

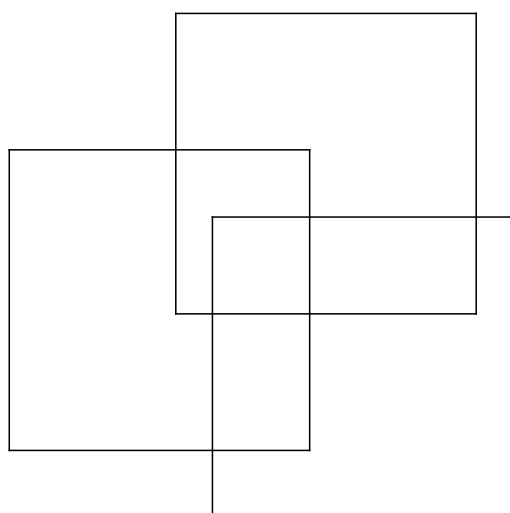


International
Labour
Organization



For national reconciliation and social justice in the Bolivarian Republic of Venezuela

Report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labour Organization to examine the observance by the Government of 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)



Contents

	<i>Page</i>
Summary	vii
Acronyms	xi
Part I. Introduction, context of the complaint and procedure of the Commission	1
Chapter 1. Submission of the complaint and appointment of the Commission.....	1
1.1. Submission of the complaint and relevant legal provisions.....	1
1.2. Summary of the measures adopted by the Governing Body of the ILO following submission of the complaint	5
1.3. Appointment of the Commission	7
Chapter 2. The context of the complaint.....	9
2.1. Social dialogue in the country: The historical background	9
2.1.1. Precedents before 1958.....	9
2.1.2. From the Worker–Employer Covenant to the entry into force of the Constitution in 1999	11
2.2. National legal framework.....	14
2.2.1. Legal system.....	14
2.2.2. Enactment of international law	15
2.2.3. Regulatory framework for freedom of association and civil rights and freedoms.....	15
2.2.4. Regulatory framework for minimum wage fixing	16
2.2.5. Regulatory framework for tripartite consultation on the promotion of the application of international labour standards	16
2.3. Relations with the ILO and comments by the supervisory bodies in relation to the Conventions concerned	17
2.3.1. Freedom of Association.....	19
2.3.2. Minimum wage fixing	29
2.3.3. Tripartite consultation on the promotion of the application of international labour standards.....	31
2.4. Current social and economic context	33
Chapter 3. Procedure of the Commission of Inquiry	37
3.1. Establishing the Commission.....	37
3.2. Communications received.....	38
3.3. Development of the procedure	40
Part II. Information on the factual issues investigated by the Commission.....	45
Chapter 4. Allegations of state interference in the independence of employers’ and workers’ organizations and the relations between them	46
4.1. Favouritism and promotion of organizations close to the Government, as well as obstacles to the operation of other organizations	46

4.1.1.	Allegations concerning employers' organizations	46
4.1.2.	Allegations concerning workers' organizations.....	52
	Interference with respect to the registration and recognition of organizations	58
	Interference in electoral processes	65
4.2.	Interference in relations between employers' and workers' organizations	74
4.2.1.	Workers' Production Boards (CPT).....	75
Chapter 5.	Allegations of violence, intimidation, bullying and other breaches of civil liberties against FEDECAMARAS and other social partners	82
5.1.	Physical violence against persons and headquarters.....	83
5.1.1.	Allegations concerning employers.....	83
	Attack on FEDECAMARAS headquarters in 2008	83
	Attack against FEDECAMARAS leaders in 2010	85
	Attack on ASOGATA headquarters.....	87
5.1.2.	Allegations concerning trade union members.....	89
	Killings	89
	Physical assaults during the course of union activities.....	94
5.2.	Judicial persecution, including consignment to military jurisdiction and extensive application of alternative precautionary measures	97
5.2.1.	Allegations concerning employers' leaders	98
	Detention of the President of FEDELIF.....	98
	Detention of the President of the FEDECAMARAS Lara State Electrical Commission.....	99
	Detention of the President and other leaders of AGAPURE	100
5.2.2.	Allegations concerning trade unionists	100
	Detention and prosecution and sentencing of the Secretary-General of SINTRAFERROMINERA Orinoco	101
	Detention and prosecution of a trade unionist from SINTRAFERROMINERA in June 2011	104
	Incarceration, prosecution and sentencing of trade unionists from Ferrominera in November 2018	105
	Detention, prosecution and conviction of the Secretary-General of SUTRAPUVAL and other trade unionists from CVG VENALUM.....	108
	Detention and prosecution in military courts of presidents of professional associations and trade unionists from Carabobo State	109
	Detention and placement under long-term precautionary measures of trade unionists from SUTISS and FETRAELEC	111
5.3.	Acts of harassment.....	113
5.3.1.	Media campaign against FEDECAMARAS and affiliated organizations.....	113
5.3.2.	Public protests and acts of vandalism at headquarters	116
5.3.3.	Harassment of employers' and workers' leaders in the course of their union activities and in their private lives.....	119
	Allegations concerning employers.....	119
	Allegations concerning workers.....	122

5.3.4.	Short-term detentions without a court order at the SEBIN headquarters	125
	Allegations concerning employers.....	122
	Allegations concerning workers.....	125
5.3.5.	Measures infringing upon the private property of enterprise leaders in reprisal for their activities or membership of FEDECAMARAS.....	129
	Confiscation of the lands and properties of employers' leaders	130
	Other measures detrimental to the private business sector organized around FEDECAMARAS, including the Polar Empresas group	137
Chapter 6.	Alleged exclusion from social dialogue and lack of tripartite consultation, particularly on fixing the minimum wage (Convention No. 26), and the promotion of the application of international labour standards (Convention No. 144)	142
6.1.	Approval of increases to the minimum wage without tripartite consultation	142
6.2.	Lack of tripartite consultation, in particular on matters under Convention No. 144, and alleged exclusion from social dialogue of organizations that are not close to the Government.....	151
Part III.	Conclusions and recommendations	161
Chapter 7.	Conclusions: A complex web that is hostile to and undermines the action of employers' and workers' organizations that are not close to the Government	161
7.1.	Violations of civil liberties, including physical violence, persecution and harassment against FEDECAMARAS and other social partners	162
7.1.1.	Acts of physical violence against employers' leaders and trade union members and of physical violence against their premises, and the impunity or lack of investigation of such acts	165
	Attack on the FEDECAMARAS headquarters	166
	Attack on Ms Muñoz and other FEDECAMARAS leaders	166
	Attack on the ASOGATA headquarters.....	167
	Murders of trade unionists	168
	Attacks on trade unionists.....	168
7.1.2.	Judicial persecution of employers' and trade union leaders.....	170
	Cases involving employers' leaders of FEDELIF and the FEDECAMARAS Electricity Commission, and the trade unionist of FETRAELEC	171
	The case of the Secretary-General of SINTRAFERROMINERA, Rubén González.....	172
	The case of the trade unionists of CVG FMO and CVG VENALUM.....	174
	The case of the Presidents of professional associations and the trade union leader in Carabobo state	176
	The cases of the employers' leaders of AGAPURE.....	177
	The case of the SUTISS trade unionist	177
	The case of the other SINTRAFERROMINERA trade unionist.....	178

7.1.3.	Harassment of employer and trade union leaders	182
	Media smear campaign	183
	Protests against FEDECAMARAS	183
	Persecution of employer and worker leaders	184
	Sudden and arbitrary detention without a court order	185
	The implementation of economic policy measures, particularly land seizure.....	185
7.2.	Absence of tripartite consultation, in particular on minimum wage fixing and the promotion of the application of international labour standards, and exclusion from social dialogue	191
7.2.1.	Approval of increases in the minimum wage without tripartite consultation.....	191
7.2.2.	Absence of tripartite consultation on promoting of the application of international labour standards.....	194
7.2.3.	Exclusion from social dialogue of organizations that are not close to the Government	197
7.3.	Other allegations of state interference in the independence of employers’ and workers’ organizations and in the relations between them	200
7.3.1.	Favouritism and the promotion of parallel employers’ and workers’ associations close to the Government and obstacles to the functioning of other organizations	200
	Favouritism and promotion of organizations close to the Government.....	200
	Determination of representativeness	204
	Other forms of interference.....	206
7.3.2.	Interference in relations between workers’ and employers’ organizations.....	215
Chapter 8.	Recommendations: Respect for freedom of association as a basis for tripartite dialogue with a view to national reconciliation, sustainable economic development and social justice	221

Appendices

I.	Provisions of the Constitution of the International Labour Organisation with respect to complaints concerning failure to observe ratified Conventions.....	227
II.	Substantive provisions 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)	229
III.	Rules of procedure	234

Summary

In March 2018 the Governing Body of the ILO established a Commission of Inquiry under article 26 of the Constitution of the ILO to examine a complaint presented in June 2015 by 33 Employers' delegates at the International Labour Conference. The complaint referred to non-observance 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 \(No. 144\)](#), and alleged, in particular, acts of violence, other attacks, harassment, aggression and a campaign to discredit the employers' organization, FEDECAMARAS, including its leaders and affiliates, as well as interference by the authorities, a lack of tripartite consultation and exclusion from social dialogue. The complainants added that these problems also affected workers' organizations that are not close to the Government.

