



Governing Body

324th Session, Geneva, 13 June 2015

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Institutional Section

INS

SEVENTH ITEM ON THE AGENDA

Report of the Director-General

Sixth Supplementary Report: Report of the committee set up to examine the representation alleging non-observance by the Plurinational State of Bolivia of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), submitted under article 24 of the ILO Constitution by the Bolivian Workers' Federation (COB)

I. Introduction

- 1.** In a communication received on 9 April 2012, the Bolivian Workers' Federation (COB) submitted a representation to the International Labour Office under article 24 of the ILO Constitution, alleging non-observance by the Plurinational State of Bolivia of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).
- 2.** In a communication of 3 July 2012, the Office invited the COB to provide further information that would make it possible to determine whether the alleged acts were related to Convention No. 111.
- 3.** In a communication of 24 March 2014, the COB sent further information.
- 4.** Convention No. 111 was ratified by the Plurinational State of Bolivia on 31 January 1977 and is in force in the country.

5. The provisions of the ILO Constitution concerning the submission of representations are as follows:

Article 24

Representations of non-observance of Conventions

In the event of any representation being made to the International Labour Office by an industrial association of employers or of workers that any of the Members has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party, the Governing Body may communicate this representation to the government against which it is made, and may invite that government to make such statement on the subject as it may think fit.

Article 25

Publication of representation

If no statement is received within a reasonable time from the government in question, or if the statement when received is not deemed to be satisfactory by the Governing Body, the latter shall have the right to publish the representation and the statement, if any, made in reply to it.

6. The representations procedure is governed by the Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the ILO Constitution, as revised by the Governing Body at its 291st Session (November 2004). In accordance with articles 1 and 2(1) of the above Standing Orders, the Director-General acknowledged receipt of the communications, informed the Government of the Plurinational State of Bolivia thereof and brought the matter before the Officers of the Governing Body.
7. At its 321st Session (June 2014), the Governing Body, on the recommendation of its Officers, decided that the representation submitted by the COB was receivable and appointed a three-member committee to examine it. The members of the committee are: Mr Carlos Flores (Government member, Bolivarian Republic of Venezuela); Mr Juan Mailhos (Employer member, Uruguay); and Ms Miryam Triana (Worker member, Colombia).
8. In a communication of 18 December 2014, the Government sent its observations.
9. In a communication received on 16 December 2014, the COB sent further information. In a communication of 23 January 2015, the Government was invited to present its observations on the matter.
10. In a communication of 27 March 2015, at the request of the tripartite committee at its preliminary meeting of 19 March 2015, the Office invited the Government and the complainant organization to send additional information, and in particular copies of the court decisions mentioned in the various communications sent by the parties.
11. In communications received on 13 April and 22 May 2015, the Government sent copies of the court decisions as requested.
12. The Committee met and adopted the present report on 12 June 2015.

II. Examination of the representation

A. The complainant's allegations

13. The present representation was submitted by the COB in a communication received by the Office on 9 April 2012. In a communication of 28 May 2012, the Office invited the trade union organization to provide additional information on how the alleged acts constituted a violation of the provisions of Convention No. 111. The trade union organization sent further information in a communication received on 24 March 2014.
14. In its communication of 9 April 2012, the COB states that the workers of the Catavi and Siglo XX mines, as well as other miners in the sector, were dismissed pursuant to Supreme Decree No. 21060 of 29 August 1985. In total, more than 35,000 miners were affected. According to the COB, the Catavi and Siglo XX workers instituted legal proceedings on the grounds that the social benefits granted to them were substantially inferior to those granted to workers at other mines. On 20 August 1991, the Third Labour and Social Welfare Court of La Paz found that the benefits granted to these workers had indeed been miscalculated. The Administrative Chamber of the La Paz District High Court upheld that finding. That decision was challenged by the employer, the COMIBOL, before the Social and Administrative Chamber of the Supreme Court of Justice. In a judgment of 26 January 2006, the Court upheld the finding of the first instance and forwarded the case files to the Fourth Court of Labour and Social Welfare for enforcement of the judgment. According to the complainant organization, despite the court decisions in their favour, more than 3,000 workers have not yet received the agreed social benefits, which, according to the complainant organization, constitutes an act of discrimination in violation of Convention No. 111.
15. In its communication of 24 March 2014, the COB adds that Supreme Decree No. 21060 made it possible for the Government to exert pressure on mineworkers, as it considered them to be opposed to its policies. The COB alleges that, on the grounds that mining was no longer profitable, steps were taken to remove benefits and to put pressure on workers to accept relocation offers that were never put into effect. Thousands of miners were dismissed. The COB adds that these events constitute an act of discrimination on the grounds of political opinion, national extraction and social origin "as mineworkers are at the forefront of the labour movement in Bolivia", were considered as "reds", "communists" or "revolutionaries" and were "a danger" to the Government because they were "a social class whose thinking is politically opposed to the Government". The complainant organization states that, despite the 28 years that have elapsed and despite their advanced age, the mineworkers who were dismissed have still not received their social benefits. In its communication of 16 December 2014, the COB repeats its allegations and mentions, in particular, the demonstrations carried out by the dismissed miners and by other miners and citizens in solidarity with them.

