



Governing Body

328th Session, Geneva, 27 October–10 November 2016

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Institutional Section

INS

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EIGHTEENTH ITEM ON THE AGENDA

Reports of the Officers of the Governing Body

Second report: Complaint concerning non-observance by the Bolivarian Republic of Venezuela of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Protection of Wages Convention, 1949 (No. 95), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), made under article 26 of the ILO Constitution by a delegate at the 105th Session (2016) of the International Labour Conference

1. During the 105th Session of the International Labour Conference, Ms Mildred Oliphant, President of the Conference, received a communication dated 10 June 2015 and signed by the following Workers' delegates: Mr Sergio Luis Leite (Brazil), Ms Vilma Sarahi Molina de Huevo (El Salvador), Mr Salvador Medina (Mexico), Ms Nelva Reyes Barahona (Panama), Ms Sonia Leguizamón (Paraguay) and Mr Gabriel del Río Doñé (Dominican Republic). 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 Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Protection of Wages Convention, 1949 (No. 95), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). The text of the complaint is contained in Appendix I.
2. In the plenary of the Conference session, the Workers' delegate of Paraguay 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. The complaint refers to Conventions ratified by and in force for the Bolivarian Republic of Venezuela. The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Protection of Wages Convention, 1949 (No. 95), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), were ratified by the Bolivarian Republic of Venezuela on 20 September 1982, 10 August 1982 and 3 June 1971, respectively.

5. At the time of the filing of the complaint, its signatories were Workers' delegates of their respective countries to the 105th 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 the Bolivarian Republic of Venezuela had adopted measures to secure the effective observance of these three Conventions.

6. In light of the above, 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.

7. 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(4) of the Constitution), the Governing Body will be requested to take measures only after the Commission of Inquiry has reported on the merits of the complaint. 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.

8. It should be recalled that the Committee on Freedom of Association has, for several years, considered various complaints submitted by trade unions which allege violations of freedom of association, in law and practice. It is also to be noted that the Committee of Experts on the Application of Conventions and Recommendations (CEACR) has made comments to the Government of the Bolivarian Republic of Venezuela on the application of Convention No. 87 referred to in the complaint, which have also been discussed in the Conference Committee on the Application of Standards, the last occasion being June 2015. While some

elements of the matter raised in relation to Convention No. 111 have been examined by the CEACR, the matter in relation to Convention No. 95 has yet to be examined.

9. In accordance with article 26(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.
10. Appendix II contains a communication dated 15 September 2016, in which the Government of the Bolivarian Republic of Venezuela makes a series of comments on the receivability of this complaint and requests that they be brought to the attention of the Governing Body.
11. ***Taking into account that the conditions established in article 26 of the ILO Constitution appear to be fulfilled, the Officers of the Governing Body consider that the complaint is receivable and recommend that the Governing Body decide:***
 - (a) *to request that the Director-General transmit the complaint to the Government of the Bolivarian Republic of Venezuela inviting it to communicate its observations on the complaint by 10 January 2017; and*
 - (b) *to include this item on the agenda of its 329th Session (March 2017).*

Appendix I

Geneva, 10 June 2016

Mr Guy Ryder
Director-General
International Labour Organization
Geneva, Switzerland

Complaint alleging non-observance by the Bolivarian Republic of Venezuela of Conventions Nos 87, 95 and 111, made under article 26 of the ILO Constitution

Dear Mr Ryder,

We, the undersigned accredited Workers' delegates to the 105th Session (2016) of the International Labour Conference, whose names are listed at the end of this request, formally submit a complaint under article 26 of the ILO Constitution against the Government of the Bolivarian Republic of Venezuela for serious and continuous violations of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the Protection of Wages Convention, 1949 (No. 95). We would be grateful if you would inform the Governing Body and if a Commission of Inquiry could be set up.