The Commission of Inquiry was composed of three independent members appointed in June 2018 by the Governing Body of the ILO: Judge and President Manuel Herrera Carbuccia (Dominican Republic, President of the Commission); Dr María Emilia Casas Baamonde (Spain); and Dr Santiago Pérez del Castillo (Uruguay). Under article 28 of the Constitution of the ILO, the Commission of Inquiry is required to prepare a report that establishes the facts of the case and make recommendations on the steps to be taken to address the problems raised in the complaint. The Commission examined the issues raised in the complaint within the scope of the respective Conventions, from the perspective of both employers' organizations and workers' organizations.

The findings of the Commission are based on both the compilation of abundant documentation and written information (having received more than 200 voluminous communications from the Government, the complainants and various social partners in the country, as well as other persons and institutions with knowledge of the issues raised), and direct interaction with the parties and other actors concerned through numerous videoconferences and a visit to the country, both to the capital and to other cities. The procedure also included adversarial hearings held in Geneva with the presence of representatives of both parties and the participation of witnesses from both the public authorities and non-governmental sectors.

The report comprises three parts: (i) Part I sets out the procedure followed and analyses the context of the complaint, and particularly the historical framework of social dialogue in the country, together with the national legal framework, as well as previous relations with the ILO, including comments by its supervisory bodies on the issues raised; (ii) Part II summarizes the information on the facts investigated by the Commission in relation to the complaint, with chapter 4 covering the general allegations of State interference in the independence of employers' and workers' organizations and in the relations between them; chapter 5 covers specific allegations of attacks, persecution and harassment of the social partners, as well as other violations of civil liberties; and chapter 6 deals with the allegations concerning the lack of tripartite consultation, particularly on the fixing of the minimum wage and issues related to promoting the application of international labour standards, and exclusion from social dialogue; and (iii) Part III contains the Commission's conclusions and recommendations.

The Commission notes in its conclusions (chapter 7) the existence in the country of a set of institutions and practices that are in violation of the guarantees and rights set out in the Conventions covered by the complaint. They are prejudicial in particular to the existence and action of free and independent employers' and workers' organizations and the development of social dialogue in good faith in a climate of trust and mutual respect. These

practices and situations form part of a complex institutional and informal web that creates hostility and undermines the action of FEDECAMARAS and of workers' organizations that are not close to the Government. The web includes many elements (legal, political, institutional, social, etc.), some of which are a reflection of systemic problems in the functioning of the rule of law in the country.

In general, the Commission's conclusions highlight:

- (i) persistent and serious harassment in the activities of FEDECAMARAS and its affiliates, as well as of workers' organizations not close to the Government; and a situation of impunity in relation to acts of violence, threats, persecution, stigmatization and intimidation, as well as other violations of civil liberties, suffered by its leaders and members;
- (ii) practices of favouritism and the promotion of parallel organizations, and of discrimination against, the replacement of and interference in the activities of employers' and workers' organizations that are not close to the Government, and interference in the relations between employers and workers, all of which are in violation of the guarantees set out in Convention No. 87; and
- (iii) non-compliance with the requirement for tripartite consultation on the fixing of minimum wages (Convention No. 26), obligations of and on issues related to promoting the application of international labour standards (Convention No. 144), as well as the absence of genuine social dialogue, as advocated by ILO standards.

In light of the problems identified, the Commission of Inquiry is making recommendations with a view to ensuring compliance with the Conventions covered by the complaint and in relation to the issues raised, and particularly freedom of association as a basis for tripartite dialogue for the achievement of national reconciliation, sustainable economic development and social justice. Specifically, the Commission recommends that the authorities concerned take the necessary steps to ensure:

- (1) the existence of a climate free from violence, threats, persecution, stigmatization, intimidation or any other form of aggression, in which the social partners are able to exercise their legitimate activities, including participation in social dialogue with full guarantees. In particular, the Commission recommends:
 - (i) the immediate cessation of all acts of violence, threats, persecution, stigmatization, intimidation or other forms of aggression against persons or organizations in relation to the exercise of legitimate employers' or trade union activities, and the adoption of measures to ensure that such acts do not recur in future;
 - (ii) cessation of the use of judicial proceedings and preventive and non-custodial measures, including the subjection of civilians to military jurisdiction, for the purpose of undermining freedom of association;
 - (iii) the immediate release of any employer or trade unionist who is imprisoned in relation to the exercise of the legitimate activities of their organizations, as is the case of Rubén González and Rodney Álvarez;
 - (iv) the independent investigation without delay of all allegations of violence, threats, persecution, stigmatization, intimidation and any other forms of aggression that have not been duly elucidated, with a view to clarifying responsibilities and identifying the perpetrators and instigators, while ensuring the adoption of appropriate protection, penalization and compensation measures;

-
- (v) the adoption of the necessary measures to ensure the rule of law, and particularly the independence from the executive authorities of the other branches of State authority; and
 - (vi) the organization of training programmes with the ILO to promote freedom of association, tripartite consultation and social dialogue in general, including on full respect for its essential conditions and basic rules, in accordance with international labour standards. These programmes should respond to the specific needs of the various actors and be targeted in particular at public authorities and officials, as well as workers' and employers' organizations.
- (2) full respect for the independence of employers' and workers' organizations, particularly in relation to the Government and political parties; and the suppression of any interference and favouritism by State authorities. The Commission also encourages the social partners to take any measures at their disposal to preserve the independence of their organizations in defence of their members' interests. The Commission therefore specifically recommends, in consultation with the representative organizations:
- (i) the adoption of the necessary measures to ensure in law and practice that registration is a mere administrative formality and that in no event can it imply previous authorization, and to proceed to the immediate registration of the ASI confederation;
 - (ii) the elimination of "electoral abeyance" and the reform of the rules and procedures governing trade union elections, so that the intervention of the CNE is really optional, does not constitute a mechanism for interference in the life of organizations, the pre-eminence of trade union independence is guaranteed in election processes and delays are avoided in the exercise of the rights and activities of employers' and workers' organizations;
 - (iii) the elimination of any other use of institutional machinery or types of action that interferes in the independence of employers' and workers' organizations and their mutual relations. In particular, the Commission recommends the adoption of any necessary measures to eliminate the imposition of control institutions or mechanisms, such as Workers' Production Boards, which may in law or in practice restrict the exercise of freedom of association;
 - (iv) the establishment, with ILO assistance, of criteria that are objective, verifiable and fully in accordance with freedom of association to determine the representativeness of both employers' and workers' organizations; and
 - (v) in general, the elimination in law and practice of any provisions or institutions that are incompatible with freedom of association, including the requirement to provide detailed information on members, taking into account the conclusions of the Commission and the comments of the ILO supervisory bodies.
- (3) due and effective compliance with the consultation requirements set out in Conventions Nos 26 and 144, and the ending of the exclusion from social dialogue and consultation of FEDECAMARAS and trade union organizations that are not close to the Government. In particular, the Commission recommends, through tripartite dialogue with the representative organizations of employers and workers:
- (i) the establishment of effective tripartite consultation procedures. In light of the serious deficiencies in social dialogue in the country, taking into consideration the recognition by the Government itself of the need to create mechanisms for social dialogue, the Commission advises the establishment in the very near future of

bodies or other institutionalized procedures for social dialogue to facilitate compliance with the obligations set out in the Conventions covered by the complaint, in relation to both the fixing of the minimum wage and consultations to promote the application of international labour standards; and

- (ii) the institutionalization of dialogue and consultation covering the subjects envisaged in all ratified ILO Conventions or relating to their application. In this regard, the Commission recommends the submission to tripartite consultation of the revision of the laws and standards that give effect to Conventions, such as the Decree with the rank, power and force of the Basic Labour Act (LOTTT), which raise problems of compatibility with Conventions in light of the conclusions of the Commission and the comments of the ILO supervisory bodies.

The Commission considers that its recommendations must be implemented without further delay, and their implementation completed no later than 1 September 2020. The Commission urges the Government to seek ILO technical assistance in relation to the implementation of these recommendations.

