



Governing Body

329th Session, Geneva, 9–24 March 2017

GB.329/INS/16(Rev.)

Institutional Section

INS

Date: 13 March 2017

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SIXTEENTH ITEM ON THE AGENDA

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 several delegates to the 105th Session (2016) of the International Labour Conference

Purpose of the document

The Office communicates to the Governing Body the information provided by the Government of the Bolivarian Republic of Venezuela, as contained in the appendix to this document. 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/18/2; GB.328/PV/Draft.

1. At its 328th Session (November 2016), the Governing Body examined a report by its Officers regarding a 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 several delegates to the 105th Session (2016) 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: (a) requested the Director-General to transmit the complaint to the Government of the Bolivarian Republic of Venezuela, inviting it to communicate its observations on the complaint by 10 January 2017 at the latest; and (b) included this item on the agenda of its 329th Session (March 2017).
3. The Director-General wrote to the Government of the Bolivarian Republic of Venezuela on 19 December 2016, informing it of the decision taken by the Governing Body and requesting it to communicate its observations on the complaint.
4. In a communication dated 9 January 2017, the Government transmitted its observations on the complaint. A copy of these observations is appended to the present document.
5. In a recent communication received on 9 March 2017, the Government transmitted additional information. It indicated that a meeting to discuss issues related to the complaint had taken place on 8 February 2017 with the Bolivarian and Socialist Workers' Central (CBST), the most representative workers' organization in the country, and on 23 February with the Confederation of Workers of Venezuela (CTV), which was previously the most representative workers' organization. The Government stated that the CBST expressed its support for the increases to the minimum wage decided by the Government to protect workers' dignity and living conditions. The Government further informed that, in accordance with the requirements of Convention No. 26, it had invited, in a written communication dated 16 February 2017, all workers' and employers' organizations in the country to express their views on the issue of the national minimum wage to be fixed for 2017 (copies of the relevant communications were attached).
6. 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

7. The Governing Body decides:

- (a) *to transmit all allegations of the complaint concerning Convention No. 87 to the Committee on Freedom of Association for their examination;*

¹ [GB.328/INS/18/2](#).

- (b) given that all aspects of the complaint relating to Conventions Nos 95 and 111 have not been recently examined by the Committee of Experts on the Application of Conventions and Recommendations (CEACR), to transmit these allegations to the CEACR for their full examination; and*
- (c) that the complaint not be referred to a Commission of Inquiry and that, as a result, the procedure under article 26 of the ILO Constitution be closed.*

Appendix

People's Ministry for the Social Process of Labour
Government of the Bolivarian Republic of Venezuela

No. 001

Caracas, 9 January 2017

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

Attn: Governing Body/March 2017
Cc: International Labour Standards Department

Further to the decision adopted by the Governing Body (GB.328/INS/18/2), I would like to take this opportunity to respond to the complaint lodged by several Workers' delegates to the 105th Session (June 2016) of the International Labour Conference, at 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).

First and foremost, the Government of the Bolivarian Republic of Venezuela rejects the assertion that it has failed to observe Conventions Nos 87, 95 and 111. On the contrary, the Government confirms its commitment to the observance of these and all other ILO Conventions ratified by the Bolivarian Republic of Venezuela.

BACKGROUND

(1) **Procedural flaws/Lack of tripartite consensus in the adoption of the decision concerning the receivability of this complaint**

The Government of the **Bolivarian Republic of Venezuela** once again notes with regret that the decision concerning the receivability of this complaint was adopted without tripartite consensus. We recall that, during the extensive debate on this case at the 328th Session (November 2016) of the Governing Body, **detailed arguments against the draft decision and concerning the receivability of the complaint were put forward not only by our Government but also by the vast majority of GRULAC countries and several other governments (the Russian Federation, Cuba, Mauritania, India, Uruguay and Algeria).**

To demonstrate the lack of tripartite consensus, we refer once again to paragraph 46 of the Compendium of rules applicable to the Governing Body of the International Labour Office:

*“The Governing Body, whether meeting in plenary or in committees, takes decisions usually by consensus. The term “consensus” refers to an established practice under which every effort is made to reach without vote an agreement that is generally accepted. Those dissenting from the general trend are prepared simply to make their position or reservations known and placed on the record. **Consensus is characterized by the absence of any***

objection presented by a Governing Body member as an impediment to the adoption of the decision in question. It is for the person chairing the sitting ... to note the existence of a consensus” (emphasis added).

Nevertheless, the Chairperson of the Governing Body regrettably ignored this rule regarding the lack of consensus and announced the adoption of the decision against the Government of the Bolivarian Republic of Venezuela, declaring receivable the complaint with which we are concerned today.

Once more, we draw the attention of the Governing Body to the need to review the unjust automatic receivability of complaints under article 26 of the ILO Constitution.