The principal violations of the aforementioned Conventions are as follows:

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

For several years, the Government has adopted a systematic policy of violating the right to freedom of association, which is well known to and well documented by the ILO supervisory bodies. Measures such as the following have been taken pursuant to this policy:

- (a) Prosecution and imprisonment of trade unionists and workers for exercising their trade union rights: With few exceptions, the prosecuted trade unionists are imprisoned indefinitely or required to appear periodically before a criminal judge and, in some cases, they have been subjected to ill-treatment; these facts have been well documented in cases brought before the Committee on Freedom of Association (see Cases Nos 2763, 3016 and 3187) and in observations by the Committee of Experts on the Application of Conventions and Recommendations (see the observations on the application by Venezuela of Convention No. 87 from 2010 and 2011, 2013, 2014 and 2015);
- (b) Anti-union retaliation (see Case No. 2827);
- (c) Violation of the rights to collective bargaining and freedom of association through the Basic Act on labour and men and women workers (see Cases Nos 2917 and 2968);
- (d) Dismissal and suspension of trade unionists and pressure on workers to renounce their trade union membership (see Cases Nos 3006, 3036 and 3059);
- (e) Imposition of compulsory arbitration in collective bargaining (see Cases Nos 3082 and 3172).

Facts:

1. The National Executive systematically disparages elements of the trade union movement who take critical and independent positions, including those from the Government's own party.
2. For the past three years, the Venezuelan Government has been intensifying its policy of criminalizing legitimate labour protests. In one such case, during discussions on their collective agreement – which had expired over two years previously – workers employed by state-owned enterprise Siderúrgica del Orinoco (SIDOR) were brutally repressed by police and the military while holding a peaceful demonstration against management's intransigence in reaching contractual agreements. In addition, the elections of the trade union of which SIDOR workers were members which were planned for 19 to 21 January of that year were suspended by the Supreme Court.
3. As stated in the 2015 report of the Committee of Experts, eight workers of the CIVETCHI enterprise, a joint venture with Chinese and Venezuelan capital, were detained for nearly a year. They were accused of criminal association and extortion when, in reality, they had been attempting to establish a trade union and to engage in collective bargaining.
4. With the support of the Bolivarian National Intelligence Service, the police, the national guard, the army, the labour and criminal courts, prosecutors from the public prosecution service and ombudspersons, all of them on the side of public and private sector employers, disputes at Galletera Carabobo, SOUTO, PETROCASA, the National Cement Factory, Venezolana de Cementos, the University Hospital, COPOSA and dozens of other cases that have been documented and submitted to the Committee on Freedom of Association have been criminalized.

The struggle for trade union rights has led to criminal charges, harassment, intimidation, dismissals, worsening of labour conditions, imprisonment and ethical and moral demonization of hundreds of workers and trade union leaders. Examples include Mr José Bodas, General Secretary of the National Oil Workers' Federation, who was arrested upon entering a petroleum plant to which he was bringing trade union flyers, and Mr Iván Freitas, another leader of the National Oil Workers' Federation, who was dismissed for reporting the lack of maintenance at the Paraguaná refinery, where a subsequent explosion killed over 50 people.

5. Murders of leaders and workers of the UNETE confederation: On 16 April 2015, Mr Ramón Jiménez, General Secretary of the Construction Union of the State of Barinas, was murdered while eating lunch.
6. Harassment by state security services of Mr Reynaldo Díaz, General Secretary of the Union of Electricians and Similar and Allied Workers (STE) in the Capital District and the state of Miranda.
7. Since 2015, Ms Norma Torres, Administrative and Financial Secretary of the Union of Electricians and Similar and Allied Workers in the state of Carabobo, has been harassed and assaulted and her payment of wages has been suspended.

All of these cases and several others – a total of 30 – were reported to the high-level tripartite mission in January 2014 and are supported by videos; documentation was submitted to the Committee on Freedom of Association at the proper time.

II. Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

The Government has continually violated this Convention through overt, systematic and widespread discrimination in employment and occupation for various political reasons, as seen from the following:

Facts:

1. Tascón List (2004 recall referendum), parliamentary election held on 6 December 2015 and proposal of a recall referendum in 2016: The names of the citizens who signed a declaration of support for the 2004 referendum on the recall of the President from office were placed on a list (the “Tascón List”), which has been mentioned by the Committee of Experts on the Application of Conventions and Recommendations. This list has been used to ban those on the list from public office or to deny them employment in the public administration or state-owned enterprises.

This scenario has begun to reappear as a result of the Government’s poor performance in the parliamentary election and poor prospects in the planned referendum on the recall of the current President. Senior Government officials and leaders of the official party immediately began to make threatening statements against those who had voted for the opposition candidates in the election or had signed the petition calling for the new referendum.

