



Governing Body

326th Session, Geneva, 10–24 March 2016

GB.326/INS/9(Rev.)

Institutional Section

INS

Date: 11 March 2016

Original: Spanish

NINTH ITEM ON THE AGENDA

Complaint concerning the 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), submitted under article 26 of the Constitution by several delegates to the 104th Session (2015) 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 (see draft decision in paragraph 6).

Relevant strategic objective: Promote and realize standards and fundamental principles and rights at work.

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.325/INS/16/1; GB.325/PV/Draft.

1. At its 325th Session (November 2015), the Governing Body had before it a report by its Officers regarding a 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), submitted under article 26 of the Constitution by several delegates to the 104th Session (2015) 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 2016 at the latest; and (b) placed this item on the agenda of the 326th Session of the Governing Body (March 2016).
3. The Director-General wrote to the Government of the Bolivarian Republic of Venezuela on 21 December 2015, 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 6 January 2016, the Government transmitted its observations on the complaint. A copy of these observations is appended to the present document.
5. 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

6. *The Officers of the Governing Body recommend that the Governing Body:*
 - (a) *taking into account the latest examination by the CEACR in relation to many of the issues raised in the article 26 complaint, requests the Government and the social partners to provide detailed information on all the issues raised in the complaint; and*
 - (b) *defer to its 328th Session (November 2016) the decision to consider the appointment of a Commission of Inquiry.*

¹ Document GB.325/INS/16/1.

Appendix

6 January 2016

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

cc: International Labour Standards Department

For the attention of the 326th Session of the Governing Body, March 2016

I would like to take this opportunity to refer to the decision adopted on 12 November 2015 during the 325th Session of the Governing Body, in document GB.325/INS/16/1, considering receivable the complaint submitted under article 26 of the ILO Constitution which was submitted by several Employers' delegates to the 104th Session of the International Labour Conference (June 2015), in which they requested the appointment of a commission of inquiry against the Government of the Bolivarian Republic of Venezuela alleging non-observance of the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26), the Freedom of Association and Protection of the Right to Organise Convention (No. 87), and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).

In the interest of fully defending the Government of the **Bolivarian Republic of Venezuela**, we will respond to and comment on the following matters.

I. BACKGROUND/IRREGULARITIES IN THE DECISION ADOPTED

1.1. Our Government once again regrets and opposes the decision adopted during the 325th Session of the Governing Body, which was both riddled with legal flaws and lacking in transparency, objectivity and impartiality.

Once again, we wish to recall and place on record the following points:

- (a) The discussion on the aforementioned complaint against our Government was not included in any item on the agenda of the 325th Session of the Governing Body.
- (b) There was a failure to comply with the procedure in place for setting the agenda as per the Standing Orders of the Governing Body and the Introductory Note to the rules applicable to the Governing Body.
- (c) Document GB.325/INS/16/1 was published extremely late, barely five (05) working days prior to the day of discussion. Therefore, under the Standing Orders, because it had not been published fifteen (15) working days in advance, this item had to be postponed until the following session of the Governing Body.
- (d) The statement of defence that we submitted to the ILO on 20 October 2015 was neither published nor acknowledged.

- (e) The universal legal principle that one cannot be both judge and complainant in the same case should be respected; it is not possible to be both interested party and judge. We provide the following facts in support of this point:

Of the thirty-five (35) employers that signed the commission of inquiry request, fourteen (14) are members of the Governing Body:

Name	Governing Body member	
(1) Mthunzi Mdwaba	South Africa	Deputy member
(2) Ronnie Goldberg	United States	Regular member
(3) El Mahfoudh Megateli	Algeria	Regular member
(4) Jacqueline Mugo	Kenya	Regular member
(5) Lidija Horvatic *	Croatia	Deputy member
(6) Khalifa Mattar	United Arab Emirates	Regular member
(7) Kris De Meester	Belgium	Deputy member
(8) Christopher Syder *	United Kingdom	Regular member
(9) Alexander Frimpong *	Ghana	Deputy member
(10) Kamram Rahman	Bangladesh	Regular member
(11) José María Lacasa Aso	Spain	Deputy member
(12) Pablo Carrasco	Bolivia, Plurinational State of	Substitute member
(13) Alberto Echavarría *	Colombia	Regular member
(14) Juan Mailhos	Uruguay	Deputy member

