



Governing Body

350th Session, Geneva, 4–14 March 2024

Institutional Section

INS

Date: 8 March 2024

Original: Spanish

Fifteenth item on the agenda

Complaint alleging non-observance by Nicaragua of Conventions Nos 87, 98, 111 and 144, filed by various delegates at the 111th Session (2023) of the International Labour Conference under article 26 of the ILO Constitution

1. At its 349th Session (October–November 2023), the Governing Body examined a report of the Officers on a complaint concerning non-observance by the Government of 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), submitted under article 26 of the ILO Constitution by several Employers' delegates to the 111th Session (2023) of the International Labour Conference.¹
2. Having considered that the complaint was receivable given that it fulfilled the conditions established in article 26 of the ILO Constitution, the Governing Body requested the Director-General to: (a) transmit 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 on this matter at its 350th Session (March 2024); and (b) include this item on the agenda of its 350th Session (March 2024).²

¹ GB.349/INS/19/1.

² GB.349/INS/PV, para. 752.

3. The Director-General informed the Government of Nicaragua on 12 December 2023 of the decision adopted by the Governing Body and requested it to communicate its observations on the complaint.
4. In a communication dated 20 December 2023, the Government communicated its observations on the complaint (see Appendix), summarized as follows. The Government indicates that it rejects the complaint, which it considers unfounded and lacking in substantive legal grounds. The Government indicates that: (i) the legal status of the Higher Council for Private Enterprise (COSEP) and its affiliated chambers was annulled for failure to comply with its legal obligations as a non-profit civil society organization (non-governmental organization); (ii) since May 2018, COSEP and its affiliated chambers have refused to participate in any kind of social dialogue and tripartite consultations; (iii) between 2008 and 2023, consultations were held and copies were sent to the social partners of the 32 regular reports sent to the ILO on the application of the Conventions that are the subject of the complaint and the replies to four report forms on unratified Conventions and Recommendations, in pursuance of articles 22 and 19 of the ILO Constitution, respectively; and (iv) periodic tripartite consultations were held in the National Minimum Wage Committee which have led to agreements among all the parties involved. The Government also emphasizes that workers are guaranteed the right to establish and join organizations of their own choosing, without prior authorization, and that collective bargaining mechanisms are guaranteed and promoted, as demonstrated by the high number of collective agreements in force in the country.
5. It is recalled that the Committee of Experts on the Application of Conventions and Recommendations (CEACR) has recently adopted comments in which it examines the application by Nicaragua of the Conventions that are the subject of the complaint: Conventions Nos 87 (2023), 111 (2023), 144 (2022) and 98 (2021). The Conference Committee on the Application of Standards (the Conference Committee) has also recently examined the application by Nicaragua of Convention No. 87 (2022 and 2023) and Convention No. 111 (2023). In its [2023 conclusions concerning Convention No. 87](#), the Conference Committee noted with deep concern the persistent climate of intimidation and harassment of independent workers' and employers' organizations; as well as the allegations of the arrest and detention of employer leaders and the further deterioration of the situation, and urged the Government to, in consultation with the social partners, take urgent action in this respect. Furthermore, in its [2023 conclusions concerning Convention No. 111](#), the Conference 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. In its 2023 comments concerning Conventions Nos 87 and 111, the CEACR noted with deep concern that the situation highlighted by the Conference Committee is ongoing.
6. It is also noted that various United Nations bodies, including the Human Rights Council, the Group of Human Rights Experts on Nicaragua and the Inter-American Commission on Human Rights have, in the course of 2023, commented on the human rights situation in the country.
7. In accordance with article 26 of the Constitution, it is for the Governing Body to take the necessary decisions concerning future action on this complaint.

► Draft decision

8. The Governing Body:

- (a) took note of the deep concerns expressed by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) and by the Conference Committee on the Application of Standards (CAS) in their latest examination of the implementation by the Government of Nicaragua of the Conventions subject of the article 26 complaint;**
- (b) urged the Government to address, as a matter of urgency, the serious compliance gaps identified and to accept ILO technical assistance to that effect;**
- (c) requested the Government and the social partners to provide detailed information on all the issues raised in the complaint to the Governing Body at its 352nd Session (October–November 2024);**
- (d) deferred to its 352nd Session the decision to consider further action in respect of the article 26 complaint, in light of the follow-up given to paragraphs (a), (b) and (c) above.**

► Appendix

Reply of the Government of Nicaragua

Managua, 20 December 2023
DM-ALTB-0100-12-2023

Madam **Corinne Vargha**,
Director, International Labour Standards
Department of the ILO,
Geneva, Switzerland

Dear Madam Director,

This letter is in response to a communication of the International Labour Organization (ILO) sent on 12 December 2023, reference No.: **TUR 1-44**, concerning a **complaint under article 26 of the ILO Constitution** against the Government of Nicaragua containing allegations of 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)**, presented by 11 employer delegates of the International Organisation of Employers (IOE) accredited to the 111th Session (2023) of the International Labour Conference and 4 ILO advisers and substitute delegates.

