



Governing Body

332nd Session, Geneva, 8–22 March 2018

GB.332/INS/10(Rev.)

Institutional Section

INS

Date: 13 March 2018

Original: English and Spanish

TENTH ITEM ON THE AGENDA

Complaint concerning non-observance by the Bolivarian Republic of Venezuela of the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), made under article 26 of the ILO Constitution by several delegates to the 104th Session (2015) of the International Labour Conference

Purpose of the document

This document has been drawn up in response to the Governing Body's decision to consider this matter at its March 2018 session. The document includes information provided by the Government of the Bolivarian Republic of Venezuela and the social partners on the issues raised in the complaint. It will be for the Governing Body to adopt the necessary decisions as to the procedure to be followed in respect of this complaint (see the draft decision in paragraph 13).

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.331/INS/14(Rev.); GB.331/PV.

1. At its 331st Session (October–November 2017), the Governing Body, seriously concerned with, and deeply regretting, the lack of progress with respect to the decisions taken at its previous sessions:
 - (a) urged the Government of the Bolivarian Republic of Venezuela to engage in good faith in a concrete, transparent and productive dialogue based on respect for employers' and workers' organizations with a view to promoting solid and stable industrial relations;
 - (b) urged, for the last time, the Government to institutionalize before the end of 2017 a tripartite round table to foster social dialogue for the resolution of all pending issues, and to invite to that effect an ILO high-level mission led by the Officers of the Governing Body, to meet with government authorities, FEDECAMARAS and their member organizations and affiliated companies, as well as trade unions and leaders from all social sectors;
 - (c) requested the Director-General of the ILO to make available all necessary support in that regard and the Officers of the Governing Body to report back on the ILO high-level mission at the 332nd Session of the Governing Body (March 2018) on the determination of whether concrete progress had been achieved by means of the social dialogue fostered by the tripartite roundtable;
 - (d) suspended the approval of a decision on the appointment of a Commission of Inquiry pending on the report of the high-level mission at its 332nd Session of the Governing Body (March 2018);
 - (e) decided that the cost of the high-level mission, estimated at US\$45,000, be financed in the first instance from savings that might arise under Part I of the budget for 2018–19 or, failing that, through the use of the provision for unforeseen expenditure, in Part II. Should this not prove possible, the Director-General would propose alternative methods of financing at a later stage in the biennium.
2. On 13 December 2017, the Office addressed a communication to the Government to give effect to the decision of the Governing Body and begin preparing the high-level mission. On 15 December 2017, the Government formalized its invitation to the mission, which was scheduled to take place from 29 January to 1 February 2018. Through the Office, numerous contacts ensued between the Officers of the Governing Body and the Government in order to coordinate the details of the mission.
3. Throughout the preparation of the mission all the proposals and decisions of the Officers of the Governing Body were taken unanimously. The Officers agreed on – as a matter of principle and in accordance with established practice – the utmost importance of safeguarding the autonomy of the mission with regard to its agenda, recalling that it was within the purview of Officers' attributions to determine with whom the mission should meet. This was without prejudice to the necessary coordination with the Government.
4. On 22 January 2018, the Government informed the Office that it had not been possible to institutionalize the tripartite round table called for in the Governing Body decision (the explanations provided by the Government are summarized in the appendix), but stated that nothing impeded its constitution during the mission.
5. On 25 January 2018, the Officers submitted to the Government a detailed agenda of meetings for the high-level mission. The agenda included meetings with public authorities (authorities of the Ministry of Labour and the Ministry of Foreign Affairs, the Supreme Court of Justice, the Public Prosecutor's Office, and the Office of the Attorney-General of the Republic); the Federation of Chambers and Associations of Commerce and Production of Venezuela

(FEDECAMARAS) and their member organizations and affiliated companies, as well as other employers' organizations (Federation of Artisans, Micro, Small and Medium-Sized Business Associations (FEDEINDUSTRIA), National Confederation of Farmers and Stockbreeders (CONFAGAN), Entrepreneurs for Venezuela (EMPREVEN)); trade unions (the Single Confederation of Workers of Venezuela (CUTV), the Bolivarian Socialist Workers' Confederation of Workers (CBST), the Independent Trade Union Alliance (ASI), the Confederation of Workers of Venezuela (CTV), the National Union of Workers of Venezuela (UNETE), the Confederation of Autonomous Trade Unions (CODESA), the General Confederation of Workers (CGT), the Autonomous Employment, Salary and Trade Union Defence Front (FADESS) and the Grassroots Trade Union Movement (MOSBASE)); and leaders from other social sectors (Episcopal Conference of Venezuela, the Center for Dissemination of Economic Knowledge about Freedom, the Press and Society Institute of Venezuela and the Venezuelan Association of University Presidents to defend the autonomy of universities, quality of education and freedom of expression).