The aforementioned persons accredited to the 325th Session of the Governing Body¹ should have been guided by objectivity, ethical practice and impartiality, and should not have overstepped their authority as members of the Governing Body; they should not have been both judge and complainant given that they had submitted this complaint on the basis of article 26 of the ILO Constitution.

From a legal point of view, these persons were automatically barred from hearing this case during the session and from taking the disputed Governing Body decision at the November 2015 session.

This disqualification follows from the universal legal principle that one cannot be both judge and complainant in a case, and this is precisely what happened with the request for a commission of inquiry against our Government that was submitted by the Employers' delegates in 2004.

We recall that in 2005, the ILO's Legal Adviser stated with regard to this situation, which has now recurred, that in fact, "it is not possible to be complainant and judge at the same time".

This is stated in paragraph 156 of document GB.292/PV, document GB.294/7/1, and paragraph 1311 of the 338th Report of the Committee on Freedom of Association (November 2005).

¹ According to the Final list of persons attending the session, published on the ILO web page, of these fourteen (14) Governing Body members, only those listed as Nos 12 and 14 were not accredited to the 325th Session of the Governing Body (November 2015).

Once again, we ask that note be taken of this universal legal principle that one cannot be both judge and complainant in a case: it is impossible to be both the interested party and the judge or a member of the body that is ruling on the complaint.

In the interest of the objectivity, ethical practice and impartiality that we are all called upon to uphold in the ILO's supervisory and decision-making bodies, this is the approach that should be taken in the Governing Body during the 326th Session (March 2016) and subsequent sessions that continue the examination of this complaint.

1.2. Lack of consensus on the grounds for the decision adopted: We recall that, during the extensive discussion of this case during the 325th Session of the Governing Body, not only our Government, but also the Group of Latin American and Caribbean Countries (GRULAC) and other Governments, presented extensive arguments in support of their position that the complaint was not receivable.²

To demonstrate the absence of tripartite consensus, our delegation would like to refer to **paragraph 46 of the Compendium of rules applicable to the Governing Body of the ILO:**

*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].*

Unfortunately, the Chairperson of the Governing Body nevertheless ignored this rule regarding the absence of consensus and announced that the decision against the Government of the Bolivarian Republic of Venezuela, declaring receivable the complaint that we have before us, had been adopted.

1.3. Duplication of procedures: As stated in our submission of 20 October 2015 (which was neither acknowledged nor published by the Office in preparation for the 325th Session of the Governing Body), we recall that all of the arguments contained in this complaint have been considered by the Committee on Freedom of Association in Case No. 2254, which concerns the events and arguments against the Government of the Bolivarian Republic of Venezuela that are habitually made by the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS) and the International Organisation of Employers (IOE).

These same events and arguments have been repeated in the context of article 26 of the ILO Constitution; at its 2011 session, the Governing Body expressly declared closed the proceedings of the commission of inquiry established in 2004 and decided that the Committee on Freedom of Association was the body competent to examine all of these allegations pursuant to the decisions adopted by the Governing Body at its 310th and 320th Sessions (GB.310/7, March 2011; and GB.320/INS/8, March 2014, respectively).

² They expressly opposed the draft decision and therefore were not in favour of declaring the complaint receivable. Thus, there was no consensus on the decision, which was rejected by an entire regional group – GRULAC – and individually by the Governments of Algeria, China, Cuba, the Dominican Republic, India, the Islamic Republic of Iran, Mauritania, Pakistan, the Russian Federation, and Trinidad and Tobago.