The Government of National Unity and Reconciliation of the Republic of Nicaragua notes the complaint in question concerning the alleged violation of ILO Conventions Nos 87, 98, 111 and 144, which it **rejects**, considering it manifestly unfounded and lacking in legal grounds or arguments to uphold it.

In this regard, we provide the following labour-related observations on the ill-intentioned allegations contained in the complaint submitted by the IOE employers' group.

1. **The exclusion of the Higher Council for Private Enterprise (COSEP) from the national social dialogue processes.**
2. **The total absence of tripartite consultation with COSEP over the past five years on matters concerning employers, such as the approval of an increase in the minimum wage.**

The Government of Nicaragua clarifies and reiterates its position in this forum that the former COSEP and its 18 associations were non-profit civil society organizations (non-governmental organizations), the legal status of which was annulled by the relevant regulating body, as it did not meet its fundamental obligations, such as reporting its financial statements, and did not complete the registration validation process in accordance with Act No. 1115, the **General Act on Regulating and Controlling Non-profit Organizations**.

Furthermore, we set forth that the **former COSEP and its affiliated chambers have refused any kind of tripartite dialogue and consensus** with the Government of Nicaragua since **May 2018**, before the National Minimum Wage Committee and the National

Occupational Safety and Health Council. See **Annex 1**: Communications from chambers affiliated to COSEP, refusing such dialogue and consensus committees.

From 2008 to 2023, the Government of Nicaragua has been reporting to the ILO in a timely manner through the reports corresponding to Conventions Nos 87, 98, 111 and 144 and has sent to the ILO a total of **32 regular reports** under article 22 of the ILO Constitution and **three report forms on unratified Conventions and Recommendations** on these 4 Conventions, in accordance with article 19 of the ILO Constitution. It has always responded to the observations and recommendations of the Committee of Experts on the Application of Conventions and Recommendations (CEACR). In addition, the Government of Nicaragua engages in consultation and sends the reports to the most representative workers' and employers' organizations of the country. (Attached are **Annex 2**: Table showing reports sent to the ILO by Nicaragua between 2008 and 2023; and **Annex 3**: Letters from the workers' and employers' organizations acknowledging receipt of the reports sent to the ILO between 2008 and 2023).

The Government of National Unity and Reconciliation respects and faithfully complies with its Political Constitution, all national labour laws and the international ILO Conventions ratified by Nicaragua for the benefit of workers, always through dialogue and the right to freedom of association and collective bargaining, without discrimination whatsoever against Nicaraguan workers.

The Government of Nicaragua, through the Ministry of Labour and in accordance with Act No. 625, the Act on minimum wages, has convened all members of the National Minimum Wage Committee to readjust the legal minimum wage in force each year.

In the light of the foregoing, since 2007, the Act on the minimum wage has been enforced in order to strengthen forums for tripartite dialogue among all stakeholders who are members of the National Minimum Wage Committee, to agree on the legal minimum wage for each year. Between January 2018 and March 2023, six meetings were held, with agreements reached among all stakeholders participating in each meeting, and approximately 40 to 42 participants at each meeting. In this way, it is ensured that workers and their families can meet their basic and essential needs with these new salary adjustments.

Following are the agreements and adjustments made at each meeting of the National Minimum Wage Committee (the signed agreements for each year are attached).

Year	First term	Second term	Observations
2018	5.2% all economic sectors 8.25% export processing zones	5.2% all economic sectors	For each period, in accordance with Ministerial Agreement No. ALTB-01-03-18, in the agricultural sector, meals or meal expenses were included, in addition to the wage. Export processing zones from 1 January 2018.
2019	The National Minimum Wage Committee agreed to maintain the same minimum wages of 2018 in the agricultural sector, whereby meals or meal expenses were included, in addition to the wage. Only in the enterprises in the export processing zones was there adjustment of 8.25% from 1 January 2019.		