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; in other words, various considerations must be assessed so that a decision on the case may be taken. It is not sufficient for the complaint to have been submitted by delegates to the Conference and for the Government concerned to have ratified the Conventions referred to therein. Rather, the competent bodies must assess both the written complaint and the Government’s arguments, and only in this way will the decision on receivability be objective and transparent. There are no grounds for automatic receivability; hence a discussion is necessary within the Governing Body at the session dealing with the complaint in question (see Minutes of the 325th Session of the Governing Body, paragraph 350: case concerning the Bolivarian Republic of Venezuela – complaint made under article 26 of the ILO Constitution).

We should not forget that complaints made 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 get involved 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 duly assessed by the competent bodies.

The International Organisation of Employers (IOE) itself has stated as follows:

“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 article 24 and 26 procedures complement the regular supervisory machinery should also be considered in order to prevent overlapping and provide more coherence” (emphasis added). Position adopted by the IOE General Council, Geneva, 9 June 2000 – *Employers’ handbook on ILO standards-related activities*, Appendix 8, p. 126, para. 32 – see following link: http://www.ilo.org/public/libdoc/ilo/2001/101B09_325_engl.pdf.

(2) Duplication of procedures

There are no grounds for appointing a Commission of Inquiry since the contents of this complaint and the arguments used to support it are the same as those used in complaints that are already before the Committee on Freedom of Association.

The unfounded arguments presented in this complaint point to a duplication of procedures because the written complaint, submitted at the 105th Session of the International Labour Conference, states that the same allegations had been or were being considered by the various ILO supervisory bodies. Furthermore, all the arguments form part of cases which are before the Committee on Freedom of Association. The Government has duly responded to these arguments and on each occasion has rejected them with sound and extensive reasoning.

In particular, this complaint under article 26 of the ILO Constitution refers to, reproduces and copies the same facts and arguments contained in Cases Nos 2763, 3016, 3187, 2827, 2917, 2968, 3006, 3036, 3059 and 3082, the majority of which were lodged by the National Union of Workers of Venezuela (UNETE). Even those who lodged the present complaint under article 26 of the ILO Constitution mentioned this in their written complaint.

The Committee on Freedom of Association has already examined all these cases and the Government has responded to all the abovementioned complaints in a consistent and appropriate manner. It has even requested that several of these cases be closed because they lack any basis to warrant further examination by the Committee. Various points responded to by the Government in these cases are referred to below:

With regard to Case No. 3187, for the sake of coherence in the pronouncements of the Committee on Freedom of Association, my Government requested the Committee not to pursue its examination of the case and asked that the case be declared unreceivable since there is no violation of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). Furthermore, the Committee has no competence to make pronouncements on the internal disputes of a trade union organization, nor is it for this Government to interfere in that area.

With regard to Case No. 2827, the Government informed the Committee on Freedom of Association that it had carried out a comprehensive search of all its archives, both physical and digital, and had not found any records, claims or files that constituted evidence of proceedings against any member of the National Union of Workers of the National Institute for Socialist Training and Education (SINTRAINCES). Moreover, the Committee was informed that SINTRAINCES had presented a draft collective agreement to be discussed with the National Institute for Socialist Training and Education (INCES). The draft agreement was accepted by the labour inspectorate and subsequently the negotiations and discussions relating to the draft agreement were completed.

Lastly, on 9 October 2015 the Government of the Bolivarian Republic of Venezuela requested the Committee on Freedom of Association to close this case since there were no grounds or actions to support allegations of any violation of ILO Convention No. 87 or any infringement of the principles of freedom of association and the right to organize.

With regard to Case No. 2968, concerning a complaint lodged by the Association of Teachers of the Central University of Venezuela (APUCV), the Government informed the Committee on Freedom of Association that the APUCV is a civil organization, not a trade union, and therefore the complaint should not have been received by the Committee since it did not meet the requirements for receivability.

With regard to Case No. 3082, on 9 October 2015 the Government of the Bolivarian Republic of Venezuela indicated that there was no action or omission on the part of the Venezuelan State that could be presented as a violation of the principles of freedom of association, of the right to organize or of the right to strike and that, on the contrary, the Venezuelan State is a faithful guardian of these principles. For that reason, the Committee was requested to stop making unfounded statements to the effect that the Government was not complying with these principles. Furthermore, the Government requested the Committee not to pursue its examination of the allegations concerning arbitration and interference by the authorities if the complainant organizations had not provided additional information. In view of the lack of detailed information, it also called for the case to be closed.

With regard to Case No. 3036, the Committee requested the Government to keep it informed of the outcome of a criminal complaint filed with the Public Prosecutor's Office relating to the alleged acts of violence by the National Guard against workers who, according to the complainant trade union, participated on 5 July 2012 in a peaceful union protest. My Government informed the Committee that information had been requested from the Public Prosecutor's Office, which advised that, according to information provided by the Department for the Protection of Fundamental Rights and the High Public Prosecutor's

Office of the judicial district of the state of Carabobo, the Public Prosecutor's Office has not launched any investigation into the aforementioned acts since it has no record of any complaint relating to the matter in question. The Government therefore requested the Committee not to pursue its examination of this case since the Public Prosecutor's Office had reported that no complaint relating to the acts in question existed or had been filed.