With regard to this duplication and to the fact that the same arguments have been made in Committee on Freedom of Association Case No. 2254, the article 26 complaint with which we are now concerned expressly states:

- *The Committee on Freedom of Association and the Governing Body in plenary ... have considered and discussed the cases of lack of consultation ... by the Government of Venezuela against ... FEDECAMARAS.*
- Exclusion of FEDECAMARAS from social dialogue processes.
- *Adoption, without tripartite consultation, of increases to the minimum wage.*
- *To date, the Committee on Freedom of Association has considered the complaints arising from violations of Conventions Nos 87 and 144 contained in Case No. 2254 on 13 occasions.*
- *... contained in the complaints that have been filed and verified by the Committee on Freedom of Association and constitute violations of ILO Conventions Nos 26, 87 and 144.*
- *The allegations severely undermine FEDECAMARAS's enjoyment of freedom of association, tripartite consultation and social dialogue, in blatant and grave violation of ILO Conventions Nos 26, 87 and 144, as well as the conclusions and recommendations issued by the various ILO supervisory bodies (Committee on Freedom of Association).*

Our Government rejected these allegations before the Committee on Freedom of Association and other ILO supervisory bodies at the time. We again deny and reject them and, in that regard, we refer to the replies that we provided and justified on those occasions.

It is clear that, following this new development of June 2015, the employers (FEDECAMARAS and the IOE) are again attempting to threaten the Government of the Bolivarian Republic of Venezuela by placing a standing item on the agenda of the Governing Body.

By submitting this complaint, they are disregarding the previous decisions of the Governing Body in an attempt to prevent the Committee on Freedom of Association from pursuing its examination of the case. This is contrary to the decisions expressly taken by the Governing Body since they are once again requesting the constitution of a commission of inquiry even though the Governing Body discussed and rejected that request in March 2011 on the grounds that the Committee on Freedom of Association was the supervisory body competent to pursue its consideration of all of these allegations.

We must not allow the ILO's raison d'être to continue to be undermined and its supervisory bodies to be used to serve the political interests of those who, in the past, have violated the Venezuelan Constitution through undemocratic acts that have done serious harm to the **Bolivarian Republic of Venezuela**.

The Government of the **Bolivarian Republic of Venezuela** once again appeals to the ILO and regrets that biased political interests continue to be involved in the work of the Organization's supervisory bodies.

II. IT IS NOT APPROPRIATE TO ESTABLISH A COMMISSION OF INQUIRY TO EXAMINE COMPLIANCE WITH THE MINIMUM WAGE-FIXING MACHINERY CONVENTION, 1928 (NO. 26)

In the **Bolivarian Republic of Venezuela**, the national minimum wage is universally protected and guaranteed without any discrimination whatsoever in accordance with article 91 of the Constitution and article 129 of the Basic Act on Labour and Workers; **it is FEDECAMARAS and all of the capitalist employers that dislike our national minimum wage policy, hence the constant attacks on our Government.**

The current situation is merely an example of the typical attitude and behaviour of FEDECAMARAS and the IOE; they are attempting to use the ILO to advance their capitalist interests, which are radically opposed to our Government's pro-worker social and protection policies.

Indeed, the IOE "*expresses the view that minimum wages, like all policies, have winners and losers*", and believes that companies' productivity is more important than minimum wage policies (General Survey on **minimum wage systems**, 103rd Session of the International Labour Conference, June 2014, paragraph 66).

The complaint states, as general information, that "*the Government of Venezuela has repeatedly violated*" Convention No. 26 and lists among its principal complaints the "*adoption without tripartite consultation of increases to the minimum wage. In 16 years, the Government has not held a single effective consultation or meeting with FEDECAMARAS to discuss this matter*".

This assertion has been roundly refuted by our Government, as can be seen from the defence arguments put forward within the wide-ranging discussion of the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) by the Committee on the Application of Standards during the 103rd Session of the International Labour Conference in June 2014.