Acronyms

AILA	Association of Latin-American Industrialists
AGAPURE	Apure State Stockbreeders' Association
ANC	Constituent National Assembly
ANSA	National Association of Supermarkets and Self-service Stores
APUNEG	Teachers' Association at the National Experimental University of Guayana
ASI	Independent Trade Union Alliance Confederation of Workers
ASOGATA	Táchira State Stockbreeders' Association
BCV	Central Bank of Venezuela
CARICOM	Caribbean Community
CAS	Committee on the Application of Standards
CBST	Bolivarian Socialist Workers' Confederation of Venezuela for the urban, countryside and fishing sectors
CCL	Caribbean Congress of Labour
CEACR	Committee of Experts on the Application of Conventions and Recommendations
CEC	Confederation of Caribbean Employers
CELAC	Community of Latin American and Caribbean States
CEPUSTAL	Permanent Congress of Trade Union Unity of Latin America
CFA	Committee on Freedom of Association
CGT	General Confederation of Workers
CICPC	Scientific, Penal and Criminal Investigation Corps
CLAP	Local Supply and Production Committee
CNE	National Electoral Council
CNEP	National Council for the Productive Economy
COBOIEM	Bolivarian Council of Industrialists, Entrepreneurs and Micro-Entrepreneurs
CODESA	Confederation of Autonomous Trade Unions
CONFAGAN	National Confederation of Farmers and Stockbreeders
CONINDUSTRIA	Venezuelan Confederation of Industrialists
CONSECOMERCIO	National Commerce and Services Council
CONSEVEN	Confederation of Socialist Entrepreneurs of Venezuela
COPP	Code of Criminal Procedure
CPT	Workers' Production Boards
CSA	Trade Union Confederation of Workers of the Americas
CTV	Workers' Confederation of Venezuela
CUTV	Confederation of Workers of Venezuela

CVG	Corporación Venezolana de Guayana
CVG FMO	CVG Ferrominera Orinoco C.A.
CVG VENALUM	CVG Industria Venezolana de Aluminio
DGCIM	General Directorate of Military Counterintelligence
ECLAC	(United Nations) Economic Commission for Latin America and the Caribbean
ECOSOC	United Nations Economic and Social Council
EMPREVEN	Entrepreneurs for Venezuela
FAES	Government Special Actions Forces
FADESS	Independent Front for the Protection of Employment, Wages and Trade Unions
FEDEAGRO	Confederation of Agricultural Producers Associations
FEDECAMARAS	Venezuelan Federation of Chambers of Commerce and Manufacturers' Associations
FEDEINDUSTRIA	Federation of Chambers and Associations of Artisans, Micro, Small and Medium-sized Industries and Companies of Venezuela
FEDENAGA	National Federation of Ranchers of Venezuela
FEDETRANSPORTE	National Transport Federation
FETRAELEC	Federation of Workers in the Electric Industry
FETRASALUD	National Federation of Health Workers
FSBT	Bolivarian Socialist Workers Force
ILC	International Labour Conference
INTI	National Land Institute
IOE	International Organisation of Employers
IOM	International Organization for Migration
ITUC	International Trade Union Confederation
LCCPT	Constitutional Act on Workers' Production Boards
LOTTT	Basic Labour Act
LTDA	Land and Agrarian Development Act
MERCOSUR	Southern Common Market
MOSBASE	Basic Trade Union Movement
MPPPST	Ministry of Popular Power for the Social Process of Labour
OAS	Organization of American States
OHCHR	Office of the High Commissioner for Human Rights
PROVEA	Venezuelan Programme of Education and Human Rights
PSUV	United Socialist Party of Venezuela
RNOS	National Trade Union Register
SEBIN	Bolivarian National Intelligence Service
Sidor	Alfredo Maneiro Metallurgy Plant of Orinoco

SINBOLTRAFE	Bolivarian Workers Union of Ferrominera Orinoco
SINTRAFERROMINERA	Orinoco Ferrominera Workers' Union
SINTRAINCES	National Union of Workers of the National Institute for Socialist Training and Education
SUEPGEC	Single Union of Public Employees of the Carabobo State Government
SUNDDE	National Superintendence for the Defence of Socioeconomic Rights
SUTPGEF	Single Union of Oil, Petrochemical, Gas and Allied Workers of the state of Falcón
SUTRALUMINA	Single Trade Union of Workers in Aluminium, Bauxite and their By-products
SUTRAPUVAL	Single Union of Professional University Workers of Venalum
SUTISS	Single Union of the Steel Industry and Associated Workers
UASG	Guild of Trade Unions and Employers' Organizations
UNASUR	Union of South American Nations
UNDPPA	United Nations Department of Political and Peacebuilding Affairs
UNDSS	United Nations Department of Safety and Security
UNETE	National Union of Workers of Venezuela
UNHCR	United Nations High Commissioner for Refugees
WFTU	World Federation of Trade Unions

Part I. Introduction, context of the complaint and procedure of the Commission

Chapter 1. Submission of the complaint and appointment of the Commission

1.1. Submission of the complaint and relevant legal provisions

1. At the 104th Session of the International Labour Conference, the President of the Conference received a communication dated 13 June 2015, signed by 33 Employers' delegates, submitting a complaint against the Government of the Bolivarian Republic of Venezuela under article 26 of the ILO Convention for non-observance of the Minimum Wage-Fixing Convention, 1928 (No. 26) – ratified on 20 November 1944; the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) – ratified on 20 September 1982; and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) – ratified on 17 June 1982. The complaint reads as follows:

104th International Labour Conference

Geneva, 13 June 2015

Ms IEVA JAUNZEME
PRESIDENT of the
104th International Labour Conference

C.C. GUY RYDER
ILO Director-General

Dear Ms Jaunzeme,

COMPLAINT UNDER ARTICLE 26 OF THE ILO CONSTITUTION AGAINST THE GOVERNMENT OF THE BOLIVARIAN REPUBLIC OF VENEZUELA FOR VIOLATION OF ILO CONVENTIONS NOS 26, 87 and 144

We the undersigned, Employers' delegates to the 104th Session of the International Labour Conference (2015), whose names are included at the end of this request, have decided to submit formally, by means of this document, a complaint, in accordance with article 26 of the International Labour Organization (ILO) Constitution, against the Government of the Bolivarian Republic of Venezuela (Government of Venezuela) for permanent and continuous violation 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), ratified by the Bolivarian Republic of Venezuela in 1994, 1982 and 1983, respectively.

The Government of Venezuela has committed violations of ILO Conventions Nos 26, 87 and 144 on many occasions, according to the reports of various ILO supervisory bodies. The Committee on Freedom of Association and the Governing Body in plenary, as well as the Conference Committee on the Application of Standards and the Committee of Experts on the Application of Conventions and Recommendations have considered and discussed the cases of lack of consultation, aggression, intimidation and stigmatization by the Government of Venezuela against the most representative employers' organization in the Bolivarian Republic of Venezuela, the Venezuelan Federation of Chambers of Commerce and Manufacturers' Associations (FEDECAMARAS).

The main allegations are as follows:

- Personal attacks on FEDECAMARAS leaders and physical attacks on its headquarters (explosives and vandalism, gunshots and other acts of violence).
- Exclusion of FEDECAMARAS from social dialogue processes.
- Total lack of consultation with FEDECAMARAS regarding laws that affect the economic and labour situation of employers, particularly several laws issued directly by the President of the Republic, by enabling delegation of the legislative body.
- Adoption, without tripartite consultation, of increases to the minimum wage. The Government has not held effective consultations or meetings with FEDECAMARAS to discuss this issue for 16 years.
- Smear campaigns, verbal attacks and the creation of a hostile environment by government officials for FEDECAMARAS and its affiliated organizations, such as the National Commerce and Services Council (CONSECOMERICIO) and the Venezuelan Confederation of Industrialists (CONINDUSTRIA).
- Dispossession of land from former leaders of FEDECAMARAS or of organizations affiliated with it.

To date, the Committee on Freedom of Association has considered the complaints of violations of Conventions Nos 87 and 144 contained in Complaint No. 2254.

This year, the Committee of Experts on the Application of Conventions and Recommendations is issuing, with a double footnote, its twenty-second observation (2015, 2014, 2013, 2011, 2010, 2009, 2008, 2007, 2006, 2005, 2004, 2003, 2002, 2001, 2000, 1999, 1998, 1997, 1996, 1995, 1994 and 1991), in its Annual Report in relation to the serious issues surrounding the application of Convention No. 87 in the Bolivarian Republic of Venezuela.

This year, the Committee on the Application of Standards of the International Labour Conference discussed on a tripartite basis the non-application of Convention No. 87 in the Bolivarian Republic of Venezuela and adopted very strong conclusions. The Committee had discussed this case on 13 previous occasions (2010, 2009, 2007, 2005, 2004, 2003, 2002, 2001, 2000, 1999, 1997, 1996 and 1995). In 2014, the Committee on the Application of Standards discussed the issues relating to the application of Convention No. 26 in Venezuela.

Furthermore, in 2006, an ILO technical assistance mission visited the country, with a view to strengthening tripartite social dialogue. Years later, in March 2011, in view of the fact that the situation in the country regarding respect for freedom of association and tripartite consultation was getting worse, the Governing Body agreed to send a high-level tripartite mission to the Bolivarian Republic of Venezuela to investigate the complaints, to which the Government eventually agreed in December 2013.

The high-level tripartite mission visited the Bolivarian Republic of Venezuela in January 2014, and its report was adopted by the Governing Body at its session in March of that year. The main conclusions of the report contain the following recommendations to the Government of Venezuela:

- (a) To put an end to the acts of violence and intimidation, threats and excessive language aimed at FEDECAMARAS in order to ensure its full enjoyment of trade union rights and freedom of association. The mission also indicated that, in light of the organization's level of representativeness of employers in the country and in view of the time that had elapsed since 2002, as well as the change in the leadership of FEDECAMARAS and its statements of respect for the Constitution of the Bolivarian Republic of Venezuela, the dialogue with FEDECAMARAS should be re-established, and the organization should not be subjected to discrimination and should be consulted on draft legislation concerning labour, social or economic matters (paragraphs 44 and 49 of the report).
- (b) Create the conditions necessary for establishing and setting up structured tripartite social dialogue bodies with the most representative employers' and workers' organizations, which require constructive spirit, good faith, mutual respect and respect for freedom of association and independence, in order to find, as far as possible, shared solutions. To that end, the mission requested the Government to devise a plan of action that includes: (1) a round table between the Government and FEDECAMARAS, with the presence of the ILO, to discuss the matters referred to in the complaints; (2) a tripartite round table, with the

participation of the ILO, with an independent chairperson who has the trust of all the sectors, that respects the representative nature of employers' and workers' organizations, that meets periodically to deal with all matters relating to industrial relations between the parties, and that includes the holding of consultations on new legislation that is envisaged concerning labour, social or economic matters (including within the framework of the Enabling Act) among its main objectives; (3) the discussion of laws, bills, other regulations and socio-economic policy at the round table, with a view to bringing domestic legislation into conformity with ILO Conventions. The mission believed that it was important for the Government to avail itself of the technical assistance of the ILO to that end (paragraphs 52 and 54 of the report).