(3) This complaint relates to political and partisan interests against my Government

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

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

UNETE's Ms Marcela Máspero herself acknowledged that, in order to assert her interests, she made use of the Workers' delegate of Paraguay and the other delegates who signed the present complaint, 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/>; and
- <http://caraotadigital.net/site/2016/07/08/unete-denuncio-ante-parlasur-que-se-incumple-carta-sociolaboral-del-mercosur/>.

At the national level, UNETE has lost ground to 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 this the most representative, powerful and visible organization in the country.

It should be noted that previously, when UNETE was a workers' organization with a significant level of representativeness and even sent a delegate to the International Labour Conference (ILC), it never made complaints or accusations against our Government. It sufficed for UNETE to lose ground to 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 are clearly politically motivated and have nothing to do with union action on behalf of the workers.

The crude scheming against our Government involving UNETE, certain other trade unions and FEDECAMARAS was demonstrated when, at the previous session of the ILO Conference Committee on the Application of Standards, the Employer spokesperson, during various interventions on behalf of the 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 pursue a partisan political campaign at the ILO against our Government. In this regard, *Provisional Record* No. 16, Part Two, pp. 153–154, of the 105th Session (2016) of the International Labour Conference, may be consulted on the following ILO web page:

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

This situation never ceases to amaze 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 ILC and the Governing Body. Currently, both organizations claim to act in the interests of the Venezuelan workers and employers, express the same views, submit similar complaints and blatantly 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 amazed by this situation. We are also aware that it generates ongoing comment and concern among the Workers' group at the ILO about confusing business interests with so-called 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, spoke during the discussion of the Venezuelan case which took place within the Committee on the Application of Standards (see *Provisional Record* No. 16, p. 152), spontaneously stating that “... it is really surprising that ... in Venezuela the people defending the workers are the employers ... Allow me to say to their representatives in FEDECAMARAS and the IOE that I don't believe a single word, that the Committee of Experts of the ILO is amazed by them. On the basis of 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, slaughter and assassinate workers and their union leaders during protests in defence of their rights. The constant practice of employers is to dismiss workers if they establish a union ...”. This quotation is contained in a press release to be found via the link below:

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

In addition, it is clear that the complaints mechanism under article 26 of the ILO Constitution must be fully reviewed. It is highly questionable that workers' representatives from other countries, without the presence or explicit support of workers' representatives from the countries concerned and without any knowledge of the real situation 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, so that the only option available to the government in question is to submit a written response to illustrate its point to the Officers of the Governing Body and the Governing Body in plenary.

All of this is connected with what was noted above regarding the IOE's specific comments on the arbitrariness of the application of article 26 of the ILO Constitution, which has even been used for purposes of 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 overhauled in order to prevent overlapping and provide more coherence.

Our Government has already noted with regret the use of the complaints mechanism as a political stratagem to undermine the Venezuelan Government and its institutions, weave a web of adverse opinion and manipulate the ILO supervisory bodies.

The Government of the Bolivarian Republic of Venezuela reiterates its call for the ILO to reclaim its *raison d'être*, to ensure that it is not undermined and to prevent its supervisory bodies from being used as a platform for serving individual political interests, discrediting governments and carrying out plots, campaigns and attacks against our Government.

The Government has already stated at 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 note with regret that delegates of workers' organizations from other countries, as in the present case, are playing along and are allowing themselves to 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 party-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, thereby serving as a further link and as additional spokespersons for this opposition political alliance which is promoting the aforementioned mechanism, 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 on 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 supposed *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 so-called trade union sector composed of UNETE, the trade unions 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-anzoategui-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 handling of cases concerning Venezuela, and once again demands that there be no recurrence of the errors made in these cases to the detriment not only of the Government of the Bolivarian Republic of Venezuela but also of all the ILO Governing Body members, owing to the failure to carry out thorough research on each item before making a decision. Objectivity and transparency must prevail in order to preserve the good reputation that the ILO deserves.

Our Government trusts that a review will be carried out of what we consider to be an unfair mechanism whereby complaints are automatically receivable. In this particular case, it is considered that this new attack is part of dishonest manoeuvring and scheming against my Government, as we have already argued and demonstrated, and we hope that neither the ILO nor its members are party to it. We call on the Governing Body to review the article 26 complaints procedure.

There are no grounds for appointing a Commission of Inquiry in relation to the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87):

In the last report (2016) on Convention No. 87, a reply was given to the questions of the ILO supervisory bodies relating to the observations made separately by various employers' and workers' organizations concerning allegations of non-observance of Convention No. 87. The allegations related to murders of trade unionists and workers; arrests, intimidation and other anti-union practices; laws and administrative measures supposedly contrary to freedom of association; and supposed interference in trade union elections by the administrative authorities and as a result of the labour legislation.

The Government defends and guarantees compliance with all trade union principles and rights recognized by ILO Convention No. 87 and the national laws concerning those matters in our country. Under no circumstances does it promote violence or use intimidation or threats of any kind against individuals or organizations.