In refutation of the arguments contained in the written complaint, we would like to recall that, during the discussion of the issue in the Committee on the Application of Standards at the 103rd Session of the International Labour Conference, **our Government demonstrated in the meeting room (as recorded in the minutes) that the employers were lying and that a press release on the minimum wage increase had been published on 1 May 2014. The article was entitled "FEDECAMARAS considers the wage increase responsible" and stated that, according to its President, FEDECAMARAS "was consulted sufficiently in advance this year and will send a communication to the Ministry of Labour"** (see *Provisional Record* No. 13(Rev.), Part Two, 103rd Session of the International Labour Conference, page 14).

During the discussion on this matter in June 2014, the Committee on the Application of Standards did not express concern regarding this case, even when it became clear that the employers had lied. Therefore, the employers can hardly expect that a commission of inquiry will be established to investigate our Government in relation to this matter.

The truth is that the Government of the Bolivarian Republic of Venezuela does in fact hold consultations on this issue. **Moreover, Convention No. 26 itself states, in Article 3, that "each Member which ratifies this Convention shall be free to decide the nature and form of the minimum wage-fixing machinery, and the methods to be followed in its operation"**; the same Article provides for consultations with the representatives of the employers and workers concerned.

Our Government acts accordingly; it consults the country's social partners on equal terms and, **as is well known and has been recognized by the employers, it has the ultimate decision-making power** (see *Provisional Record* No. 13(Rev.), Part Two, 103rd Session of the International Labour Conference, page 14).

As the ILO supervisory bodies have highlighted and the Office has explained, "... *the consultation procedure may set the objective of reaching a consensus, although this is not necessary. All views are to be taken into account, but the Government makes the final decision if consensus is not reached.*" (International Labour Office booklet, Promote tripartite consultation: Ratify and apply Convention No. 144; emphasis added).

The Committee of Experts on the Application of Conventions and Recommendations (CEACR) has repeatedly expressed the view that: "*The consultations required under the terms of the Convention are intended, rather than leading to an agreement, to assist the competent authority in taking a decision.*" (General Survey on **minimum wage systems**, 103rd Session of the International Labour Conference, June 2014, paragraph 202).

We would like to recall that, in the aforementioned General Survey on *minimum wage systems*, which was discussed extensively during the 103rd Session of the International Labour Conference in June 2014, **the CEACR highlighted many positive features of our country's policy.** Among other things, it:

- welcomed the progress achieved in enhancing minimum wage coverage for domestic workers (paragraph 91);
- recognized that the minimum wage is fixed by public government authorities after consultation with the social partners (paragraph 143);
- acknowledged the establishment of a single minimum wage at the national level (paragraph 149);
- recognized that the minimum wage applies even to workers paid at a piece rate or by the task (paragraph 163);
- stressed that the minimum wage applies even to adolescent apprentices if they perform their work under the same conditions as other workers (paragraph 182);
- appreciated the fact that the minimum wage applies without any discrimination on grounds of nationality and even covers disabled workers (paragraph 189);
- noted that the minimum wage is fixed using a minimum consumer basket as a reference point and is readjusted annually (paragraphs 255 and 276);³
- noted that there are established penalties for the violation of minimum wage provisions (paragraph 306);
- highlighted the general procedure through which complaints can be made to the labour inspectorate by a worker or group of workers if they consider that their right to the minimum wage has been violated (paragraph 313).

The CEACR, in its 2015 report, does not mention any alleged violation of Convention No. 26 by the Government of the Bolivarian Republic of Venezuela; it merely requests the Government to guarantee the consultation and participation on an equal footing of the most representative organizations of employers and workers with a view to establishing and applying minimum wage systems (page 404).

³ Translator's note: The reference to paragraph 276 appears to be in error.