Some of these statements by senior officials are annexed hereto as proof of politically motivated discrimination.

2. Party and ideological bias in employment and in the working environment in the public service, including the military and public enterprises: The Government has introduced a policy of identifying the public service, including the military, with the official party and the goals of the so-called “Bolivarian revolution”. Employment opportunities are generally limited to active party members; many public servants wear uniforms in the party’s colours; and all public servants are required to march on State holidays and other occasions involving the Government or the party; and the armed forces are declared “Bolivarian, Socialist and Chavist” by ministers and senior officials. All of the foregoing creates a pattern of discrimination in occupation and employment against anyone who does not agree with the Government’s political position and forces them to leave public service or continue to work in a climate of fear and harassment.

A sample of documents showing the climate of discrimination in public service and state-owned enterprises is annexed hereto.

III. Protection of Wages Convention, 1949 (No. 95)

Facts:

1. “Desalarization” of employees’ income: The Convention contains a clear and comprehensive definition of “wages”. However, the Government has implemented a policy whereby various elements of workers’ income are not counted as wages. This has disastrous consequences that are contrary to the protection provided by the Convention.

In the most significant recent example, it has been legally established that the food allowance, better known as “cesta tickets” (food vouchers), does not constitute wages (article 7 of Legislative Decree No. 2.066 of 23 October 2015 governing Socialist food vouchers for men and women workers, which has the rank and force of law (Official Gazette No. 40773 of 23 October 2015)).

This legislative decree is such a gross and flagrant violation of the Convention that the amount of the “food voucher”, which is considered non-wage, is now higher than the minimum wage.

In another example of the desalarization of workers’ income, in many public administration positions the employment relationship is concealed and, to that end, wages are disguised under a wide variety of names, such as vouchers, grants or fees. This practice, which is widespread in the public administration, is most clearly seen in the remuneration of musicians who play in state orchestras and the payments made to alleged volunteers on Government missions.

2. Excessive deductions from workers for various reasons.
3. Poverty wages in Venezuela: The primary purpose of the Convention, over and above its individual provisions, is to ensure that workers receive wages, defined in Article 1, which are clearly of a nature to provide income to workers and their families. Yet the Government has fixed the monthly minimum wage at the paltry sum of 15,051 bolivars, the equivalent of around US\$15 PER MONTH.

The value of the food allowance is 18,585 bolivars, the equivalent of around US\$18.50, PER MONTH. Workers who earn the minimum wage – more than 65 per cent of Venezuela’s population – earn US\$33.50 per month.

Legal basis

In deciding to become a Member of the ILO, Venezuela accepted the fundamental principles set out in the ILO Constitution and in the Declaration of Philadelphia, including those concerning freedom of association. It is therefore required to ensure that its legislation respects the principles of freedom of association and the Conventions that Venezuela has freely ratified, such as Conventions Nos 111 and 95, regardless of the level of the country’s development.

On the understanding that a truly free and independent trade union movement can function only in a climate of respect for the fundamental human rights, we would like to recall some of the previous conclusions of the Committee on Freedom of Association:

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

- All appropriate measures should be taken to guarantee that, irrespective of trade union affiliation, trade union rights can be exercised in normal conditions with respect for basic human rights and in a climate free of violence, pressure, fear and threats of any kind. (See the 1996 Digest, para. 36; 306th Report, Case No. 1884, para. 684; 308th Report, Case No. 1934, para. 135; 316th Report, Case No. 1773, para. 614; 332nd Report, Case No. 1888, para. 61; and 333rd Report, Case No. 2268, para. 744.)
- [A]llegations of criminal conduct should not be used to harass trade unionists by reason of their union membership or activities. (See the 1996 Digest, para. 43; 305th Report, Case No. 1773, para. 365; 306th Report, Case No. 1884, para. 700; and 327th Report, Case No. 2018, para. 117.)
- The right to life is a fundamental prerequisite for the exercise of the rights contained in Convention No. 87. (See the 1996 Digest, para. 45.)