It has been extensively proven that the Venezuelan State respects, protects and guarantees freedom of association and the right to organize. In previous reports on this Convention, we have reiterated the Government's compliance with constitutional and labour law, and also with the principles and tenets established by the Convention.

There are no grounds for appointing a Commission of Inquiry in relation to the Protection of Wages Convention, 1949 (No. 95):

Regarding Convention No. 95, the last report (2012) addressed the queries of the Committee of Experts on the Application of Conventions and Recommendations relating to the Basic Act on Labour and Men and Women Workers (LOTTT) concerning the protection of wages against attachment, social benefits and compensation (sections 152–154 of the LOTTT) and other measures of protection for workers' income.

In the Bolivarian Republic of Venezuela, workers' wages are covered by extensive guarantees and protection. The Constitution requires the State to guarantee workers a minimum living wage which must be reviewed and adjusted every year. In Venezuela, the minimum wage applies equally to all workers, including young persons, migrants, *campesinos* (peasant farmers) and people with disabilities, regardless of gender, age, ethnicity or religion. The application of the national minimum wage has also been extended to domestic workers, homeworkers, those earning piece-rate wages and those employed in enterprises with fewer than five workers.

Furthermore, in the Bolivarian Republic of Venezuela, workers have the right to receive a food allowance for each day of work or, failing that, payment of a sum of money established by the National Executive through the Cesta Ticket (food benefit) scheme.

There are no grounds for appointing a Commission of Inquiry in relation to the Discrimination (Employment and Occupation) Convention, 1958 (No. 111):

In the Bolivarian Republic of Venezuela, the principle of non-discrimination is promoted in all its forms. While the principle is established in national law, it is chiefly the Constitution that provides that there shall be no discrimination, not only on the basis of race, sex or social status, but also in situations and activities which create unequal conditions or limit the rights and freedoms of any individual.

Similarly, the LOTTT establishes the principle of non-discrimination at work. To that end, the State uses all means necessary to improve workers' material, moral and intellectual

conditions, according to the constitutional principle and guarantee of prohibiting any kind of discrimination on the grounds of politics, age, race, sex, belief or any other criterion.

In the last report (2015), replies were given to questions relating to allegations of discrimination on the grounds of national extraction and colour, gender, HIV/AIDS status and political opinion, and also relating to sexual harassment.

In all these areas, the Venezuelan Government has reiterated its dedication to, and utmost respect for, the principles and rules established in the national Constitution and in the other laws and regulations in force, including the ILO Conventions ratified by the Government.

Hence the complaint under article 26 of the ILO Constitution, which proposes the establishment of a Commission of Inquiry against our Government for alleged violations of Conventions Nos 87, 95 and 111 that we categorically and forcefully deny, refute and contradict, does not warrant any consideration. In the complaint, no mention is made of any scenario that violates the abovementioned Conventions, with which the Government fully complies.

Notwithstanding the above, in order to fully defend the Government of the Bolivarian Republic of Venezuela, we provide further information below regarding the main allegations of the complaint:

- **prosecution and imprisonment of trade unionists and workers for exercising their trade union rights; with few exceptions, the prosecuted trade unionists have been imprisoned for an indefinite period or are required to appear at intervals before a criminal judge;**
- **anti-union retaliation;**
- **violation of the right to collective bargaining and of the human right of freedom of association.**

The Government of the Bolivarian Republic of Venezuela has indicated emphatically to the Committee on Freedom of Association that on several occasions complainant organizations such as UNETE and the Confederation of Workers of Venezuela (CTV) have reported that, for example, there are “over a hundred workers who have been the subject of criminal proceedings for exercising their trade union rights”, without including detailed and accurate information about the workers who are supposed to have been prosecuted. Regarding this matter, we have asked the Committee to request a list from the complainants indicating their details, the trade union organization to which they belong and the trade union activities for which they are allegedly being prosecuted. We have also indicated that until such time as the aforementioned information is submitted, they should refrain from making baseless statements and announcing as if it was true that in Venezuela there are “over a hundred workers who have been the subject of criminal proceedings”.

In some cases, the complainants have submitted certain workers’ names and the Government has provided detailed and accurate information on each one of them.

The Government of the Bolivarian Republic of Venezuela categorically rejects the allegation that it has applied judicial measures without justification. In our country, peaceful protest is a legitimate right enshrined in the country’s Constitution, and therefore citizens have the right to take part in peaceful, unarmed protests, subject only to the requirements of the law.

The Venezuelan State respects the exercise of this right to protest as long as it does not endanger the lives or the physical, psychological and moral integrity of the rest of the population, freedom of movement, public order and the security of the nation. Hence it is also the responsibility of the State to protect citizens, property and institutions from unlawful acts committed by third parties during violent protests and to fulfil all its obligations in this regard.