In light of this general request by the CEACR, the Employers' group can hardly expect a commission of inquiry to be established to investigate our Government in relation to this issue.

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 Convention No. 26 that we deny, refute and categorically and forcefully contradict, is thus unworthy of consideration. It bears repeating: **in the complaint, the employers are lying when they state that the Government does not hold consultations on minimum-wage fixing; this was demonstrated at the 103rd Session of the International Labour Conference and is clear from the relevant *Provisional Records*, cited above.**

We would like to draw attention to, among others, the following press releases:

*The first Vice-President of FEDECAMARAS, Francisco Martínez, said that the 30 per cent wage increase announced by the Government was necessary in order to improve workers' earnings. ...*⁴

*Last Wednesday, Jorge Roig, President of FEDECAMARAS, told a journalist that the 30 per cent increase in the minimum wage, announced yesterday by President Nicolás Maduro, was "moderate" and "responsible". ... Roig said that this year, they had been consulted "sufficiently in advance" and had sent a communication to the Ministry of Labour. ...*⁵

In addition, our Government sent the ILO a copy of Communication No. 0397 of 23 October 2015, signed by the People's Minister of Labour and sent to the President of FEDECAMARAS, Francisco Martínez García, stating, among other things:

*I acknowledge your request and urge you to submit proposals with a view to development of the wage policies to be discussed next year (2016) and of the new implementing regulations for the Basic Act on Labour and Workers Regulations so that they can be evaluated and discussed while encouraging and promoting broad, inclusive social dialogue as part of the social labour process.*⁶

IV. IT IS NOT APPROPRIATE TO ESTABLISH A COMMISSION OF INQUIRY TO EXAMINE COMPLIANCE WITH THE FREEDOM OF ASSOCIATION AND PROTECTION OF THE RIGHT TO ORGANISE CONVENTION, 1948 (NO. 87)

It bears repeating: **in Case No. 2254, the Committee on Freedom of Association is considering the same events and the same arguments against the Government of the Bolivarian Republic of Venezuela that the Employer representatives habitually make and are now repeating with reference to article 26 of the ILO Constitution. The Governing Body has expressly declared closed the proceedings of the commission of inquiry against the Government of the Bolivarian Republic of Venezuela and decided that the Committee was the body competent to examine these allegations, as seen from**

⁴ Press release dated 30 April 2014, posted on the *Globovisión* web page (<http://archivo.globovision.com/en-primera-pagina-el-primer-vicepresidente-de-fedecamaras/>).

⁵ Press release dated 1 May 2014, posted on the *La Patilla* web page (<http://www.lapatilla.com/site/2014/04/30/fedecamaras-considera-responsable-aumento-de-salario/>).

⁶ This communication was received by the ILO. The Director of the International Labour Standards Department also acknowledged its receipt in Communication No. TUR-i-63-23 of 3 November 2015, stating that it would be forwarded to the Committee on Freedom of Association.

the aforementioned decisions adopted by the Governing Body in March 2011 and March 2014.

V. IT IS NOT APPROPRIATE TO ESTABLISH A COMMISSION OF INQUIRY TO EXAMINE COMPLIANCE WITH THE TRIPARTITE CONSULTATION (INTERNATIONAL LABOUR STANDARDS) CONVENTION, 1976 (NO. 144)

The complaint states, as general information, that “*the Government of Venezuela has repeatedly violated*” Convention No. 144, **without describing these alleged violations of the principle of tripartite consultation concerning international labour standards.** Rather, it mentions, without further particulars, “*incidences of failure to hold consultations*”.

The complaint makes no mention of any violation of Convention No. 144, which, like the 2005 ILO Memorandum, mentions “*the obligation to submit Conventions and Recommendations to the competent authorities*”. The member States which have ratified said Convention **must hold consultations on proposals to subscribe to international instruments or labour standards adopted by the Conference.**

It should be borne in mind that, as the ILO has indicated, “***Convention No. 144 deals with national tripartite consultation strictly on ILO standards-related activities, for example on the ratification and application of international labour standards***”; ***it does not require consultation on a country’s social and economic policy issues*** (International Labour Office booklet, Promote tripartite consultation: Ratify and apply Convention No. 144, page 13).