B. The Government's observations

16. In its communications of 18 December 2014 and 13 April and 22 May 2015, the Government states that, in 1985, the parastatal Bolivian Mining Corporation (COMIBOL), faced a serious crisis due to the low mineral prices on the international market. Until that year, COMIBOL had employed the majority of the workforce in the sector. The Government states that efforts to address the situation, in line with the Government's neoliberal policies, led to the adoption of Supreme Decree No. 21060 of 29 August 1985, establishing a model of market liberalization and free contracting. This resulted in the closure of mines in Bolivia. The Government states, however, that COMIBOL complied

with its labour obligations. Nevertheless, on 3 August 1989, the former workers of Catavi and Siglo XX instituted legal proceedings against COMIBOL before the Third Court of Labour and Social Welfare, calling for the reinstatement of the former workers and for the recalculation of social benefits. In a decision of 20 August 1991, the Court found in favour of the claimants and ordered the recalculation of social benefits. The appeals lodged by COMIBOL were rejected and the judgment was upheld in the second instance (6 September 2004) and in cassation proceedings (26 January 2006). COMIBOL lodged an appeal for *amparo* (protection of constitutional rights) that was also rejected.

17. The Government states that the process of enforcing the judgment was pursued through the courts and that, in this instance, the former workers requested that the levels of the benefits agreed should be adjusted. COMIBOL raised an objection to this request on the grounds that the amounts specified in the judgment had already been paid to the mineworkers. On 20 April 2007, the Fourth Court of Labour and Social Welfare certified that payment had been made to the workers and declared the matter *res judicata*. The appeals brought by the former workers were rejected and the Second Social and Administrative Chamber of the Supreme Court of the La Paz Judicial District upheld the exception on the grounds of payment and confirmed that the court decisions had gained the status of *res judicata*. The former workers lodged an appeal under the *amparo* procedure, which was rejected on 20 May 2008 as time-barred.
18. The Government states that the court decision of 20 April 2007 shows that the legal process has been completed at all instances, that the enterprise has paid the sums of money ordered and that there are no obligations outstanding.
19. With regard to the allegation by the COB to the effect that the miners were discriminated against for being “communist” or “revolutionary” and “because they constituted a serious danger to the policies of that period”, the Government states that COMIBOL’s conduct was examined by the court, which found that the enterprise had met its social and labour obligations. Accordingly, the Government considers that there are no grounds to conclude that there had been discrimination on the basis of political opinion, national extraction or social origin.

III. The Committee’s conclusions

20. The Committee notes the complainant organization’s allegations and the Government’s observations thereon.
21. The representation relates to Article 1 of Convention No. 111, which reads as follows:
 1. For the purpose of this Convention the term discrimination includes:
 - (a) any distinction, exclusion or preference made on the basis of race, colour sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;
 - (b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers’ and workers’ organisations, where such exist, and with other appropriate bodies.
 2. Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.
 3. For the purpose of this Convention the terms employment and occupation include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.