- (c) With regard to the confiscation of property from leaders of employers' organizations, the mission highlighted the importance of taking measures to avoid any kind of discretion or discrimination in the legal mechanisms governing the expropriation or recovery of land, or other mechanisms that affect the right to own property. It also indicated that the bill governing land announced by the Government should be the subject of full consultations with representative workers' and employers' organizations (paragraph 47 of the report).

To date, the Government of Venezuela has not implemented any of the recommendations contained in the 2014 report of the ILO high-level tripartite mission or the observations, conclusions or recommendations issued by the various ILO supervisory bodies (Committee of Experts, Committee on the Application of Standards and Committee on Freedom of Association). At present, there is escalation in acts of intimidation, aggression and stigmatization by the Government against FEDECAMARAS and its affiliated organizations, according to new complaints that have been filed with the ILO, which include:

- The President of the Republic and public officials issue public messages that attack FEDECAMARAS, accusing it of waging an alleged economic war of conspiracy against the Government.
- Pro-Government groups have held demonstrations in front of FEDECAMARAS headquarters. Moreover, the state intelligence service has been following the President of FEDECAMARAS to meetings outside its headquarters, including meetings in the country's interior, and his work agenda has been revealed in the media. (These events were reported to the Ministry of Popular Power for the Interior, Justice and Peace in November 2014.)
- In September 2014, the state intelligence service detained the President of CONINDUSTRIA.
- In February 2015, more than 15 employers' organization and business leaders, including the Presidents of the Venezuelan Association of Private Clinics and Hospitals and the National Association of Supermarkets and Self-Services, were detained.
- In May, the President of the Republic stated that the Government would not issue foreign currency (under an exchange control system) to FEDECAMARAS; made new threats of imprisonment; and issued various calls to the people inciting hatred against FEDECAMARAS.

To date, no corrective measures have been taken to address the issue of occupied or expropriated lands. Consultation continues to be overlooked by the Government, and in recent months, more than 50 laws have been issued by the President of the Republic, without due consultation of FEDECAMARAS, under the enabling order granted by the Venezuelan legislative body. Furthermore, various increases to the minimum wage of workers have been adopted without consultation. All of the above is contained in the complaints that have been filed and verified by the Committee on Freedom of Association and constitute new 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 of Experts, Committee on the Application of Standards and Committee on Freedom of Association) and the recommendations of the 2014 high-level tripartite mission.

The non-observance by the Government of Venezuela of the provisions of ILO Conventions Nos 26, 87 and 144 is extremely serious and undermines the very existence of FEDECAMARAS, the most representative employers' organization.

The Government of Venezuela must put an end to the constant violations of the aforementioned ILO Conventions and, therefore, in light of the foregoing, we the undersigned, Employers' delegates to the 104th International Labour Conference, formally present this complaint, in accordance with article 26 of the ILO Constitution, for repeated failure to observe ILO Conventions Nos 26, 87 and 144 and we therefore request the ILO to take the appropriate measures with a view to the prompt and timely consideration of this complaint under article 26. We the undersigned reserve the right to provide additional information.

Algeria	El Mahfoudh Megateli Delegate
Argentina	María Victoria Giulietti Delegate for Juan José Etala
Australia	Dick Grozier Delegate
Bangladesh	Kamran Rahman Substitute Delegate for Tapan Chowdhury
Belgium	Kris De Meester Delegate
Bolivia, Plurinational State of	Pablo Carrasco Delegate
Brazil	Clésio Soares De Andrade Delegate
Cambodia	Alessandra D'Amico Delegate
Canada	Sonia Regenbogen Delegate
Chile	Héctor Humeres Substitute Delegate
Colombia	Alberto Echavarría Delegate
Costa Rica	Gabriela Díaz Chanto Delegate
Croatia	Lidija Horvatić Delegate
Denmark	Flemming Dreesen Delegate
El Salvador	Roberto Arnoldo Jiménez Delegate
Ethiopia	Endris Tadele Yimer Delegate
Germany	Max Conzemius Delegate for Renate Hornung-Draus
Ghana	Terence Darko Delegate
Ghana	Alexander Frimpong Substitute Delegate
Guatemala	Guido Ricci Delegate

Honduras	Lina José Mejía Galo Delegate
India	U.D. Choubey Delegate
Italy	Stefania Rossi Delegate
Japan	Hiroshi Tokumaru Delegate
Kenya	Jacqueline Mugo Delegate
Mexico	Octavio Carvajal Delegate
Norway	Henrik Munthe Delegate
Panama	Elisa Suárez Delegate
Peru	Julio César Barrenechea Delegate
South Africa	Mthunzi Mdwaba Delegate
Spain	José María Lacasa Aso Delegado
Swaziland	Bonsiwe Ntando Delegate
United Arab Emirates	Khalifa Mattar Delegate
United Kingdom	Christopher Syder Delegate
United States	Ronnie Goldberg Delegate
Uruguay	Juan Mailhos Delegate
Venezuela, Bolivarian Republic of	Eloina Pérez Di Giácomo Delegate

2. Articles 26 to 29 and 31 to 34 of the ILO Constitution set out the procedure under which the Employers' delegates submitted their complaint against the Government of the Bolivarian Republic of Venezuela. These articles set out the procedure under which a Commission of Inquiry may be appointed and establish its mandate and functions. These provisions are set out in Appendix I.

3. The provisions of Conventions Nos 26, 87 and 144, under which the complaint has been submitted, are set out in Appendix II

1.2. Summary of the measures adopted by the Governing Body of the ILO following submission of the complaint

4. At its 325th Session (November 2015), the Governing Body of the ILO had before it a report from its Officers on the subject of the complaint. The Officers, having verified that the Conventions were in force and that the complaint had been submitted by delegates accredited

to the International Labour Conference, considered that the complaint was receivable in accordance with article 26 of the ILO Constitution and, without entering into the substance of the complaint, agreed to refer the matter to the Governing Body. In this regard, it should be recalled that, at this stage of the procedure, it was not possible to debate the substance of the complaint in the Governing Body and that, if a Commission of Inquiry were to be appointed, the Governing Body would only be asked to take action when the Commission of Inquiry had submitted its report. Similarly, it should also be recalled that, in accordance with established practice, when the Governing Body appoints a Commission of Inquiry, the relevant matters before the various supervisory bodies are referred to this Commission – and until a Commission of Inquiry is appointed, the supervisory bodies remain competent to consider the issues raised. In this respect, it should be recalled that: (i) the Committee on Freedom of Association 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 and that, since March 2009, the case has been categorized as "extremely urgent and serious"; (ii) in its November–December 2014 meeting, the Committee of Experts on the Application of Conventions and Recommendations provided comments to the Government of the Bolivarian Republic of Venezuela relating to the application of the Conventions (Nos 26, 87 and 144) referred to in the complaint; (iii) that on several occasions the Committee on the Application of Standards of the International Labour Conference (hereafter the Committee on the Application of Standards, or CAS) discussed the application by the Bolivarian Republic of Venezuela of Convention No. 87 (most recently in June 2015); (iv) in 2014, it also discussed the application by the Bolivarian Republic of Venezuela of Convention No. 26; (v) that a complaint submitted on 17 June 2004 – relating to the non-observance of Convention No. 87 – also under article 26 of the ILO Convention, submitted by several Employers' delegates was considered receivable by the Governing Body, but for which a Commission of Inquiry was not appointed, and other measures were taken instead, including a high-level tripartite mission which took place from 27 to 31 January 2014 and which designated an action plan which was ratified by the Governing Body in March 2014. Under these conditions, the Governing Body, on the recommendation of its Officers, 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 and to place this item on the agenda of the 326th Session of the Governing Body (March 2016).¹

5. At its 326th Session (March 2016), the Governing Body took note of the observations of the Government in which it questioned the decision adopted and argued that the Commission of Inquiry should not proceed with respect to the said Conventions. In this regard, taking into account the latest examination by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) in relation to the issues raised in the complaint, the Governing Body had invited the Government and the social partners to provide information on all the issues raised in the complaint. The Governing Body deferred to its 328th Session (November 2016) the decision to consider the appointment of a Commission of Inquiry.²
6. At its 328th Session (November 2016) the Governing Body, in light of communications received, noted with interest the information provided by the ILO Director-General regarding the commitment of the Government of the Bolivarian Republic of Venezuela to include FEDECAMARAS in the future socio-economic dialogue table. The Governing Body expressed the firm expectation that before the 329th Session (March 2017), the Government would take appropriate measures to foster an appropriate environment for

¹ See GB.325/INS/16/1 and GB.325/PV, para. 371.