Consequently, the actions of the police and security forces, whose responsibility it is to protect the population and maintain order, are in strict conformity with the law, and only in specific circumstances involving unlawful or illegal acts against individuals, properties or institutions are they called upon to fulfil their duty to protect the latter.

The full exercise of civil, political and labour rights is guaranteed in Venezuela. However, the exercise of these rights cannot be invoked to commit acts that are against the provisions of international agreements, the Constitution of the Bolivarian Republic of Venezuela and other legal instruments in force.

Similarly, the right to strike is enshrined in the national Constitution, and therefore all workers may exercise this right, whilst fulfilling the requirements of the law. However, no individual, while exercising the right to strike, may commit unlawful acts involving the obstruction of free movement, damage to property, people or institutions, or any other offence or crime.

The security forces intervene only when acts are committed which violate the law in force in our country or which threaten public order, people, property or institutions. Furthermore, the procedures, methods and decisions of the judicial bodies comply with and are firmly grounded in the law.

There has been no action or omission on the part of the Venezuelan Government which could be presented as a violation of the principles of freedom of association, the right to organize or the right to strike. On the contrary, the Government is a faithful guardian of these principles.

- **Alleged dismissal and suspension of trade unionists and pressure on workers to renounce their trade union membership (Cases Nos 3006, 3036 and 3059)**

The complainants themselves indicate in their communication that this allegation is contained in Cases Nos 3006, 3036 and 3059, which are currently before the Committee on Freedom of Association. The Government of the Bolivarian Republic of Venezuela has already provided adequate replies to each of the arguments made in these cases. We would like to stress, once again, that the duplication of cases and procedures serves merely to waste the time and effort not only of the ILO supervisory bodies but also of the Government concerned, which must devote itself to replying to the same arguments and allegations in different cases being addressed by different bodies of the SAME ORGANISATION. We suggest referring to each of the replies that the Government has provided in relation to these cases.

- **Imposition of compulsory arbitration in collective bargaining (Case No. 3082/Galletera Carabobo)**

The Government has responded to all the procedures undertaken in this case concerning the Single Union of Workers of Galletera Carabobo (SINTRAEGALLETERA) in communication No. 174/2014 of 17 October 2014, submitted to the Committee on Freedom of Association, which demonstrates that the accusation that arbitration was imposed is false since, on the contrary, it was requested by the workers themselves. Once again, the Government suggests referring to the replies provided in relation to this case.

- **Discrimination in employment and occupation on political grounds, the complainants allege that the Government has intensified its policy of criminalizing labour protests and that in one case, during discussions relating to a collective agreement, the workers of the Siderúrgica del Orinoco (SIDOR) enterprise were brutally repressed by the police and armed forces while holding a peaceful demonstration.**

The Government of the Bolivarian Republic of Venezuela is aware of the complaint lodged by UNETE in Case No. 2763, referred to the Committee on Freedom of Association, in which the complainants alleged that on 14 March 2008 the state police dispersed a gathering of steelworkers from TERNIUM-SIDOR who were demanding improvements to the collective agreement being negotiated.

In this connection, the Government reiterates that it replied to the Committee on Freedom of Association stating that no criminal investigation into these events was under way or had ever been initiated, as the Public Prosecutor's Office had no knowledge of such events. The Government has nothing further to add in relation to this allegation, and has asked the Committee not to pursue its examination of this case. The Government suggests once again that the Committee refer to the replies provided by the Government in the cases currently before the Committee on Freedom of Association.

- **Workers of the CIVETCHI enterprise**

This is another of the allegations which already feature in the cases currently before the Committee on Freedom of Association and to which the Government has already responded. However, owing to a duplication of procedures once again, we are obliged to inform you that no worker of the CIVETCHI enterprise is in custody, and that the eight workers specifically referred to in the complaint are at liberty.

- **The complainants allege that disputes at Galletera Carabobo, SOUTO, PETROCASA, the National Cement Factory, Venezolana de Cementos, the University Hospital and COPOSA have been criminalized**

Galletera Carabobo:

As indicated above, we request that the full reply provided by the Government regarding Case No. 3082, contained in communication No. 174/2014 of 17 October 2014, be re-read.

PETROCASA:

The Committee on Freedom of Association was informed that, according to the labour inspectorate in Guacara in the state of Carabobo, the draft collective labour agreement submitted by the complainant trade union on 18 August 2008 to be discussed with the PETROCASA enterprise was shelved on 15 July 2014, owing to a lack of action by the parties, a period of four years, six months and 12 days having elapsed since its last revision on 27 January 2010.

The Government and the People's Ministry for the Social Process of Labour are fulfilling their duty, as established in the Constitution and in the LOTTT, to promote the right to collective bargaining, to which all workers are entitled with no further requirements than those established by law.

The cement industry:

The Government of the Bolivarian Republic of Venezuela informed the Committee that CEMEX Venezuela had changed its name to Venezolana de Cementos S.A. By the date of submission of the last reply in Case No. 3016, currently before the Committee on Freedom of Association, there were 47 collective agreements in the cement industry. We therefore request the Committee to ask the complainants for more information regarding the unions and enterprises concerned, in view of the fact that the Government promotes and guarantees collective bargaining in the cement industry as in all other sectors.