- The rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and it is for governments to ensure that this principle is respected. (See the 1996 Digest, para. 47; and, for example, 299th Report, Case No. 1512, para. 407; 304th Report, Case No. 1862, para. 81; 308th Report, Case No. 1888, para. 342; 321st Report, Case No. 2052, para. 247; 327th Report, Case No. 2017/2050, para. 601; 333rd Report, Case No. 2158, para. 83; 334th Report, Case No. 2254, para. 1088; 336th Report, Case No. 2321, para. 496; 337th Report, Case No. 1787, para. 535; and 338th Report, Case No. 2298, para. 886.)
- A climate of violence, such as that surrounding the murder or disappearance of trade union leaders, or one in which the premises and property of workers and employers are attacked, constitutes a serious obstacle to the exercise of trade union rights; such acts require severe measures to be taken by the authorities. (See the 1996 Digest, para. 49; and 330th Report, Case No. 1888, para. 657.)
- The detention of trade union leaders or members for trade union activities or membership is contrary to the principles of freedom of association. (See the 1996 Digest, paras 69 and 72; 302nd Report, Case No. 1824, para. 155, Case No. 1849, para. 213, and Case No. 1773, para. 476; 304th Report, Case No. 1850, para. 211, and Case No. 1865, para. 245; 305th Report, Case No. 1773, para. 369; 307th Report, Case No. 1864, para. 432; 308th Report, Case No. 1920, para. 524; and 334th Report, Case No. 2249, para. 866.)
- Union leaders should not be subject to retaliatory measures, and in particular arrest and detention without trial, for having exercised their rights which derive from the ratification of ILO instruments on freedom of association, in this case for having lodged a complaint with the Committee on Freedom of Association. (See 338th Report, Case No. 2382, para. 532.)
- The full exercise of trade union rights calls for a free flow of information, opinions and ideas, and to this end workers, employers and their organizations should enjoy freedom of opinion and expression at their meetings, in their publications and in the course of other trade union activities. (See the 1996 Digest, para. 152; 304th Report, Case No. 1850, para. 210; 306th Report, Case No. 1885, para. 140; 309th Report, Case No. 1945, para. 67; 324th Report, Case No. 2014, para. 925; and 336th Report, Case No. 2340, para. 652.)
- The right of workers to establish and join organizations of their own choosing in full freedom cannot be said to exist unless such freedom is fully established and respected in law and in fact. (See the 1996 Digest, para. 271; 302nd Report, Case No. 1825, para. 491; 304th Report, Case No. 1712, para. 376; 318th Report, Case No. 1978, para. 217; 325th Report, Case No. 2109, para. 460; 333rd Report, Case No. 2133, para. 59, and Case No. 2301, para. 592; and 337th Report, Case No. 2388, para. 1353.)
- Measures taken against workers because they attempt to constitute organizations or to reconstitute organizations of workers outside the official trade union organization would be incompatible with the principle that workers should have the right to establish and join organizations of their own choosing without previous authorization. (See the 1996 Digest, para. 301; 327th Report, Case No. 1581, para. 109; 328th Report, Case No. 2160, para. 658; 332nd Report, Case No. 2046, para. 454; and 338th Report, Case No. 2348, para. 995.)

II. Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

Article 1

1. For the purpose of this Convention the term *discrimination* includes:
 - (a) any distinction, exclusion or preference made on the basis of race, colour sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;
 - (b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organizations, where such exist, and with other appropriate bodies.
2. Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.
3. For the purpose of this Convention the terms *employment* and *occupation* include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.

III. Protection of Wages Convention, 1949 (No. 95)

Article 3

1. Wages payable in money shall be paid only in legal tender, and payment in the form of promissory notes, vouchers or coupons, or in any other form alleged to represent legal tender, shall be prohibited.
2. The competent authority may permit or prescribe the payment of wages by bank cheque or postal cheque or money order in cases in which payment in this manner is customary or is necessary because of special circumstances, or where a collective agreement or arbitration award so provides, or, where not so provided, with the consent of the worker concerned.

Article 8

1. Deductions from wages shall be permitted only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreement or arbitration award.
2. Workers shall be informed, in the manner deemed most appropriate by the competent authority, of the conditions under which and the extent to which such deductions may be made.