² See GB.326/INS/9(Rev.) and GB.326/PV, para. 161.

social dialogue, which would allow FEDECAMARAS and their member organizations, leaders and affiliated companies, as well as trade unions, to develop their legitimate activities in accordance with the decisions of the supervisory bodies of the ILO regarding Conventions Nos 87, 144 and 26. The Governing Body requested the Office to effectively follow up regarding the adequate implementation of this decision and decided to defer the decision of setting up a Commission of Inquiry to its 329th Session (March 2017).³

7. At its 329th Session (March 2017), noting that two meetings had taken place between the Ministry of Labour and FEDECAMARAS, but regretting the lack of progress concerning the establishment of a social dialogue table and action plan referred to in the past by the Governing Body; and recalling the recommendations made by the high-level tripartite mission which visited the Bolivarian Republic of Venezuela in January 2014, which have not yet been implemented, the Governing Body decided: (1) to urge the Government to implement as soon as possible the following actions: (a) take measures to ensure that there were no acts of interference, aggression and stigmatization against FEDECAMARAS, its affiliated organizations and their leaders and to ensure that FEDECAMARAS and its member organizations, leaders and affiliated companies, as well as trade unions, could freely carry out their legitimate activities in line with the decisions of the ILO supervisory bodies relating to Conventions Nos 87, 144 and 26; and (b) institutionalize without delay a tripartite round table, with the presence of the ILO, to foster social dialogue for the resolution of all pending issues; (2) to urge the Government to avail itself without delay of ILO technical assistance to these ends; (3) to request the Director-General of the ILO to make available all necessary support in this regard and to provide for periodic visits to the country by the ILO; and (4) to defer the decision on the appointment of a Commission of Inquiry until its 331st Session (November 2017).⁴
8. At its 331st Session (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 Governing to institutionalize before the end of 2017 a tripartite round table to foster social dialogue for the resolution of all pending issues, and to that end to invite 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 Offices 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 round table; and d) suspended the approval of a decision on the appointment of a Commission of Inquiry pending the report of the high-level mission at its 332nd Session (March 2018).⁵

1.3. Appointment of the Commission

9. At its 332nd Session (March 2018), the Governing Body, deeply concerned by the lack of progress with respect to its previous decisions, in particular concerning the failure to

³ See [GB.328/INS/12\(Rev.\)](#) and [GB.328/PV](#), paras 224–225.

⁴ See [GB.329/INS/15\(Rev.\)](#) and [GB.329/PV](#), para. 327.

⁵ See [GB.331/INS/14\(Rev.\)](#) and [GB.331/PV](#), para. 442.

establish a round table to foster social dialogue and an action plan, which it had requested the Government to set up, for the last time, by the end of 2017, and regretting that it had not been able to carry out the high-level mission it had recommended at its previous meeting, due to the objections raised by the Government about the agenda of the mission, decided, on the recommendation of its Officers, to recommend that a Commission of Inquiry be appointed and approved the financial implications relating to its appointment. ⁶

10. At its 333rd Session (June 2018) the Governing Body decided that the Commission of Inquiry would be composed as follows: ⁷

Chairperson:

Manuel Herrera Carbuccia (Dominican Republic): first substitute of the President of the Supreme Court of Justice of the Dominican Republic and a member of the Third Chamber of that Court. Doctor in Labour Law from the Complutense University of Madrid, Master in Constitutional Law from the University of Castille La Mancha. He has also been President of the Dominican Association of Labour Law and Social Security; the Central American and Caribbean Association of Labour Law and Social Security; and of the Ibero-American Association of Labour Law and Social Security. He is a professor at the National School of the Judiciary; the Pontifical Catholic University Madre y Maestra; and the Autonomous University of Santo Domingo. He is a Coordinator of the Commission of Legal Sciences of the Academy of Science of the Dominican Republic. He has published a number of books on labour law and labour procedure law in Latin America.

Other members:

María Emilia Casas Baamonde (Spain): former Magistrate and President of Spain's Constitutional Court. Doctor in Law. Professor in Labour and Social Security Law at the Complutense University of Madrid. An elected councillor of the Council of State. Former member of the Management Committee and Vice-Chancellor of the University Carlos III, Madrid. Extensive academic activity and publication record on labour law and industrial relations. President of the Spanish Association of Labour Law and Social Security. Recognized with a number of honorary doctorates awarded by Spanish and Latin-American labour law institutions.

Santiago Pérez del Castillo (Uruguay): former Minister of Labour in his country and government member of the Committee on Freedom of Association. Doctor in Law and Social Sciences. Professor of Labour Law and Social Security Law at the University of the Republic and Chancellor of the University of Montevideo. Founding partner of a law firm providing legal advice on labour and social security matters. Member of arbitration tribunals handling individual and collective labour disputes, and Consultant of the Inter-American Development Bank in cooperation projects with the processes of regional integration.

⁶ See [GB.332/INS/10\(Rev.\)](#), [GB.332/INS/10\(Add.\)](#) and [GB.333/PV](#) paras 284 and 289.

⁷ See [GB.333/INS/7/1](#) and [GB.333/PV](#) para.107.

Chapter 2. The context of the complaint

11. Social dialogue is the central theme running through the issues raised in the complaint: the conditions necessary for it to flourish (in particular, civil liberties, freedom of association and representation and the independence of its actors); its themes and its application in practice. In this respect, it is essential to recall the central role of social dialogue in the mission of the International Labour Organization and in its standards. As highlighted in paragraph III(e) of the Declaration of Philadelphia – an integral part of the ILO Constitution⁸ – it is the obligation of the Organization to further among the nations of the world programmes that will achieve: “the collaboration of workers and employers in the preparation and application of social and economic measures.” The conventions referred to in the complaint are an expression of and the basis of and develop this principal of the Constitution and, more recently, the 2008 ILO Declaration on Social Justice for a Fair Globalization, once again highlighted the importance of promoting social dialogue and tripartism among governments and organizations representing employers and workers as a strategic objective of the Organization.⁹ In compliance with applicable international labour standards, social dialogue can take on different manifestations in different political and legal systems. Recognizing the relevance of the context of each State, this chapter outlines the historical, legal and socio-economic framework of social dialogue and its institutions in the country, as well as a chronology of previous relations between the ILO and the Bolivarian Republic of Venezuela in relation to the application of the conventions which are the subject of the complaint.

2.1. Social dialogue in the country: The historical background

12. In view of the different references and assessments that the actors concerned in the current complaint have presented in relation to past experiences of social dialogue in the country, their main milestones are summarized below. Without pretending to be able to cover the complexity of its development and historical content, nor the richness of visions and opinions in this regard, a brief contextualization is provided with the objective of providing a framework for the allegations of the complaint and the information collected by the Commission throughout its work.

2.1.1. Precedents before 1958

13. It is possible to identify experiences and attempts at tripartism in the country since at least 1936.¹⁰ Article 32.8 of the Constitution of the Republic of 20 July 1936, provided for the

⁸ Declaration of Philadelphia of 10 May 1944, incorporated as an annex to the revised Constitution of the ILO through an instrument to amend in 1946, which entered into force on 20 April 1948.

⁹ Considering the most appropriate methods for: adapting the implementation of the strategic objectives to the needs and circumstances of each country; translating economic development into social progress, and social progress into economic development; facilitating consensus building on relevant national and international policies that impact on employment and decent work strategies and programmes; and making labour law and institutions effective, including in respect of the recognition of the employment relationship, the promotion of good industrial relations and the building of effective labour inspection systems (para. I(A)(iii)) [ILO Declaration on Social Justice for a Fair Globalization](#).

¹⁰ According to certain national scholars, historically – and especially before 1936, it is not possible to speak of a long tradition of tripartite social dialogue in Venezuela. In the past, the labour relations

creation of a National Economic Council “constituted by representatives of the population of producers and consumers, of capital and labour, and of the liberal professions” and which was conceived as a formal and permanent forum for social dialogue. However, the National Economic Council was not convened until 1946 and it had a short initial life until the end of the period of democracy that ended in 1948 – during which unions and employers’ organizations were convened – and it did not operate again effectively until the 1960s.¹¹ In parallel, the Labour Act of 1936 provided for the setting up of commissions to establish minimum wages,¹² although they were not convened at that time.¹³ This same Labour Act of 1936 legally recognized freedom of association for the first time in the country – a recognition that would be incorporated subsequently in the Constitution of 1947.¹⁴

- 14.** A general assessment of this initial period from the point of view of international labour standards is reflected in the monograph report of the ILO on freedom of association and working conditions of 1949, the result of a multi-week mission to the country after the coup d’état of 1948. The conclusions and recommendations of this report contain the following elements regarding the challenges facing social dialogue at that time: (i) they underscored the importance of “Encouragement of collaboration in the economic and social field between all elements in production represented by free, strong and independent organisations of employers and workers”; (ii) they highlighted the various violations of the right to organize that the Military Junta had committed and recommended that the Government take the necessary measures to eliminate the various obstacles to freedom of association; (iii) they found that, although trade union organizations had played a leading role in the development of the collective agreement system, they had not been able to assume an important role in the development of social legislation, which had rather been the work of the Government; and (iv) they encouraged the development of free and representative employers’ organizations.¹⁵ In this regard, it should be remembered that FEDECAMARAS had been

system would have been rather the result of legislative regulation by a state-arbitrator that defined the relations between capital and labour and sought to preserve peaceful labour relations with the support of significant income from oil revenues. See, for example, C.A. Carballo Mena and H. Villasmil Prieto, *Dialogue and social agreement in Venezuela*, Economic and Social Council, Madrid, 1999, pp. 35–36. Likewise, ILO: “Labour Relations in Venezuela”, a report of a mission of the International Labour Office, Labour Relations Series, No 79, Geneva, 1995.