When contacted, the enterprise Venezolana de Cementos S.A.C.A. indicated that it complies with wage clauses and upholds the other labour rights of workers.

Where workers consider that collective agreements have been violated and wish to call for the enforcement of such agreements or oppose the adoption of certain measures that might affect workers, they may present a list of demands to the labour inspectorate, as provided for in the LOTTT.

The Government also states that round tables for negotiation, dialogue and conciliation have been established nationwide by the various labour inspectorates involving trade unions and enterprises in the cement industry and other sectors. This is customary practice in Venezuela.

One such example is the dialogue round table set up at the offices of the Pio Tamayo labour inspectorate in the state of Lara, between Venezolana de Cementos S.A.C.A. (Lara plant) and the SINTRACEL trade union.

The Government of the Bolivarian Republic of Venezuela guarantees and monitors compliance with collective labour agreements in the cement industry, as in all other sectors.

Above all, as established in the LOTTT, the Government and its institutions promote and favour harmonious collective relations between workers and employers as the best way to protect the social process of labour.

In Venezuela, all workers have the right to engage in collective bargaining and to conclude collective agreements, with no further requirements than those established by law, in order to establish conditions of work and the rights and obligations of each party.

Venezuelan law also provides for mechanisms to settle through conciliation any disputes arising between parties regarding compliance with collective agreements.

The Government of the Bolivarian Republic of Venezuela rejects and denies that trade unions or workers that have lodged complaints with the ILO or any other national or international body are subject to reprisals or any other measures. On the contrary, the free exercise of democracy and freedom of expression is respected.

With respect to the cases of **SOUTO**, **COPOSA** and the **University Hospital**, we report that no legal process is under way and that no workers from these enterprises or institutions have been dismissed for their strike action.

■ **Mr José Bodas, general secretary of the National Oil Workers' Federation**

Venezuelan citizen Mr José Bodas is at liberty and fully exercising his trade union rights; indeed, he holds the office of general secretary of the National Oil Workers' Federation of Venezuela (FUTPV) and his trade union activities in the country may be verified in all our communication media:

- <https://web.laclase.info/content/llego-la-hora-de-los-trabajadores-vota-por-la-plancha-36-jose-bodas-a-la-presidencia-de-la-futpv/>.

■ **Mr Iván Freites**

In order to fulfil the requirements of the Committee on Freedom of Association, the Government enclosed in its reply of 2 September 2016 to Case No. 3059 a copy of the administrative decision in which the labour inspectorate of Punto Fijo, after following the relevant legal procedure under section 79 of the LOTTT, which specifies valid reasons for dismissal, and after examining the grounds for dismissal and observing the deadlines for bringing evidence in support of the allegations in compliance with the constitutional right of defence, decided that the request was admissible and authorized the enterprise to dismiss Mr Freites.

The specific offences committed by this citizen were: gross professional misconduct in making oral and written statements in the press, on the radio and on television that constituted serious offences and accusations against honour, reputation and decency; and impugning the morals, dignity and integrity of the management of Petr leo de Venezuela and the enterprise itself. These attacks were not confined to the workplace but extended to home life too.

Moreover, since 2011, the worker has expressed technical opinions whenever an operational incident has occurred at the enterprise, in violation of the enterprise's rules, uttering insults and causing unrest among the people.

These offences were verified by the corresponding authorities and bodies. They correspond to the valid reasons for dismissal specified in the following subsections of section 79 of the LOTTT: (a) lack of integrity or immoral conduct in the workplace; ... and (c) serious abuse or lack of respect or consideration due to the employer, his/her representatives or household; ... and (i) gross professional misconduct.

■ **Mr Ram n Jim nez, general secretary of the Construction Workers' Union of the state of Barinas**

In relation to this deeply regrettable incident, the agencies concerned stated that although the case was being investigated, on no account could it be inferred that the incident was linked to the status of the deceased as a trade union leader, and so the accusation is completely groundless. Consequently, in the absence of any proof on this matter, we request that any unfounded statements be avoided.

■ **Alleged persecution by the state security services of Mr Reynaldo D az, general secretary of the Union of Electricians and Similar and Allied Workers (STE) of the Capital District and state of Miranda**

The Government of the Bolivarian Republic of Venezuela flatly denies that the state security forces are, or have been, guilty of persecution of the aforementioned individual. On the contrary, Mr Reynaldo D az has the full use of his legal and trade union powers, since there is no arrest warrant or investigation against him.

Regarding the full exercise of his trade union activities, we can state specifically that Mr Reynaldo D az participated actively, as a representative of the Union of Electricians and Similar and Allied Workers (STE) of the Capital District and state of Miranda, in the discussions and negotiations relating to the collective labour agreement in the electricity industry. This agreement was concluded and is in full force.