The CEACR, in its 2015 report, merely asks the Government to provide information on consultations related to international labour standards (page 318).

In light of this general request by the CEACR, the Employers’ group can hardly expect a commission of inquiry to be established to investigate our Government in relation to this issue.

With regard specifically to Convention No. 144, on 15 December 2015, our Government sent all of the national workers’ and employers’ organizations, including FEDECAMARAS, an announcement of consultations on the most recent legal instruments, adopted by the International Labour Conference in June 2014: the Protocol to the Forced Labour Convention, 1930, and the Recommendation thereon.

However, since the complaint appears to demonstrate a lack of understanding of Convention No. 144 by confusing “tripartite consultation” on “international labour standards” with social dialogue, we feel compelled to draw attention to several statements made by the then President of FEDECAMARAS, Jorge Roig, who recognized the existence of dialogue with our Government:

- *FEDECAMARAS and the Government will meet tomorrow at Miraflores Palace. The President of FEDECAMARAS, Jorge Roig, said that he “welcomed” the new Foreign Exchange Crimes Act. ... “We are pleased that the Act authorizes a number of positive and completely ethical actions that are beneficial to the national economy”. ... He*

reported that FEDECAMARAS had been invited to meet with the executive branch at Miraflores Palace this Wednesday.⁷

- *FEDECAMARAS: The Government's remarks made it clear that it supports an increase in production capacity. The President of FEDECAMARAS, Jorge Roig, said that today's meeting with President Nicolás Maduro had been "excellent" and noted the President's "respectful attitude" towards the private sector. "Having participated in the meeting, which lasted throughout the day and was attended by over 700 employers and Maduro's economic cabinet, ... we recognize that it has been an excellent experience which, in my view, is worth repeating".⁸*
- *Jorge Roig said that, in the few weeks of dialogue, "a great deal of progress has been made". ... According to Roig, most people are unaware of the economic results "because they are really upset. But those of us who are involved know that progress has indeed been made, particularly with regard to price recognition".⁹*
- *At a press conference, Roig said that FEDECAMARAS was "concerned and in the process of offering the country solutions". He asked to meet with the President, the Vice-President and the Ministers "to discuss ways of ending the crisis". ... "We have already met with all political factions in the Government ...".¹⁰*
- *Jorge Roig spoke about the dialogue with the Government. "Jorge Roig, President of FEDECAMARAS, said that ... Prices that were lagging years behind had been recognized. ... An alternative currency system had been introduced. ... A new export regime had been established. Some labour regulations, such as those governing layoffs, had been made more flexible. But these were minor improvements".¹¹*

As mentioned in, among others, the following press release, the current President of FEDECAMARAS has met with the then members of the Bolivarian Republic of Venezuela's Parliament:

- *"FEDECAMARAS and Parliament met to discuss the economy. The new President of FEDECAMARAS, Francisco Martínez, and the Vice-President of the National Assembly, Elvis Amoroso, met to exchange views on the current economic situation. ... the National Assembly has every intention of cooperating with all sectors, and particularly private sector employers, which are essential to the economic recovery that Venezuela is*

⁷ Press release dated 25 February 2014, posted on the *Noticias 24* web page (<http://www.noticias24.com/venezuela/noticia/224465/fedecamaras-rechaza-el-aumento-de-dias-festivos-decretado-por-el-gobierno/>).

⁸ Press release dated 23 April 2014, posted on the *Globovisión* web page (<http://archivo.globovision.com/fedecamaras-el-tono-del-gobierno-fue-con-animo-de-que-el-aparato-productivo-avance/>).