The Government's practice of ignoring the repeated appeals of the Committee on Freedom of Association, the Committee of Experts and the Conference's own Committee on the Application of Standards to it to respect freedom of association and put an end to discrimination in employment and occupation is particularly serious and warrants the prompt referral of this complaint to the ILO Governing Body.

We would like to recall that the Government has ignored the appeal of the high-level mission, sent by the Governing Body to Venezuela in 2014, to the Government to open a process of dialogue capable of finding possible solutions to the serious problems that have been reported.

Therefore, the undersigned Workers' delegates to the 105th Session of the International Labour Conference request the Governing Body to declare this complaint made under article 26 of the ILO Constitution receivable and to appoint a Commission of Inquiry to investigate the violations of Conventions Nos 87, 111 and 95 by the Government of Venezuela.

Sincerely,

Country	Delegate	Signature
Mexico	Salvador Medina	<i>(Signed)</i>
El Salvador	Vilma Sarahi Molina	<i>(Signed)</i>
Brazil	Sérgio Luiz Leite	<i>(Signed)</i>
Paraguay	Sonia Leguizamón	<i>(Signed)</i>
Dominican Republic	Gabriel del Río Doñé	<i>(Signed)</i>
Panama	Nelva Reyes Barahona	<i>(Signed)</i>

Appendix II

Caracas, 15 September 2016

Mr Guy Ryder
Director-General
International Labour Office (ILO)
Geneva, Switzerland

Attn: 328th Session of the Governing Body, November 2016
cc: Officers of the Governing Body and the International Labour Standards Department

I would like to take this opportunity to inform you of certain issues in relation to the complaint lodged by various Workers' delegates to the 105th Session of the International Labour Conference in June 2016, during which they requested the appointment of a Commission of Inquiry against the Government of the Bolivarian Republic of Venezuela, alleging non-observance of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Protection of Wages Convention, 1949 (No. 95), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), which will be considered at the 328th Session of the Governing Body.

I. Background/response to the complaint

Despite the fact that the ILO International Labour Standards Department, in Communication No. ACD 14-58 of 29 August 2016, received on 31 August 2016, explicitly indicates that *at this stage of the procedure it is not expected that our Government provide a response to the complaint*, allow us to provide our viewpoint in defence of the rights and interests of the Government of the Bolivarian Republic of Venezuela.

We ask that the corresponding ILO bodies be immediately informed of this document, in order for it to be taken duly into consideration by the Officers of the Governing Body as well as by the Governing Body in plenary, at the 328th Session of the Governing Body.

To not allow our Government to present its views in response to the complaint and prevent the Officers of the Governing Body and the Governing Body in plenary from having full knowledge of these views would, a priori, encroach on our Government's legitimate right of defence and, worse still, would, a priori, establish automatic receivability of the complaint owing to the failure to assess its relevance and other aspects which should apply in any objective and impartial procedure.

We are surprised by the Office's statement in this communication that *at this stage of the procedure it is not expected that our Government provide a response to the complaint*. We note that not providing a response is not a requirement of any procedure.

Nor do we wish any silence on our part to be interpreted for any reason as our admission of the reported acts, which we categorically reject, as they are not true.

We briefly recall that in a similar case also related to our Government, under article 26 of the ILO Constitution, the Office (through Communication No. ACD 14-50 of 6 July 2015 issued by the International Labour Standards Department) never indicated to us that *it did not expect that our Government provide a response to the complaint*. On that occasion, after the Office had informed us of the complaint, we submitted our response in due course.

Therefore, faced with a same procedure based on a complaint under article 26, the Office appeared not to act consistently and its actions could undermine the rights of the governments concerned. With respect, we draw the Office's attention to this issue so that through its actions it does not risk being discredited because of a lack of consistency, objectiveness and transparency.

The Office is clearly acting in good faith in this matter. However, we wish to point out to the Governing Body that its current approach is inconsistent, given that, for no apparent reason, there are no internal rules or regulations governing the complaints procedure under article 26 of the ILO Constitution.

It is an entirely different issue to know that at this stage of the procedure the merits of the complaint will not be discussed – this has already been established. But the Government concerned never loses its right to present its views on a particular complaint involving it.