¹¹ See C.A. Carballo Mena, *Delimitación del Campo de Batalla. La Concertación Social de 1958* (Mar. 2018), p. 10.

¹² Subsequently incorporated into the Basic Labour Act of 1990.

¹³ ILO, 1995, op. cit.

¹⁴ See C.A. Carballo Mena, *La Libertad Sindical. La Perspectiva de los Derechos Fundamentales*, Caracas, 2012, pp. 37–44.

¹⁵ ILO: *Freedom of association and conditions of work in Venezuela*: Report of the mission of the International Labour Office (Mission of 22 July to 1 September 1949), Geneva, 1950 (printed in Spanish, Havana, 1950). The mission highlighted three characteristic aspects of the structure of the country at that time: the political instability indicated by periodic coup d’états, and frequent suspensions of constitutional guarantees; the relatively recent development of modern industry and the industrial proletariat; and the preponderant role of the oil industry in the economy of Venezuela (pp. 181–182). Under the military dictatorship of General Pérez Jiménez, following the publication and follow-up given to this report, as well as other events – the break-up of the Confederation of Workers of Venezuela (CTV) decreed by the Military Junta that was in power in 1948, the rejection by the International Labour Conference of the credentials of the Worker Delegate of Venezuela chosen by the Government (1950) and incidents that occurred at the Fifth meeting of the Petroleum Commission (1955) – led the Government to request withdrawal from the ILO in 1955. The withdrawal became effective in 1957 and was of short duration since, when democracy was restored

founded shortly before this time, with the principal objective of defending and promoting free enterprise. FEDECAMARAS contributed to the creation of the National Economic Council ¹⁶ – and participated in it during its first period from 1946 to 1948 – and a decade later it would become one of the protagonists of the first major milestone of social dialogue in Venezuela, the Venezuelan Worker-Employer Covenant of 1958.

2.1.2. From the Worker–Employer Covenant to the entry into force of the Constitution in 1999

15. Signed in 1958, just months after the fall of the dictatorship, the Worker-Employer Covenant was agreed between FEDECAMARAS, on behalf of the employers, and the Unified Trade Union Committee, which grouped together different trade union movements. It was concluded with the presence of the Government authorities – which is why it is considered to be part of a broader tripartite and political agreement, committing representative organizations of workers and employers to maintain social peace with a view to not hindering the process of democratization of the country. ¹⁷ In this respect, and with the objective of promoting labour peace, its text highlights the importance of both freedom of association and its link with civil and political rights, as well as dialogue between the parties for the management of labour disputes. ¹⁸ Although it was criticised by certain communist sectors for promoting “collaboration between the classes” and for favouring employer interests, the Covenant was considered to be a first instance, albeit formally bipartite, and an antecedent of the democratic model of labour relations that would develop in the following decades. ¹⁹
16. From 1958, the country saw the beginning of the creation of a system of labour relations based on collective bargaining and, to a lesser extent, forms of participation in enterprises and tripartite consultation in relation to economic and social policy. ²⁰ Under this system, often called populist conciliation, governments adopted the policy of the distribution based on clientelism of the income derived from oil and promoted informal mechanisms for

in 1958, the Venezuelan authorities requested re-admission into the Organization. ILO, 1995, op. cit., pp. 19–20.

¹⁶ N. Arenas, 2009, *Las organizaciones empresariales venezolanas bajo el gobierno de Hugo Chávez (1999–2007) ¿De la sociedad civil nacional a la internacional?*, Cuadernos del CENDES, No. 71, pp. 4.

¹⁷ J. Urquijo, *Avenimiento Obrero-Patronal en Venezuela*. Revista Sobre Relaciones Industriales y Laborales. Caracas. No. 1. UCAB. July-August 1979, pp. 39–42. See also, ILO, 1995, op. cit., pp. 105.

¹⁸ C.A. Carballo Mena, 2018, op. cit., p. 11–14. Shortly after, on 31 October 1958, the Fixed Point Pact was signed – an agreement that - excluding the Communist Party of Venezuela – compromised the signatory political parties (Democratic Action, Democratic Republican Union and the Independent Electoral Political Committee) in defence of the constitutionality and the right to govern according to the electoral result and the defence and execution of a common minimum programme, which included respect for freedom of association. See O. Hernández Álvarez: *¿Qué es el Pacto Social?*, published by the Congress of the Republic, Caracas, 1988.

¹⁹ Carballo Mena, 2018, op. cit., pp. 5–15.

²⁰ ILO, 1995, op. cit., p.105.

participation and consultation with social actors, including employers' and workers' organizations, to ensure the stability of the existing political and economic model.²¹

17. In this context and during the period from 1974 to 1979, the President of the Republic implemented a mechanism for social consultation at the highest level. Once a month, a meeting was held with senior leaders of the Workers' Confederation of Venezuela (CTV) and FEDECAMARAS, within the framework of the so-called High Level Commission, in order to consider labour, social and economic problems. The system was characterized by a strong predominance of the State over the other partners, derived mainly from its economic power, and therefore the Commission was considered to be less a body for policy-making or conflict-resolution and more a means to communicate decisions taken by the State; and, as a consequence, it had no major significance.²²
18. At the end of the 1970s, before the fall in oil prices, the social partners agreed to propose dialogue or social agreement as a formula to overcome the crisis. Towards the end of 1981, the Government issued a decree creating the tripartite National Council on Costs, Prices and Wages to which it allocated merely advisory functions and whose membership was unequal, with a large governmental majority compared to the employer and trade union representatives. The Council functioned for a short time, since in 1982, the CTV withdrew its representation, alleging the futility of its presence in a council that was merely advisory; by the same token, it presented a bill for the creation of a National Commission on Costs, Prices and Wages based on equal membership and with the power to issue binding resolutions on essential goods and services and their prices. The project, although without the support of FEDECAMARAS, was approved maintaining the Government majority in the Commission, and with the non-binding nature of its opinions. Business representatives announced their withdrawal which took effect in October 1984 and the Commission remained formally in place with the representatives of the CTV and the Government, and it fell into disuse.²³
19. In the following years, tripartism was given more importance with respect to the adoption of certain socio-labour policy decisions. Tripartism did not always faithfully reflect all of the key trends of each of the actors – strongly affected by political parties – nor did it usually have any organic manifestations. However, there was a tendency to seek a certain measure of consensus before changing the course of social policy and consultations were conducted on economic issues of public interest. Union leaders and employers did not treat each other as irreconcilable enemies and the Government recognized that the organizations that represented them were key elements in the life of the country. Thus there was greater maturity in the capacity for dialogue and the arrival of what some writers have described as an era of implicit dialogue. An ILO mission carried out in 1989 and whose report was published in 1995, highlighted weak aspects of this system of social dialogue that it observed in trade unionism in Venezuela: linking its organizations with political parties and based on the absence of systematic consultation and information. The report warned about the danger of the consultations being seen by the trade union grassroots as a political phenomenon but outside the interests of the working classes.²⁴

²¹ Carballo Mena, 2018, op. cit, p. 15; ILO, 1995, op. cit., pp. 19–20.

²² C.A. Carballo Mena and H. Villasmil Prieto, 1999, op. cit., p. 40; ILO, 1995, op. cit., p. 106.

²³ ILO, 1995, op. cit., pp. 106–107; C.A. Carballo Mena and H. Villasmil Prieto, 1999, op. cit., p. 41.

²⁴ S. Ellner: *El sindicalismo en Venezuela en el contexto democrático (1958–1994)*, Caracas, Tropykos, 1995. ILO, 1995, op. cit., pp. 107–109.