6. By communication of 25 January 2018, the Government raised two sets of objections to the agenda submitted by Officers, and transmitted a modified plan of work for the mission, which removed the meetings envisaged with several trade unions and leaders of other social sectors. The modified plan of work excluded three of the nine trade unions listed in the agenda submitted by the Officers. In its transmission letter, the Government argued that it supported that the mission met with trade unions that were deemed to be duly registered under national law. The trade unions thus excluded were ASI, FADESS and MOSBASE – all organizations with which the previous 2014 high-level mission to the country had met. Moreover, the modified plan of work excluded all meetings with the leaders from other social sectors noted in the preceding paragraph. The Government argued that these meetings fell outside the mandate of the mission, as deriving from the decision of the Governing Body transcribed above, and that the entities concerned were partisan and contrary to the policies of the Venezuelan Government.
7. The exclusion from the proposed agenda of three trade unions and of leaders of other social sectors was considered by the Officers as contrary to the mandate of the mission, which called upon the mission to meet with trade unions as well as leaders from all social sectors. The exclusion was also not acceptable as it was incompatible with fundamental ILO principles and Conventions, in particular those relating to freedom of association. Consequently, by communication of 26 January 2018, the Officers responded to the objections of the Government by relaying their assurances that the agenda submitted was within the mandate of the mission and requested the Government to confirm that undertaking the meetings with the different entities and trade unions listed in the agenda submitted would not entail any difficulty for the conduct of the mission, noting that otherwise it would not be possible to undertake the mission. The Government submitted a written response on the same day, in which it maintained the objections outlined in the preceding paragraph. Therefore, in the absence of a confirmation from the Government that the mission would be able to meet with all the workers' organizations and other entities indicated in the agenda submitted, the Officers concluded that the necessary conditions were not in place for a full and effective conduct of the mission. Consequently, the high-level mission could not be carried out.
8. Information was received from the Government in a communication dated 20 February and 5 March 2018, and from FEDECAMARAS and the International Organisation of Employers (IOE) in communications dated 22 January, 16 February and 5 March 2018. These communications are summarized in the appendix. The full text is available to constituents.

9. Furthermore, a communication dated 2 February 2018 was addressed to the Officers by a group of Venezuelan workers' organizations,¹ with information the latter had intended to submit to the high-level mission. These organizations had hoped the mission could promote the establishment of a social dialogue mechanism to allow for a broad national agreement to address a number of violations of ILO Conventions, outlined in their communication, including: (i) the setting of the minimum wage without consultations since 2002; (ii) the lack of civil liberties and worsening of anti-union discrimination, including dismissals, harassment and criminalization of trade union activities, with leaders being subjected to military jurisdiction; and (iii) the creation without consultation of worker productive councils as a means of governmental interference with freedom of association, as well as other anti-union legislation allowing for arbitrary and abusive practices by labour inspectors, which would interfere with the rights to strike and to bargain collectively.
10. It should also be noted that, in its November–December 2017 session, the Committee of Experts on the Application of Conventions and Recommendations adopted comments relating to the application of Conventions Nos 26, 87 and 144 by the Bolivarian Republic of Venezuela, including in relation to the issues raised in the present complaint.
11. It may be further recalled that the Committee on Freedom of Association (CFA) has, on numerous occasions, considered a complaint submitted on 17 March 2003 (Case No. 2254) and broadened year after year by two employers' organizations, in which it is alleged that the freedom of association of Venezuelan employers is being violated. Ever since, the Governing Body has approved the Committee's interim conclusions in this case. Since March 2009, the CFA has categorized this case as extremely urgent and serious. In March 2011, in the context of a previous article 26 complaint submitted in 2004 by employer delegates concerning Convention No. 87, the Governing Body decided to request the Director-General to send a high-level tripartite mission to the Bolivarian Republic of Venezuela to address all the issues related to Case No. 2254, as well as technical cooperation matters, and to provide a full report to the Governing Body in November 2011. The mission finally took place in January 2014. The CFA has since then been observing that the mission's recommendations have not been implemented. The CFA last examined Case No. 2254 in November 2017.
12. In accordance with article 26 of the ILO Constitution, it is for the Governing Body to take the necessary decisions concerning future action on this complaint.