Under this procedure, the practice adopted until now has included the submission of each respective government's preliminary views on the receivability or otherwise of the case, which is its legitimate right. The competent bodies can hardly ignore the arguments presented here, as to do so would be to undermine the legitimate right to defence and to imply that complaints can be automatically receivable under article 26, which is not the case.

We recall that, with regard to the issue of receivability, the Legal Adviser to this Organization stated that *automatic receivability of a complaint certainly does not exist*. Needless to say, various considerations should be assessed so that a decision on the case may be taken. It is simply not sufficient that the complaint is submitted by delegates to the Conference and that the Government concerned has ratified the Conventions referred to therein. Rather, the competent bodies should assess both the written complaint and the Government's arguments (not on the merits) and only in this way will the decision on receivability be objective and transparent. There is no automatic receivability, hence the need for a discussion in the plenary of the Governing Body at the session dealing with the complaint in question (see Minutes of the 325th Session of the Governing Body, case concerning the Bolivarian Republic of Venezuela – complaint submitted under article 26 of the Constitution, paragraph 350).

We should not forget that complaints under article 26 of the ILO Constitution, in general, are closely linked with political issues against governments, and it is important to ensure that the ILO does not interfere in these matters but that it acts strictly in accordance with the interests and objectives of the Organization, without infringing the rights of governments, which we maintain at all times, including our legitimate right to provide relevant views to be assessed fairly by the competent bodies.

The International Organisation of Employers (IOE) itself has stated that: *“Articles 24 and 26 of the ILO Constitution are sometimes abused in that conflicts are brought to an international forum for publicity reasons. Means to limit this practice, perhaps by limiting the receivability criteria or introducing a filter mechanism, should be considered to prevent automatic discussion of a receivable complaint. The way in which articles 24 and 26 procedures complement the regular supervisory machinery should also be considered in order to prevent overlapping and provide more coherence”* (our highlighting/Position of the IOE, adopted by the Governing Body, Geneva, 9 June 2000) – Employers' handbook on ILO standards-related activities; Appendix 8, page 126, paragraph 32 – see link for publication:

http://www.ilo.org/public/libdoc/ilo/2001/101B09_325_engl.pdf.

II. Rejection of the complaint, duplication and non-receivability

The Government of the Bolivarian Republic of Venezuela rejects the suggestion that it has not observed Conventions Nos 87, 95 and 111. On the contrary, the Government confirms its commitment to fulfil these and all ILO Conventions it has ratified.

The unfounded arguments presented in this complaint point to a duplication of procedures because in the written complaint, submitted at the 105th Session of the International Labour Conference, it is indicated that the same allegations had been considered or were being considered by various ILO supervisory

bodies: the Committee on Freedom of Association, the Committee of Experts on the Application of Conventions and Recommendations, and the Committee on the Application of Standards. The Venezuelan Government has provided an appropriate response to those bodies and we will continue providing information to the competent supervisory bodies dealing with these cases which we have constantly rejected on comprehensive and strong grounds.

As stated by the representatives of the Venezuelan Government at the 105th Session of the International Labour Conference when this complaint was submitted, it is clear that these new intentions against our Government are disguised as being in the workers' interests.

In fact, this new complaint under article 26 of the ILO Constitution, submitted by certain Workers' delegates, was instigated by Marcela Máspero, the leader of the National Union of Workers of Venezuela (UNETE) and, furthermore, it is actually an extension of the party-political intentions of the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS), whereby their representatives are currently acting as allies and scheming with the UNETE against our Government.

UNETE's Marcela Máspero herself acknowledged that, in order to assert her interests, she took advantage of the Workers' delegate of Paraguay and the other delegates who signed the complaint in question, as reported in her statement of 8 July 2016, in "*Prensa Unete Caracas*". See the links below:

<http://www.turimiquire.com/2016/07/09/marcela-maspero-denuncio-ante-comision-del-parlasur-venezuela-incumple-carta-sociolaboral-del-mercosur/>.

<http://caraotadigital.net/site/2016/07/08/unete-denuncio-ante-parlasur-que-se-incumple-carta-sociolaboral-del-mercosur/>.

At the national level, UNETE has been overtaken by what is currently the most representative workers' organization in the country. In fact, many of the organizations and federations that were part of UNETE have left and are now part of the Bolivarian Socialist Workers' Federation of Venezuela (CBST), making it the most representative, powerful and visible organization in the country.