⁹ Press release dated 5 May 2014, posted on the *La Patilla* web page (<http://www.lapatilla.com/site/2014/05/04/jorge-roig-asegura-que-en-las-pocas-semanas-de-dialogo-se-ha-avanzado-mucho/>).

¹⁰ The full transcript, dated 27 August 2014, is posted on the *Noticias 24* website (<http://www.noticias24.com/venezuela/noticia/252828/fedecamaras-pide-al-gobierno-tomar-las-medidas-para-que-los-venezolanos-puedan-trabajar>).

¹¹ Interview published in the daily, *El Universal*, on 31 August 2014. The full press release is available online at: <http://www.noticierodigital.com/2014/08/jorge-roig-en-el-universal-con-el-gobierno-estamos-como-esos-matrimonios-que-duermen-en-camas-separadas>.

seeking. ... Francisco Martínez said that they would begin work on a draft legislative agenda that would include matters of economic interest.”¹²

Our Government also sent the ILO a copy of Communication No. 0397 of 23 October 2015, signed by the People’s Minister of Labour and sent to the President of FEDECAMARAS, Francisco Martínez García, which states, among other things, that:

... the meetings held in this Ministry on 8 and 16 October of this year, at which we discussed labour policy and issues that, according to you, were of interest to ... FEDECAMARAS and its affiliates. This Ministry confirms that the Government is willing to engage in broad social dialogue and to establish mechanisms that will give FEDECAMARAS a larger role in the discussions with a view to development of the labour policies, legislation and regulations adopted in order to regulate the social labour process in the Bolivarian Republic of Venezuela ... within the framework of the broad and inclusive dialogue agreed with FEDECAMARAS.¹³

In addition, the People’s Minister of Labour sent the following communications to the President of FEDECAMARAS, Francisco Martínez García, portions of which are reproduced below:

- **Communication No. 1980 of 18 December 2015:** “... Within the framework of broad social dialogue and in order to strengthen the mechanisms that help to give FEDECAMARAS a larger role in the development of labour policy, this Ministry would like to know the grounds on which ‘FEDECAMARAS and the Venezuelan Confederation of Industrialists (CONINDUSTRIA) have called for repeal of the Basic Act on Labour and Workers, approved by President Hugo Chávez in 2012’. ... In addition, it has been announced that, in a document entitled ‘Commitment to Freedom’, signed by the employers at the 71st Assembly of FEDECAMARAS, the employers ... request the Assembly ... to review the Basic Act on Labour and Workers, its implementing regulations and the social security standards, which, in their view, should be the outcome of a tripartite national debate”. Attention is also drawn to the statements made by Cipriana Ramos, President of the National Commerce and Services Council (CONSECOMERCIO), a FEDECAMARAS affiliate, in which she proposed that the Basic Act on Labour and Workers be “modified” because, in her view, this standard-setting instrument “is of no benefit to workers”.
- **Communication No. 1981 of 18 December 2015:** “I am writing to you in connection with the meetings held in this Ministry on 8 and 16 October of this year and with Communication No. 0397 of 23 October, in which this Ministry ‘...acknowledges your request and urges you to submit proposals with a view to the development of the wage policies to be discussed next year (2016) and the new implementing regulations for the Basic Act on Labour and Workers so that they can be evaluated and discussed while encouraging and promoting broad, inclusive social dialogue as part of the social labour process’. In addition, it is necessary to seek your views on current protections against dismissal and their potential extension, currently under consideration as announced by the President of the Bolivarian Republic of Venezuela in a public address. I also invite you to continue and sustain the broad social dialogue with the Government and to establish mechanisms that will give FEDECAMARAS a larger role in the discussions with a view to development of the labour policies, legislation and regulations adopted in order to regulate the social labour process in the Bolivarian Republic of Venezuela. To that end,

¹² Press release dated 6 August 2015, posted on the *Noticias del día* website (<http://noticiaaldia.com/2015/08/fedecamaras-y-el-parlamento-se-reunieron-para-abordar-tema-economico/>).