-
- 20.** Faced with a context of political and economic tension, such as major protests in 1989, two attempted coups d'état in 1992 and a major banking crisis in 1994, social dialogue intensified in the late 1990s. From 1996, a so-called Tripartite Commission was established and joined by the Government (including the Ministries of Labour, Finance and Industry and Commerce), the organizations most representative of employers: FEDECAMARAS, CONINDUSTRIA, the National Commerce and Services Council (CONSECOMERCIO); the Confederation of Agricultural Producers Associations (FEDEAGRO); and the Federation of Chambers and Associations of Artisans, Micro, Small and Medium-sized Industries and Companies of Venezuela (FEDEINDUSTRIA); and of workers: the CTV; the Venezuelan Confederation of Autonomous Unions (CODESA); and the General Confederation of Workers (CGT), to discuss possible reform of the social benefits scheme and the implementation of a new social security system.
- 21.** The Tripartite Commission reached several agreements, including: (i) the Tripartite Agreement on Social Security and Wage Policy (ATSSI) of 17 March 1997, which included the reform of social benefits (a new, comprehensive social security system); wage composition (recognition of non-wage bonuses and subsidies as components of wages) and minimum wage-fixing through tripartite social dialogue. It is considered that this Agreement institutionalized social dialogue by recognizing it as permanent and not temporary;²⁵ (ii) the Tripartite Agreement on Stability in Employment and Wages (ATES) of 3 July 1997 (which included the trilateral formulation of employment and vocation training policy – giving rise to a tripartite technical commission in this regard – and the commitment of the employers to preserve job stability, agree on this question with trade union organizations and adjust workers' salaries based on the company's economic capabilities); (iii) the Tripartite Agreement for Review of the Minimum Wage (ATSAM) of 18 February 1998 (which set the minimum wage for urban and rural workers, apprentices and concierges); and (iv) the Tripartite Agreement Dialogue and Social Partnership (ADIC) of 25 October 1998 (which provided for the establishment and permanent operation of the Tripartite Commission for Dialogue and Social Partnership, to which the status of an executive body was attributed with respect to the obligations arising out of Convention No. 144, which was established by Decree No. 3080 of 3 December, 1998.²⁶
- 22.** Following the election of President Hugo Chávez and the entry into force of the Constitution of the Bolivarian Republic of Venezuela in 1999, significant changes to the dynamics of social dialogue in the country were introduced. The new Government questioned the representativeness and legitimacy of the historical social actors – in particular FEDECAMARAS and the CTV – as well as the model of corporatist relations between employers' and workers' organizations regarding the State. Consequently, the Tripartite Commission, which had been discussing, among other issues, minimum-wage fixing, as well as the other tripartite bodies that had been formed as a result of the agreements of the Commission, were prevented from convening. For example, the Government reproached the Tripartite Commission, and the employer and union leaders who had been part of it, of

²⁵ Subsequently, the reform of the Basic Labour Act of June 1997, which included new provisions regarding minimum-wage setting in the framework of the Tripartite Commission. Under this mechanism, the Government was obliged to sit down to negotiate and was not able to unilaterally fix the minimum wage unless it had been verified that the tripartite body had been unable to agree on the fixing of the minimum wage.

²⁶ C.A. Carballo Mena and H. Villasmil Prieto, 1999, *op. cit.*, pp. 42–57. However, with the election of a new Government in the same month of December 1998, this body to facilitate dialogue was not set up. Carballo Mena, 2018, *op. cit.*, p. 19.

having agreed in 1997 to eliminate the retroactivity of workers' social benefits.²⁷ Also, in the year 2000, the National Assembly convened a union referendum (open to the participation of all citizens registered on the electoral register) that sought to terminate the positions of the management and the trade unions and proceeded to conduct elections supervised by the National Electoral Council (CNE).²⁸ Hugo Chávez Frías continued to lead the Government in successive terms until his death in March 2013. He was then replaced by the Vice-President, Nicolás Maduro, who was proclaimed President of the Republic following the elections of April 2013, giving continuity to the political, economic and social project that President Chávez had designated as the Bolivarian revolution. The transformation in relations with the social partners introduced by the Government since 1999 shape the framework of the appeal by the complainants (and of the various trade union organizations) to the supervisory bodies of the ILO – as set out in section 2.3 of this chapter.

2.2. National legal framework

2.2.1. Legal system

23. According to its 1999 Constitution, the Bolivarian Republic of Venezuela is a democratic and social State of Law and Justice; which advocates as the highest values of its legal system and actions, life, freedom, justice, solidarity, democracy, social responsibility and, in general, the pre-eminence of human rights, ethics and political pluralism. As a decentralized federal State, the power of the State is composed of the National State Authority (divided into five branches: Legislative, Executive, Judicial, Citizens' and Electoral), of the States (with their corresponding executive and legislative authorities) and the Municipalities (composed of municipalities and local entities and also having executive and legislative bodies).
24. The Venezuelan legal system is part of the tradition of civil law, with roots in Roman law and strongly influenced by French (Napoleonic Code), Spanish and Italian legal traditions. The sources of Venezuelan labour law are set out in section 16 of the Decree with the scope, effect and force of the Basic Act on Labour and Workers (LOTTT): (a) the Constitution of the Bolivarian Republic of Venezuela and social justice as a founding principle of the Republic; (b) international treaties, covenants and Conventions signed and ratified by the Republic; (c) labour laws and the principles that inspire them; (d) collective labour agreements or arbitration awards, if applicable, provided they are not contrary to the mandatory constitutional and legal norms; (e) custom and practice in so far as they are not contrary to the mandatory constitutional and legal norms; (f) jurisprudence in matters

²⁷ The importance that the new Government attributed to this issue was reflected in the fourth transitory provision of the new Constitution of 1999, which ordered the new National Assembly to reinstate such retroactivity in the Basic Labour Act. Thus, in the National Constitution of 1999, it was set out in the third subparagraph of Transitory Provision No. 4 that the new National Assembly must carry out a reform of the Basic Labour Act.

²⁸ According to some authors, the referendum was held with an abstention rate of 78 per cent and its result was not implemented – although trade union elections were held in 2001. See O. Hernández Álvarez, 2007. *Setenta años de legislación laboral en Venezuela, en Cincuenta años de Derecho del Trabajo en América Latina*, collated by A. Bronstein, Rubinzal-Culzoni (eds), pp. 461–504; see also L.M. Chirinos Portillo, J.J. Villasmil Espinoza: “El diálogo social y la concertación como práctica política en la Venezuela contemporánea”, *Revista de Ciencias Sociales*, Vol. XVI, No. 4, Oct.–Dec. 2010, pp. 682–684).

relating to labour; (g) application of norms and the most favourable interpretation; and (h) equity, equality and the Bolivarian, Zamorano and Robinsonian ideals.

2.2.2. Enactment of international law

25. Under the Constitution, for international treaties and conventions to be valid within the Venezuelan legal system, they must be approved by the National Assembly and subsequently ratified by the President. The treaties and conventions related to human rights signed and ratified by the Bolivarian Republic of Venezuela are immediately and directly applicable by the courts and other public authorities and have constitutional rank and take precedence over domestic legislation in so far as they contain provisions for the enjoyment and exercise of such rights that are more favourable than those established by the Constitution and by law. Consequently, in order for ILO Conventions to be incorporated into Venezuelan law, it is necessary for them to be approved by law and ratified – and from that time become part of international law. To the extent that they develop human rights (a consideration that is recognized in freedom of association) ²⁹ these norms have constitutional rank and prevail over domestic legislation if they are more favourable than those established by the Constitution and by law and they are immediately and directly applicable by the courts and other public authorities.
26. In addition to ratifying 54 ILO Conventions, the Bolivarian Republic of Venezuela has ratified numerous international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) and its optional protocols.

2.2.3. Regulatory framework for freedom of association and civil rights and freedoms

27. Article 95 of the Constitution of the Bolivarian Republic of Venezuela, in its first paragraph, enshrines freedom of association as a human right and a fundamental right and includes some of the central elements of Convention No. 87 (in particular the right to organize in trade unions without previous authorization) and without referring to employers. ³⁰ Its second paragraph and other constitutional provisions (in particular article 293) introduces rules relating to the election of leaders of labour unions – establishing the alternation of executive officers and representatives through universal, direct and secret suffrage; ³¹ the function of organizing union elections in the electoral authority (exercised by the National Electoral Council) and the obligation of office holders to make sworn declarations of assets.
28. With regard to the legislative framework, the main provisions that develop the application of Convention No. 87 are to be found in the LOTT, in particular in its Title VII (on the

²⁹ See C.A. Carballo Mena, 2012, op. cit., pp. 47–54.

³⁰ "Article 95: Workers, without distinction of any kind and without need for authorization in advance, have the right freely to establish such union organizations as they may deem appropriate for the optimum protection of their rights and interests, as well as the right to join or not to join the same, in accordance with law. These organizations are not subject to administrative dissolution, suspension or intervention. Workers are protected against any act of discrimination or interference contrary to the exercise of this right. The promoters and the members of the executive committee of the trade union enjoy immunity from dismissal from their employment for the period and on the terms required to enable them to carry out their functions."

³¹ In its comments to the ILO supervisory bodies, the Government has stated that the scope of the alternation was limited to the periodic holding of elections and that in no case limited the possibility of relegating leaders, see section 2.3.

right to a participatory role by workers and their social organizations), which recognizes both the freedom of association of workers (section 355) and the freedom of association of employers (section 369). In addition, the recognition of the right of public officials to organize is contained in the Act on the Status of the Public Service (workers in public entities are protected by the provisions of the general labour legislation, in particular the LOTTT).

29. Civil rights and freedoms are recognized in chapter III of the 1999 Constitution – including the inviolable right to life (article 43) and to personal liberty (article 44, sets out among other guarantees that no person shall be arrested or detained except by virtue of a court order, unless such person is caught in flagrante), the right to meet publicly or privately (article 53), the right to respect for physical, mental and moral integrity (article 46), freedom of opinion and expression (article 57) and that due process shall be applied to all judicial and administrative actions (article 49), as well as the right to protection of honour, private life, intimacy, self-image, confidentiality and reputation (article 60).