It should be noted that previously when the UNETE was a workers' organization with a significant level of representativeness, and even participated as a delegate at the International Labour Conference, it never submitted complaints or reports against our Government. All it took was the ousting of UNETE by another workers' organization for it to launch this campaign and conspiracy against the Government of the Bolivarian Republic of Venezuela. This is an inter-union problem which UNETE and the CBST should resolve among themselves, instead of burdening our Government with actions that have nothing to do with the welfare of the workers but are clearly politically motivated.

The clumsy scheming against our Government taking place among UNETE, other trade unions and FEDECAMARAS was demonstrated when, at the previous session of the Committee on the Application of Standards, the Employer spokesperson, during various interventions on behalf of IOE and FEDECAMARAS and in her conclusions, also spoke for UNETE and other workers' organizations, illustrating yet again that these organizations are acting together to develop a party-political campaign before the ILO against our Government. For information in this regard, see Provisional Record No. 16, Part Two, of the 105th Session of the International Labour Conference, June 2016 (pp. 153–154). See link below:

http://www.ilo.ch/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_489124.pdf.

This continues to surprise us. We recall that in the recent past when UNETE was the most representative workers' organization of Venezuela and participated as such at ILO meetings, there were full-scale public confrontations with FEDECAMARAS as their interests evidently conflicted, as reported in various records of the International Labour Conference and the Governing Body. Currently, both organizations, which each claim to act in the interests of Venezuelan workers and employers, respectively submit similar

complaints and unashamedly support each other against the Government of the Bolivarian Republic of Venezuela, entirely on the basis of party-political interests in opposition to the Government.

It is not only the Government that has been struck by this commotion. We also know that it generates ongoing commentaries and concerns among the ILO Workers' group about confusing business interests with pseudo workers' interests.

It should not be forgotten that at the 105th Session of the International Labour Conference, the delegate of the General Confederation of Workers of Peru (CGTP), among others, made a statement during the discussion of the Venezuelan case which took place within the Committee on the Application of Standards (see page 152 of the aforementioned Provisional Record No. 16) and at that time very spontaneously stated that "... it is really surprising that ... in Venezuela the people defending the workers are the employers ... Allow me to say to their representatives at FEDECAMARAS and the IOE that I don't believe a single word, that the Committee of Experts of the ILO is surprised by them. Based on my vast experience as trade union leader, I reaffirm that employers have never been concerned about the situation of workers in any country. On the contrary, they have manipulated governments to repress, kill and assassinate workers and their union leaders during protests in defence of their rights. The continued practice of employers is to dismiss workers if they establish a union." This quotation is contained in a press release at the link below:

<https://perusindical.wordpress.com/2016/06/15/498/>.

In addition, it remains clear that this complaints mechanism under article 26 of the ILO Constitution must be fully reviewed. It is highly questionable that workers' representatives from other countries, who cannot rely on the presence or express support of the workers' representatives of the countries concerned and who, furthermore, have no knowledge of the reality as they do not carry out their labour or trade union activities in that country, can submit a complaint against a government, and that this complaint is automatically receivable without considerations on the merit, leaving the government in question with the only option of submitting a written response to illustrate its point to the Officers of the Governing Body and the Governing Body in plenary.

In that regard, we have already noted above the IOE's *specific comments on the arbitrariness of the application of article 26, which has even been used for publicity. It is necessary to restrict this practice by limiting the receivability criteria or by introducing a filter mechanism to prevent automatic discussion of a receivable complaint. This mechanism must be reconsidered in order to prevent overlapping and provide more coherence.*

Our Government has already expressed regret for the use of the complaints mechanism as a political stratagem to undermine the Venezuelan Government and its institutions, generate a web of adverse opinion and manipulate the ILO's supervisory bodies.

The Government of the Bolivarian Republic of Venezuela reiterates its call for the ILO to reclaim its raison d'être, ensure that it is not undermined and prevent supervisory bodies from being used to serve specific political interests, discredit governments and develop schemes, campaigns and attacks against our Government.