¹³ This Communication was received by the ILO. The Director of the International Labour Standards Department also acknowledged its receipt in Communication No. TUR-i-63-23 of 3 November 2015, stating that it would be forwarded to the Committee on Freedom of Association.

I request that you submit a proposal for the establishment of an agenda for dialogue, which, once received, will be evaluated”.

Thus, with regard to the Government’s willingness, **respectful dialogue between the Government and FEDECAMARAS is in fact ongoing. Although the employers consider that the outcome thereof is not entirely favourable to them, this does not mean that there is an absence of social dialogue and consultation.**

Obviously, not all of the Venezuelan Government’s decisions can be favourable to the employers represented in the complaint that we have before us; their capitalist interests must be balanced against the legitimate social and labour rights of Venezuelan workers, which our Government continually safeguards, and this tension is a consequence of the permanent contradiction between capital and labour.

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 Convention No. 144 that we deny, refute and categorically and forcefully contradict, is thus unworthy of consideration. And, it bears repeating: **the complaint does not mention any alleged violation of Convention No. 144, with which the Government of the Bolivarian Republic of Venezuela is fully compliant.**

Request

The Government of the **Bolivarian Republic of Venezuela** reiterates and emphasizes that this complaint submitted in June 2015 by various Employer representatives under article 26 of the ILO Constitution relates to the events and arguments, put forward by FEDECAMARAS and the IOE, that the Committee on Freedom of Association is already examining in Case No. 2254.

The decisions adopted by the Governing Body in March 2011 and March 2014, closing the proceedings initiated in 2004, should be borne in mind. These proceedings concerned the same allegations made by the Employer representatives, who sought the establishment of a commission of inquiry against our Government; the Governing Body expressly decided that all of this fell within the purview of the Committee on Freedom of Association. Therefore, **the Governing Body has already decided that the Committee on Freedom of Association is the supervisory body which should continue to examine these allegations in the context of Case No. 2254.**

Furthermore, we reiterate that **of the 35 signatories to the request for a commission of inquiry, 14 – whom we have identified above – are members of the Governing Body and are thus not qualified to consider this case when the Governing Body discusses it and adopts a decision.**

This disqualification follows from the **universal legal principle that one cannot be both judge and complainant in the same case,** and this is precisely what occurred in Case No. 2254 when Employer representatives called for a commission of inquiry in 2004.

The Government of the **Bolivarian Republic of Venezuela** would like to state expressly for the record that, as indicated above, it is compliant with ILO Conventions Nos 26, 87 and 144 and to reiterate its commitment to full compliance with all the ILO Conventions that it has ratified.

The broad and inclusive social dialogue is moving forwards, driven by the continuous and coordinated leadership of the Government of the **Bolivarian Republic of Venezuela.**

There is no need to establish a commission of inquiry, but we need more time to further demonstrate our compliance with the aforementioned Conventions. We are convinced that if the Employers are willing to cooperate, the Government will be increasingly able to reach a better understanding with FEDECAMARAS and all Venezuelan private employers without neglecting the national social and labour policies that benefit workers.

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 that harm the **Bolivarian Republic of Venezuela**.

Given that this reply has been prepared well in advance of the 326th Session of the Governing Body (March 2016), **we reserve the right to submit an annex to this document in order to provide further information on the progress made or additional arguments in favour of our Government as further proof that it is inappropriate to establish a commission of inquiry** on the basis of the unfounded allegations contained in the complaint submitted by the Employers' representatives under article 26 of the ILO Constitution.

We request that this document be published in annex to the ILO document on this matter, which will be discussed during the 326th Session of the Governing Body.

(Signed) Menry Rafael Fernández Pereira
Minister for Labour Rights and Relations
Pursuant to Decree No. 1735 of 10 April 2015
Official Gazette No. 40,651 of 30 April 2015