¹ Confederation of Workers of Venezuela (CTV), the Confederation of Autonomous Trade Unions (CODESA), the General Confederation of Workers (CGT), the Autonomous Employment, Salary and Trade Union Defence Front (FADESS) and the Grassroots Trade Union Movement (MOSBASE), the Federation of Associations of University Professors of Venezuela (FAPUV) and the Unitary Revolutionary Autonomous Classist Current (CCURA).

Draft decision

13. *The Officers of the Governing Body recommend that the Governing Body, deeply concerned with the lack of any progress with respect to its previous decisions, in particular as to the establishment of a social dialogue table and action plan, which it had urged for the last time the Government to institutionalize before the end of 2017 and regretting the impossibility to carry out the high-level mission it recommended at its preceding session, due to the objections raised by the Government to its agenda, decide that a Commission of Inquiry should be established, subject to the approval of the related financial implications set out in GB.332/INS/10(Add.).*

Appendix

Summary of communications received

Government of the Bolivarian Republic of Venezuela

1. In its communication dated 20 February 2018, the Government provides observations in respect of the Governing Body's decision of November 2017 relating to the complaint. The Government emphasizes that it has remained firmly committed to strengthening broad, transparent and respectful dialogue with a view to promoting solid and stable industrial relations, in accordance with the Governing Body's decision and the commitments made at a meeting held with the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS) in October 2017. Since November 2017, the Government has invited FEDECAMARAS to meet in order to draw up a timetable of meetings and/or round tables, with an initial meeting being held on Thursday, 7 December 2017, covering topics of mutual interest related to the world of work, to be discussed further at round tables. It was agreed that the timetable would take effect on 14 December 2017. However, again for reasons beyond the Government's control, that meeting could not take place.
2. With respect to the tripartite round table for the resolution of all pending issues, on 15 December 2017, both FEDECAMARAS and the Bolivarian Socialist Confederation of Workers (CBST) agreed that, given the activities taking place in December, both for the workers and the employers, it was more suitable to set it up in the third week of January 2018 (this was confirmed in communications from FEDECAMARAS and the CBST). On 19 January 2018, the Government called a meeting with FEDECAMARAS in order to reaffirm the willingness to engage in dialogue and to identify common ground. At that meeting, the discussion covered topics of interest relating to the high-level mission and the Government expressed its commitment to setting up the tripartite round table (the details were being worked out at the high levels of Government but it was emphasized that there was nothing to prevent the round table from being set up during the mission's visit). The Government states that nevertheless the tripartite round table was not set up, given the refusal of FEDECAMARAS, which, in a communication of 24 January 2018, stated that the conditions for setting it up in the context of the mission had not been met. This was a major setback in the Government's work to establish the tripartite round table and resolve the existing differences through social dialogue.
3. With regard to the high-level mission, in a communication of 15 December 2017, the Ministry of People's Power for the Social Process of Labour (MPPPST) issued a formal invitation to the ILO to carry out the mission on the dates proposed by the Office (29 January–1 February 2018). However, in a communication of 19 January 2018, the ILO formalized a proposed agenda that included meetings not only with authorities and stakeholders involved in labour matters, but also with entities that were not linked to the complaint – one belonging to the opposition-led parliament, another from the religious sector and three others of a political nature, which were lacking in objectivity and held distorted opinions against the Government. In a communication of 22 January 2018, the MPPPST, while reaffirming its broad willingness to support the mission, elaborated on what the scope of the mission should be according to the Governing Body's decision of November 2017, and on the competence and nature of the organizations that should be called on to participate (those involved in labour matters). The MPPPST objected to the inclusion of entities that had no links to the complaint and that actually had political interests that were contrary to those of the Government and Venezuela's institutional framework (the MPPPST mentions in that respect the shared views of these entities in relation to the presidential elections) and whose participation would not help to solve the issues raised in the complaint, since their intention was to politicize the mission. Subsequently, the Officers of the Governing Body