22. The Committee notes the allegation by the COB that more than 3,000 workers of the Catavi and Siglo XX mines had suffered discrimination on the basis of political opinion, national extraction and social origin, as specified in Article 1(1)(a) of the Convention.
23. In this regard, the Committee recalls that, in its initial communication of 9 April 2012, the COB pointed out that, pursuant to the implementation of Supreme Decree No. 21060 of 29 August 1985, which entailed the dismissal of more than 35,000 mineworkers and the closure of many mines, more than 3,000 workers had suffered discrimination from COMIBOL in that they had not been paid the same social benefits as the workers in other mines which had also been shut down, despite the court decisions in their favour.
24. The Committee notes, however, that the abovementioned communication does not state whether the alleged discrimination was based on any of the grounds specified in Article 1(1)(a) of the Convention. Neither do these grounds appear to have been cited in the legal proceedings instituted, either by the disputing parties or by the court during the many years that this issue has been under consideration. Shortly after being invited by the Office to provide further information regarding the connection between the alleged acts and Convention No. 111, the complainant organization indicated in its communication of 24 March 2014 that the mineworkers had been discriminated against on the grounds of political opinion, national extraction and social origin. The COB alleges that the mineworkers were considered as “reds” or “communists” or “revolutionaries” and were “a danger” to the Government. The communication contains no further information, however, demonstrating that the non-payment of social benefits granted by the courts constituted an act of discrimination on the grounds of political opinion, national extraction or social origin.
25. The Committee notes that, in its response, the Government denies any discrimination and explains that the dismissals were necessitated by the economic crisis that affected the mining sector following the fall in mineral prices on the international market, and notes that the parastatal COMIBOL complied with its labour obligations and paid the recalculated social benefits, as decided by the courts at successive instances. The Committee notes in particular the information from the Government that the former workers filed a new lawsuit for the adjustment of the level of social benefits payable but that the Fourth Court of Labour and Social Welfare, by its decision of 20 April 2007, rejected the claim and confirmed that COMIBOL had paid the amounts due and therefore declared the matter *res judicata*.
26. The Committee recalls that the Convention does not define what might be considered discrimination on the grounds of political opinion, national extraction or social origin, but that, in its 2012 General Survey on the fundamental Conventions, the Committee of Experts on the Application of Conventions and Recommendations (CEACR) examined the situations in which discrimination on the criteria enumerated might occur. In this context, the CEACR has indicated that protection against discrimination on the basis of political opinion implies protection in respect of the activities of expressing or demonstrating opposition to established political principles and opinions. It also covers discrimination based on political affiliation. The protection of political opinion applies to opinions which are either expressed or demonstrated, but does not apply where violent methods are used (General Survey on the fundamental Conventions, 2012, paragraph 805).
27. Where social origin is concerned, the CEACR has stated the view that discrimination and lack of equal opportunities based on social origin refers to situations in which an individual’s membership of a class, socio-occupational category or caste determines his or her occupational future, either because he or she is denied access to certain jobs or activities, or is assigned only certain jobs (General Survey, *op. cit.*, paragraph 802). The concept of national extraction, according to the CEACR, covers distinctions made on the

basis of a person's place of birth, ancestry or foreign origin. Discrimination based on national extraction may be directed against persons who are nationals of the country in question, but who have acquired their citizenship by naturalization or who are descendants of foreign immigrants, or persons belonging to groups of different national extraction living in the same State. Distinctions made between citizens of the same country on the basis of foreign birth or origin is one of the most evident examples (General Survey, op. cit., paragraph 764).

- 28.** The Committee is of the view that, on the basis of the representation and the court rulings, it is not possible to state that the alleged acts involve the grounds of discrimination invoked and specified in Article 1(1)(a) of the Convention, namely, political opinion, national extraction or social origin, as described above. The Committee therefore considers that the alleged acts do not constitute a violation of the obligations of the Plurinational State of Bolivia under Convention No. 111.

IV. The Committee's recommendations

- 29.** *In the light of the considerations on which the Committee's conclusions, as set out in paragraphs 20–28 above, are based, the Committee recommends to the Governing Body that it:*

- (a) approve the present report and, in particular, the conclusion formulated by the Committee in paragraph 28;*
- (b) make this report publicly available and close the procedure initiated by the representation made by the Bolivian Workers' Federation alleging the non-observance by the Plurinational State of Bolivia of Convention No. 111.*

Geneva, 12 June 2015

(signed) Carlos Flores

Miryam Triana

Juan Mailhos

Points for decision: paragraph 29