The Government has already informed the ILO that the behaviour of UNETE and other workers' organizations in Venezuela departs from the purpose of a trade union organization, as they are acting on a political level and as allies to FEDECAMARAS; and rather than defending the rights of workers and representing the working class in the country, they are overtly siding with the employers in order to attack and discredit the Bolivarian Republic of Venezuela. We regret that delegates of workers' organizations from other countries, as in the present case, are playing into the hands of and are letting themselves be manipulated by UNETE and FEDECAMARAS.

The claim that we are making is evidenced by the fact that both UNETE and FEDECAMARAS have adopted the same stance as the partisan political alliance called the Unity Round Table, which is completely opposed to the Government, by promoting the referendum on the recall of the legitimately and democratically elected President, and therefore serving as a further link and additional spokespersons for this political alliance from the opposition that is promoting the aforementioned mechanism, which is contrary to the legal regulations governing it.

Representatives of both UNETE and FEDECAMARAS have expressed their support for the recall of the President of the Republic, and have protested in the press, on the radio and television, highlighting the need to revoke the elected President's mandate. Furthermore, Ms Marcela Máspero from UNETE is now participating in meetings and programmes in support of FEDECAMARAS. All of these actions represent a departure from the alleged *raison d'être* of these organizations, as such acts and protests have nothing to do with the representation of workers or employers; on the contrary, they are carried out in favour of the political opposition in our country.

Details of all of these reprehensible political actions by this pseudo-trade-union sector composed of UNETE, the trade union organizations supporting it, and the Workers' delegates who lodged this complaint, can be found in the aforementioned press notes and on the following links:

<http://www.turimiquire.com/2016/07/09/marcela-maspero-denuncio-ante-comision-del-parlasur-venezuela-incumple-carta-sociolaboral-del-mercosur/>.

<https://www.youtube.com/watch?v=mSkINdNgnOA>.

<http://elpitazo.com/ultimas-noticias/marcela-maspero-rompio-con-el-oficialismo-y-lanzo-candidatura-a-la-an/>.

<https://www.youtube.com/watch?v=m-3xPE-m8Ao>.

<https://prensapcv.wordpress.com/2014/09/15/unete-anzoatequi-rechaza-participacion-de-marcela-maspero-en-evento-de-la-extrema-derecha/#more-7671>.

<http://www.aporrea.org/actualidad/n178620.html>.

The Government of the Bolivarian Republic of Venezuela yet again draws the ILO's attention to the processing of cases relating to Venezuela, and once again calls for the prevention of errors made in these cases to the detriment of not only the Government of the Bolivarian Republic of Venezuela but also all of the ILO Governing Body members, as a result of the failure to carry out thorough research on each item before making a decision. Objectivity and transparency must prevail in order to preserve the positive reputation that the ILO deserves.

Our Government trusts that an assessment will be carried out of this supposed and unfair mechanism for the automatic receivability of these complaints. In this particular case, it is considered that this new attack is part of a dishonest deal and scheme between UNETE and FEDECAMARAS, as we have argued and demonstrated in this letter, and we hope that neither the ILO nor its members participate in this activity. We call on the Governing Body to assess this procedure concerning complaints made under article 26.

The Government of the Bolivarian Republic of Venezuela requests the Officers of the Governing Body and the Governing Body in plenary not to receive this new complaint made under article 26 of the ILO Constitution.

We reaffirm our broad commitment to complying and continuing to comply with Conventions Nos 87, 95 and 111, the non-observance of which is alleged in the complaint, and with the rest of the ILO Conventions ratified by our country.

Refusing to admit this complaint will reflect the objectivity, morality and impartiality which should underpin the decisions of the Governing Body and those of all the ILO supervisory bodies if the International Labour Organization is not to suffer serious damage to its reputation as a respected international organization with clearly defined objectives and goals which are far-removed from partisan political considerations.

We must not allow the ILO's raison d'être to continue to be undermined and its supervisory bodies to be used to serve specific political interests.

We request that this document be transmitted to the Officers of the Governing Body and the Governing Body in plenary, which we call upon to analyse the matter in the light of all the arguments here put forward in defence, and that it be considered during the 328th Session of the Governing Body.

(Signed) José Ramón Rivero
Vice-Minister for the Integrated System of Labour Inspection and Social Welfare
Ministry of Popular Power for the Social Labour Process
Bolivarian Republic of Venezuela