insisted on the proposed agenda with these politicized organizations and the Government upheld its objections, in view of which the Officers considered that the conditions were not in place for the mission to take place and they unilaterally cancelled it. In the light of this situation, the MPPPST sent a communication on 26 January 2018, indicating that it had been unpleasantly surprised by the cancellation and reiterating its willingness for the high-level mission to take place, with priority being accorded to meetings with government authorities and organizations of employers and workers, in accordance with the Governing Body's decision.

4. The Government states that it was always convinced that the mission was the most appropriate platform for strengthening tripartite social dialogue in the country to address the complaint, and considers that it has demonstrated both its efforts to overcome the differences with FEDECAMARAS through a broad, transparent and respectful dialogue and its interest in fully complying with the ratified Conventions and the decisions of the Governing Body. The Government reiterates its call for respect for its sovereignty, democracy and good will, noting that some employers continue to manipulate the work of the supervisory bodies for political purposes, undermining the legal certainty of States. It regrets in this regard that all matters relating to high-level missions and commissions of inquiry are subject to the corresponding regulation by the ILO, and consequently governments face legal uncertainty due to a lack of standards that guarantee the objectivity and transparency of procedures. The Government reiterates that the complaint is eminently political in nature, has been presented time and again since 2003, after the coup led by FEDECAMARAS, and is lacking objectivity and sound arguments. The Government expresses its dismay at the unilateral decision to stop the mission, as all the guarantees had been in place, and it had been fully prepared to give to the mission the attention it needed in order to fulfil the objectives entrusted to it. Nevertheless, the Government is keeping its invitation to the high-level mission open, and is convinced that the visit will serve to strengthen solid and stable industrial relations and that the foundations will be laid for institutionalizing the tripartite round table in order to resolve the pending issues related to the complaint, and it will thereby be demonstrated that it is not necessary to appoint a Commission of Inquiry.
5. In an ulterior communication, of 5 March 2018, the Government reiterates the preceding observations and, in particular, emphasizes its commitment to the ILO and to its supervisory bodies; stresses that the complaint has a political motivation (recalling that an earlier employer complaint from 2004 was closed by the Governing Body and accusing FEDECAMARAS of having led a coup in the 2002); reiterates its disappointment with the unilateral cancellation of the mission – challenging the insistence of the Officers in meeting with entities opposed the Government and beyond the scope of the mission; and considers that it is not necessary to designate a Commission of Inquiry, recalling that the high-level mission can still visit the country.

Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS) and International Organisation of Employers (IOE)

6. In their communications of 22 January and 16 February 2018, FEDECAMARAS and the IOE allege an extremely serious situation of non-compliance by the Government of the Bolivarian Republic of Venezuela with Conventions Nos 26, 87 and 144.
7. FEDECAMARAS and the IOE denounce the continued intimidating attacks against FEDECAMARAS and the business sector by spokespersons for or associated with the Government, in particular: (i) on 3 November 2017, a violent attack on the FEDECAMARAS headquarters, involving a protest in which members of social groups linked to the Government used motor vehicles to threaten the people inside the building, calling out that they were going to invade the building and smashing the gate at the entrance, causing considerable damage; (ii) attacks against the business sector and extreme behaviour in the application of governmental measures (including, in December 2017 and January

2018, orders for compulsory price reductions in clothing and footwear shops, and in food shops, in an attempt to blame the business sector for inflation, which led to a wave of looting of such shops; as well as orders to reduce prices to the levels that were in place prior to 15 December, with the use of police persecution against retailers and threats of sanctions, including prison); (iii) stigmatization, insults and attacks by government spokespersons and members of the Constituent National Assembly (ANC), as part of a campaign to intimidate and discredit FEDECAMARAS (including public statements by the Minister of People's Power for Planning in January 2018, accusing the business leadership of economic warfare for political purposes and blaming it for the crisis; discrediting messages by the former Minister of the Social Process of Labour and member of the ANC, accusing FEDECAMARAS of staging a coup and attacks against the people, including in relation to the prices of products; and false accusations of economic warfare by a leading member of the ANC on a state television programme).