Once again, this is a vague and unfounded accusation against the Government of the Bolivarian Republic of Venezuela and against its institutions and agencies. Like many of the complaints brought before the Committee on Freedom of Association by UNETE, this complaint made under article 26 of the ILO Constitution is riddled with such accusations,

where the complainants merely mention, name or vaguely accuse the Government or its agencies and institutions, with no evidence whatsoever.

■ **Alleged persecution, harassment and suspension of wages of Ms Norma Torres, administrative and financial secretary of the Union of Electricians and Similar and Allied Workers in the state of Carabobo**

Regarding the situation of Ms Norma Torres, the Government consulted the CORPOELEC enterprise directly and was given the following information:

Ms Norma Torres has not reported for work for more than nine months, meaning that she has not fulfilled her duties as a worker of the aforementioned enterprise for more than nine months. However, under both the collective agreement and the law, trade union leave cannot be taken indefinitely in Venezuela; in other words, in addition to exercising her trade union rights as a union leader, Ms Torres is obliged to fulfil her professional duties. Hence, even allowing for her status as a trade union leader, she is not authorized to be continuously absent from her job.

In view of her position as a trade union leader, representatives of CORPOELEC spoke to her on several occasions, reminding her of the need to fulfil her professional, legal and contractual obligations and report for work. However, she has systematically refused to do so.

The payment of her wages has been suspended on account of her repeated and unjustified absences and failure to honour her work commitments. Venezuelan legislation provides for employers to withhold wages when the worker is absent from work without justification.

A request for authorization to dismiss the aforementioned citizen is currently before the labour inspectorate, not on trade union grounds, but rather on account of her repeated and unjustified absences from work, and her resulting failure to fulfil her professional duties and obligations.

In the light of the above, the Government categorically denies the accusation and rejects the irresponsible and unfounded statement made by the complainants regarding the situation of Ms Norma Torres. On the contrary, it has been established that at no point was the aforementioned individual harassed or persecuted. Once again, the accusation made is vague and groundless.

■ **“Tascón List”**

Once more we reiterate, as stated in the reports on observance of the ILO Conventions ratified by Venezuela, in particular the report on the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and in cases already examined by the Committee on Freedom of Association, that in the Bolivarian Republic of Venezuela no worker can be dismissed without justification or on political grounds.

Politically motivated discrimination against workers is against the principles established in the national legal system. The principle of non-discrimination is enshrined first and foremost in articles 57 and 89 of the Constitution, in particular article 89(5), which reads as follows:

5. Any form of discrimination based on politics, age, race, sex, belief or any other condition shall be prohibited.

Article 145 of the Constitution states that the appointment, term of office or removal of state officials shall not depend on political views:

Article 145. Public officials are in the service of the State and shall be impartial. Their appointment or removal shall not be determined by their political affiliation or views ...

Equally, the Public Service Regulations Act, which governs employment in the public administration, provides as follows:

Section 40. The staff selection process shall aim to ensure the appointment of applicants to permanent positions in the public administration on the basis of their skills, attitudes and competencies, through the holding of public competitions enabling the participation, under equal conditions, of those who possess the necessary requirements to carry out the duties involved, without discrimination of any kind.

Moreover, we stress that recruitment for permanent positions in the public administration is carried out through public competitions according to the criteria, conditions and requirements established for each post, none of which contain discriminatory elements of any kind.

- **Alleged party-political and ideological bias in employment and in the working environment in the public service, including the military administration and public enterprises**

We emphatically deny this accusation, since the Government has never obliged workers to align themselves with or adopt a particular political affiliation. In the Bolivarian Republic of Venezuela, all the rights, freedoms and guarantees of a democracy can be fully exercised; hence all individuals are free to choose their political position and perform any jobs or activities that they wish, provided that these are lawful.

- **Alleged “de-waging of employees’ income” in relation to the “Cesta Ticket” scheme**

This representative of the Government of the Bolivarian Republic of Venezuela does not understand this accusation, given that the “Cesta Ticket” scheme is law in our country and establishes the right for workers to receive a food allowance, which is granted nationwide by all employers, both public and private, and this in no way constitutes a violation of any ILO Convention ratified by the Government.

- **Allegedly excessive deductions from workers for various reasons**

In the Bolivarian Republic of Venezuela, wages are protected by law. Deductions made from employees’ wages constitute their contributions to, for example, social security and the housing fund. Other contributions may also be agreed upon by workers and the employer on the basis of a collective agreement.

- **Alleged “poverty wages in Venezuela”**

Since 1999, under the Constitution of the Bolivarian Republic of Venezuela, the Government has been obliged to guarantee workers a minimum living wage which must be reviewed and adjusted each year. On the basis of that constitutional obligation, an efficient and effective system of minimum wage adjustment has been under construction.

In a period of five years, the minimum wage has been standardized at the national level, removing not only differences between regions and economic activities, but also any other kind of discrimination in its application. In Venezuela the minimum wage applies to all workers, including young persons, migrants, *campesinos* (peasant farmers) and people living with disabilities, regardless of gender, age, ethnicity or religion.

