaint before the Conference. The undersigned reserve the right to provide additional information.

Signed by the following accredited Employer delegates on 16 June 2023:

Renate Hornung-Draus	Germany
Paul Mackay	New Zealand
Neil Carberry	United Kingdom of Great Britain and Northern Ireland
Pablo Dragun	Argentina
Pablo Bobic	Chile
Juliana Manrique Sierra	Colombia
Guido Ricci	Guatemala
Armando Urtecho Lopez	Honduras
Fernando Yllanes	Mexico
Eduardo Ocampo	
Juan Antonio Ledezma	Panama
Eloína Pérez	Bolivarian Republic of Venezuela
Juan Mailhos	Uruguay
Blaise Matthey	Switzerland
Akihiro Ichimura	Japan
Jacqueline Mugo	Kenya

⁷ La Prensa, [Bienes de las Camaras y del Cosep quedan expuestos a confiscaciones en virtud de la Ley 1115](#). 6 de Marzo, 2023.