8. FEDECAMARAS and the IOE also denounce the approval by the President of the Republic, without any tripartite consultations, of new increases in wages and in the Cesta Ticket or food benefit scheme for workers, on 1 November and 31 December 2017.
9. FEDECAMARAS and the IOE further allege the absence of consultations in respect of numerous measures that have an impact at the level of economic, social and labour policy and which should be subject to tripartite discussions. They indicate that these measures are approved within the framework of the ANC and highlight the unconstitutional nature of this institution, which has unlawfully taken on the legislative functions that according to the Constitution should fall to the National Assembly. FEDECAMARAS and the IOE allege that the ANC has been exercising the legislative function without consultation, approving various laws that establish mechanisms involving high levels of political influence and interference by the Government, or by the structures created by it, in business performance. They emphasize that many of the approved laws are based on the purported "economic war waged by the business leadership" and form a network of structures controlled by the Government that interfere politically in labour matters, laws for which there is no prior or effective tripartite consultation sufficiently in advance of their approval to generate a truly productive discussion, or which are simply approved without consultation.
10. These legislative measures include: the constitutional law against the economic war for rationality and uniformity in the acquisition of public goods, services and works (a law that introduces privileges and discriminations), the Law on the Local Committee for Supply and Production (a law that, supposedly in order to fight the threats posed by the capitalist offensive, introduces a new system for the supply, production and distribution of food and products, with entities to provide oversight and monitoring over these processes), the constitutional law on wage protection (aimed at strengthening the mechanisms that monitor the prices fixed by the Government and at countering the economic war) and the Law on Workers' Production Boards (CPTs). In relation to the latter, FEDECAMARAS indicates that, having received a communication from the Government on 26 January 2018 (just days before the high-level mission was scheduled to arrive) inviting it to make proposals with respect to the draft ANC Bill on 29 January 2018, FEDECAMARAS had to respond on that date that: (i) legislative initiative was reserved for the National Assembly; (ii) that, according to the available information, the Bill had already been finalized (in fact, it was approved the following day – on 30 January 2018); and (iii) the purported consultation did not meet the necessary conditions of effectiveness or tripartism. Furthermore, FEDECAMARAS and the IOE express their concern about the content of the Law that, with the intention of contributing to the construction of a socialist economic model, calls for the existence of CPTs in all enterprises, with the aim of monitoring processes for the production, supply, marketing and distribution of goods and services, and made up of workers elected by an assembly convened by the MPPPST and which must include a member of the militia (trained by the Government and under the command of the General Command of the Bolivarian Militia). They highlight that although, according to the Law, the CPTs do not have trade union status, trade union organizations do have to cooperate with the CPTs in the exercise

of their functions, so this new arrangement constitutes a mechanism of political interference in the conduct of union activity within the work place.

11. Lastly, FEDECAMARAS reiterates its readiness for dialogue but stresses that a prerequisite for such dialogue is, at the very least, compliance with two minimum requirements so that FEDECAMARAS and other independent organizations can freely participate in a tripartite round table, namely: (i) the immediate cessation of all forms of the smear campaign and the attacks on FEDECAMARAS and its leaders and against the employer sector in general, especially the campaign based on the so-called “economic war against the Government and against the people”; and (ii) prior consultations with representative employers’ and workers’ organizations on any initiatives that have an impact on the employment relationship, in compliance with the obligations under the ILO Conventions, including the pluralistic and non-exclusive representation of workers by the CBST and involving the presence of independent business organizations.
12. In an ulterior communication, of 5 March 2018, the IOE and FEDECAMARAS denounce that, on 1 March 2018, the Government approved, without the necessary tripartite consultation, a new increase of the minimum wage and related benefits. The IOE and FEDECAMARAS argue that such governmental action demonstrates again, in a clear and worrying manner, the lack of any real willingness by the authorities to comply with ratified ILO Conventions, with the recommendations of the supervisory bodies, or with the decisions of the Governing Body.