Year	First term	Second term	Observations
2020	2.63% all economic sectors 8.25% export processing zones	All year	The Committee established a readjustment for a period of one year from 1 March 2020 to 28 February 2021 in the agricultural sector, meals or meal expenses were included, in addition to the wage. Export processing zones from 1 January 2020.
2021	1% SMEs, ArtIn and NT * 3% all other economic sectors 8.25% export processing zones	All year	For one year from 1 March 2021 to 28 February 2022, in the agricultural sector, meals or meal expenses were included, in addition to the wage. Export processing zones from 1 January 2021.
2022	7% all economic sectors 8.25% export processing zones	All year	For one year from 1 March 2022 to 28 February 2023, in the agricultural sector, meals or meal expenses were included, in addition to the wage. Export processing zones from 1 January 2022.
2023	10% all economic sectors 8% export processing zones	All year	For one year from 1 March 2023 to 29 February 2024, in the agricultural sector, meals or meal expenses were included, in addition to the wage. Export processing zones from 1 January 2023.

* Small and medium-sized enterprises, the artisanal industry and national tourism.

Annex 4: Statements duly signed by members of the National Minimum Wage Committee for the period 2018 to 2023.

From 2018 to 2023, the Government of National Unity and Reconciliation, through the Ministry of Labour, ensured occupational safety and health for workers in their posts and the good practices of tripartite dialogue through the establishment and registration of **14,946** Joint Occupational Safety and Health Committees.

Annex 5: Behaviour of social and labour indicators relating to safety and health from 2018 to October 2023.

The Government of Nicaragua guarantees workers' legal right to establish trade unions without prior authorization and irrespective of the employer's status. Workers' and employers' trade union organizations in Nicaragua may be unions, be established within enterprises (public and private), or consist of several enterprises or occupations. They have full freedom to draw up their constitutions and rules of procedure, and to freely choose their representatives, authorizing the participation of all their members (affiliates) in the highest executive body of the general assembly of workers and employers, thus establishing this body as a model of active and democratic participation, and people's power, whose main purpose is to defend their respective interests and social demands, and to improve working conditions through collective agreements, in line with Decree No. 55-97, the **Regulations on trade union associations**.

The Government of Nicaragua guarantees and promotes collective bargaining processes, as all employers are legally bound to negotiate a collective agreement through these processes when so requested, thereby restoring and recognizing the legitimate right to file labour claims. This guarantee is enshrined in the labour legislation in force, **Act No. 185, the Labour Code**, which endorses the spirit of the ILO Conventions, particularly the **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**, and the **Right to Organise and Collective Bargaining Convention, 1949 (No. 98)**.

It is a policy of the Government of National Unity and Reconciliation to promote bargaining processes between the business sector (small, medium-sized and large enterprises) and the workers, through the constitutional model of ongoing dialogue and consensus, aimed at seeking agreements that strengthen social peace. Forums for tripartite negotiation among the parties (including employers and workers) remain the main instrument for the resolution of labour disputes, contributing to the country's social and economic development to ensure the settlement of labour disputes and workers' job security, based on **article 98 of the Political Constitution of Nicaragua**.

Below are statistical data relating to the trade union organizations and collective agreements registered for the period from **2018 to 2023**:

407,305 worker members of trade union organizations, who were guaranteed their right to join a trade union (**216,304** men and **191,001** women) with the registration and updating of **5,249** basic labour organizations, **388** federations, **84** confederations and **13** worker organizations, amounting to a total of **5,734** new and updated trade union organizations.

As a reference for these data, we attach **Annex 6: Certification of the 8 most representative worker organizations** and the **39 most representative trade union confederations**.

629,139 workers (**288,788** men and **340,351** women) increased their social and labour benefits by negotiating and signing **336** collective agreements. The signing of these agreements, in addition to providing better financial benefits to workers and their families, has helped to improve labour relations within enterprises through communication mechanisms that have led to most negotiations being carried out directly between employers and workers.

As a reference for these data and to show the Government's political will to establish ongoing dialogue and consensus with a view to contributing significantly to harmony and peace in the workplace, **attached is Annex 7: Introduction and signatures of the negotiating parties to the collective agreements**.

Lastly, the Government of Nicaragua reiterates its rejection of all kinds of allegations and interference in **internal affairs that threaten the peace, sovereignty, and social and job security** of Nicaraguan families. We therefore demand, as a Member State, that matters that are not labour-related are neither addressed nor politicized at the ILO.

Without further ado, I take this opportunity to express my sincere regards and respect.

Yours faithfully,

(signed) **Ms Alba Luz Torres Briones**
Ministry of Labour
Republic of Nicaragua