The application of the national minimum wage has also been extended to domestic workers, homeworkers, those earning piece-rate wages and those employed in enterprises with fewer than five workers.

All this information on the minimum wage in our country was referred to in the General Survey on minimum wage systems, which was presented by the Committee of Experts on the Application of Conventions and Recommendations and discussed during the 103rd Session of the International Labour Conference, and which made various positive references to the existing minimum wage system in Venezuela.

This benefit has been extended to older persons in our country, since pensions are calculated and paid on the basis of the minimum wage. Whenever the minimum wage is adjusted, the pension amount is also adjusted, in order to ensure a better quality of life for older persons in our country.

Furthermore, in the Bolivarian Republic of Venezuela, workers have the right to receive a food allowance for each day of work or, failing that, payment of a sum of money set by the National Executive through the Cesta Ticket (food benefit) scheme, which is not classified as wages. The law originally stipulated that the food benefit would be given to enterprises and public or private institutions with 20 or more workers, but since 1 May 2011 this restriction has been removed and now the benefit is extended to all workers, even if an employer has only a single employee.

In 2015 and 2016, Venezuela has been under siege from various national and international economic sectors. Many businesses have increased the prices of products irrationally and without any logic in terms of costs. This situation requires our Government to protect workers, monitoring the Venezuelan people's loss in purchasing power, adjusting the minimum wage and the food benefit and maintaining stability in jobs.

Even at this crucial moment in the nation's history, when the **economic warfare** which the country is undergoing has intensified, the National Executive has increased the minimum wage, the food benefit and worker protection, which, moreover, is in line with its constitutional mandate (article 91 of the Constitution).

REQUEST

The Government of the Bolivarian Republic of Venezuela reiterates and emphasizes to the members of the Governing Body that this complaint submitted in June 2016 under article 26 of the ILO Constitution by several Workers' delegates from Mexico, El Salvador, Brazil, Paraguay, the Dominican Republic and Panama, at the instigation of UNETE and without any Workers' delegate from the Bolivarian Republic of Venezuela, refers to the same events and arguments featuring in various cases currently before the Committee on Freedom of Association. In each case, the Government has replied in an appropriate and adequate manner to all the allegations and accusations.

The unfounded arguments presented in this complaint point to a duplication of procedures because the written complaint submitted at the 105th Session of the International Labour Conference states that the same allegations have already been examined or are being examined by the various ILO supervisory bodies. Furthermore, all the arguments form part of cases which are before the Committee on Freedom of Association. The Government has provided an appropriate response to these arguments and on each occasion has rejected them with sound and extensive reasoning.

In particular, this complaint under article 26 of the ILO Constitution refers to, reproduces and copies the same facts and arguments contained in Cases Nos 2763, 3016, 3187, 2827, 2917, 2968, 3006, 3036, 3059 and 3082, the majority of which were filed by UNETE. Even those who lodged the present complaint under article 26 of the ILO Constitution indicated as much in their written complaint.

The Committee on Freedom of Association has already examined all these cases and the Government has responded to all the abovementioned complaints in a consistent and appropriate manner. It has even requested that several of these cases be closed because they lack any basis to warrant further examination by the Committee.

This duplication of cases and procedures only serves to waste the time and effort of both the ILO supervisory bodies and the Government itself, which is obliged to respond to the same issues in the context of different complaints being addressed by different bodies of the same organization. For this reason, we call on the ILO to avoid such situations by carrying out a thorough review of the complaints procedure under article 26 of the ILO Constitution, and we call on the members of the Governing Body not to appoint a Commission of Inquiry on the basis of such complaints, which only reproduce accusations and arguments being examined by another supervisory body (in this case, the Committee on Freedom of Association).

The Government of the Bolivarian Republic of Venezuela would also like to place on record that, as stated above, it complies fully and unreservedly with ILO Conventions Nos 87, 95 and 111, and reiterates its commitment to responding to the requests of the ILO as part of its observance of all the ILO Conventions that it has ratified.

There are no grounds for appointing a Commission of Inquiry on the basis of alleged non-observance of Conventions which, on the contrary, the Government safeguards and observes, as demonstrated in this communication.

Deciding that there are no grounds for appointing a Commission of Inquiry on account of baseless allegations and unconfirmed events, or others already examined by the ILO supervisory bodies, 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 must be far removed from partisan political considerations.

We must not allow the ILO's raison d'être to continue being undermined or its supervisory bodies to be used as a platform for serving individual political interests.

On the basis of all the arguments put forward above, the Government of the Bolivarian Republic of Venezuela expressly requests that **NO COMMISSION OF INQUIRY BE APPOINTED AGAINST THE BOLIVARIAN REPUBLIC OF VENEZUELA.**

Lastly, we request that this communication be brought to the attention of the Governing Body and be included as an appendix to the ILO document due to be published in relation to the agenda item on this matter to be discussed at the 329th Session of the Governing Body in March 2017.

Yours sincerely,

(Signed) José Ramón Rivero

Deputy Minister for the Integrated Labour
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