2.2.4. Regulatory framework for minimum wage fixing

30. Article 91 of the Constitution of the Bolivarian Republic of Venezuela provides that every worker has the right to a salary sufficient to enable him or her to live with dignity and to cover basic material, social and intellectual needs for himself or herself and his or her family. Specifically, this article provides that the State guarantees workers in both the public and private sector a vital minimum salary which shall be adjusted each year, taking as one of its references the cost of a basic basket. The form and the procedure to be followed shall be established by law.
31. Specifically, sections 129 and 130 of the LOTTT apply the provisions of the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26). Section 129 of the LOTTT provides that the State guarantees to workers in the public sector and in the private sector a minimum wage that will be adjusted every year, which will be the same for all workers in the national territory and must be paid in legal tender, without any discrimination in its amount or enjoyment, including on the bases of geographical reasons, branches of economic activity or category of workers. Similarly, the Act stipulates that agreement cannot be made to a salary below that established as a minimum wage by the National Executive.
32. With respect to the mechanism for the application of the minimum wage, the above-mentioned section provides that the National Executive shall fix the minimum wage each year, following the completion of a study and by decree, and based on the opinions of different social organizations and institutions specializing in socio-economic matters.
33. Finally, section 130 of the LOTTT penalizes the payment of a wage obtained through broad consultation below the minimum, requiring that the offending employer be obliged to pay the difference between the minimum wage and what is actually paid, as well as making good any impact on the benefits, remuneration and indemnities for all of the time during which lower wages than the minimum wage were received, in addition to paying the amount equivalent to the interest that would have accrued, the amount of the interest rate to be determined by the Central Bank of Venezuela, taking as a reference the six main banks in the country.

2.2.5. Regulatory framework for tripartite consultation on the promotion of the application of international labour standards

34. The preamble of the Constitution of the Bolivarian Republic of Venezuela of 1999 refers to the establishment of a society that is democratic, participatory and dynamic. With regard to

the LOTTT, section 125(2) provides that, in the process of work, broad social dialogue will be promoted and stimulated, based on the values and principles of participatory and dynamic democracy, on social justice and on the joint responsibility of the State and society, in order to ensure full social inclusion and integral human development. In the same vein, section 499(17) of the LOTTT includes among the functions of the Ministry of Popular Power with competence in matters of labour and social security to maintain a wide-ranging, democratic and participatory dialogue with trade union and social organizations that relate to the social process of work. In order to monitor compliance with the LOTTT, a Higher Labour Council was established on a temporary basis which operated from May 2012 to May 2015 with a mandate to coordinate all actions for the full development of the Act. This tripartite Council was composed of 18 persons who were individually appointed by a presidential decree dated 22 May 2012 – nine are from the executive, one from the legislature, two from the Judiciary, four are trade union representatives (three officials of the Bolivarian Socialist Workers' Confederation of Venezuela and one worker representative from the public sector) and one from the employers' sector (the president of FEDEINDUSTRIA).³²

2.3. Relations with the ILO and comments by the supervisory bodies in relation to the Conventions concerned

35. The Bolivarian Republic of Venezuela is a founding member of the ILO – having been part of the League of Nations,³³ it has ratified a total of 54 Conventions (48 of which are in force – including the eight fundamental Conventions) and its labour legislation has been strongly influenced by international labour standards.³⁴ It was also the first country to request ILO technical assistance – in 1936, in accordance with the Government's democratic reform programme, and that contributed to the preparation of the draft text that became the Labour Act adopted that same year.³⁵ In addition to this pioneering technical assistance programme, the country has received several ILO missions throughout its history. Of particular note are the missions at the request of the Government and their respective reports, referred to above, of 1949 (published in 1950) and 1991 (published in 1995), as well as the missions of 2002 and 2004 (both direct contacts missions made at the request of Committee on the Application of Standards), of 2006 (high-level technical assistance mission suggested by the Committee on the Application of Standards) and 2014 (high-level tripartite mission carried out at the request of the Governing Body). This section summarizes the relations between the ILO and the country regarding the application of the conventions concerned, in particular since the

³² The seventh transitory provision of the LOTTT provided that, for the correct application of this law and its implementation throughout the national territory and in all labour entities, the President of the Bolivarian Republic of Venezuela shall appoint a Higher Labour Council, which would have operating regulations and which shall be directly responsible for coordinating all actions aimed at ensuring the full development of the basic act on labour and workers and which would cover all male and female workers within a period of three years from the entry into force of the said law. ILO: *Report of the high-level tripartite mission to the Bolivarian Republic of Venezuela (Caracas, 27–31 January 2014)*, Governing Body, 320th Session, Geneva, 13–27 Mar. 2014, GB.320/INS/8, para. 33.

³³ Maintaining its membership until the present time – it left the Organization between 1957 and 1958 – see footnote no. 15.

³⁴ H. Villasmil Prieto: *The impact of the International Labour Organization at the time of the founding of labour law in Latin America* (Geneva, ILO, 2011).

³⁵ ILO, 1995, op. cit. p. 19.

end of 1999 – as from the change of Government, the new Constitution and the transformations in social dialogue and relations with the social partners that form the background to the complaint. The table below summarizes the chronology of major milestones in the procedures of the ILO supervisory bodies related to the Conventions and the issues that are the subject of the complaint.³⁶

2000	CEACR: observation relating to Convention No. 87 CAS: discussion relating to the application of Convention No. 87 (the subject of a special paragraph)
2001	CEACR: observation relating Conventions Nos 87 and 144 CAS: discussion relating to Convention No. 87 (the subject of a special paragraph)
2002	CEACR: observation relating to Convention No. 87 CAS: discussion relating to the application of Convention No. 87 (the subject of a special paragraph) Direct contacts missions carried out at the request of CAS
2003	CEACR: observations relation to Convention Nos 87 and 144, direct request Convention No. 26 CAS: discussion relating to the application of Convention No. 87 CFA: opening of Case No. 2254
2004	CEACR: observation relating to Convention No. 87 CAS: discussion relating to the application of Convention No. 87 Direct contacts mission carried out at the request of CAS CFA: Interim Report on Case No. 2254 Complaint regarding Article 26 submitted by employers' delegates (submitted to CFA under Case No. 2254 and closed in 2011)
2005	CEACR: observations relating to Conventions Nos 87 and 144 CAS: discussion relating to the application of Convention No. 87 CFA: Interim Report on Case No. 2254
2006	CEACR: observations relating to Conventions Nos 87 and 144 CAS: discussion relating to the application of Convention No. 87 High-level technical assistance mission carried out at the request of CAS CFA: Interim Report on Case No. 2254
2007	CEACR: observations relating to Conventions Nos 26, 87 and 144 CAS: discussion relating to the application of Convention No. 87 CFA: Interim Report on Case No. 2254
2008	CEACR: observations relating to Conventions Nos 87 and 144 CFA: Interim Report on Case No. 2254
2009	CEACR: observations relating to Conventions Nos 26 and 87 CAS: discussion relating to the application of Convention No. 87 CFA: Interim Report on Case No. 2254 (considered serious and urgent)
2010	CEACR: observations relating to Conventions Nos 26, 87 and 144 CAS: discussion relating to the application of Convention No. 87 CFA: Interim Report on Case No. 2254 (considered serious and urgent)
2011	CFA: Interim Report on Case No. 2254 (considered serious and urgent)
2012	CEACR: observations relating to Conventions Nos 26, 87 and 144 CFA: Interim Report on Case No. 2254 (considered serious and urgent)
2013	CEACR: observations relating to Conventions Nos 26, 87 and 144 CFA: Interim Report on Case No. 2254 (considered serious and urgent)
2014	CEACR: observations relating to Conventions Nos 26, 87 and 144 CFA: discussion relating to the application of Convention No. 26 High-level tripartite mission carried out at the request of the Governing Body

³⁶ Complaints to the Committee on Freedom of Association presented by workers' organizations and repeated protests before the Credentials Committee by employers' and workers' organizations are not detailed – however, both are summarized in sections 2.3.1.2 and 2.3.1.5.

2015	CEACR: observations relating to Convention Nos 87 and 144 CAS: discussion relating to the application of Convention No. 87 CFA: Interim Report on Case No. 2254 (considered serious and urgent). Opening of Case No. 3178. Submission of complaint under article 26 de la Constitution presented by 20 employer delegates (declared admissible in November 2015)
2016	CEACR: observations relating to Convention Nos 26 and 87 CFA: Interim Report on Case No. 2254 (considered serious and urgent) Complaint under article 26 submitted by worker delegates in 2016 (closed in 2017 with issues relating to freedom of association submitted to the CFA — Case No. 3277) Governing Body: consideration of complaint under article 26, employers, in March and November
2017	CEACR: observations relating to Convention Nos 87 and 144 CFA: two Interim Reports on Case No. 2254 (considered serious and urgent) and Interim Report on Case No. 3178 Governing Body: consideration of the employer's complaint under article 26 in March and November
2018	Governing Body: constitution (March) and appointment (June) of the Commission of Inquiry

2.3.1. Freedom of Association ³⁷

Committee of Experts on the Application of Conventions and Recommendations, Committee on the Application of Standards and country missions in 2002, 2004 and 2006

- 36.** Convention No. 87 entered into force in the Bolivarian Republic of Venezuela on 20 September 1982. The CEACR received the Government's first report on 11 November 1985 and since then it has made 24 observations and 11 direct requests. The Committee on the Application of Standards of the International Labour Conference has examined the implementation of Convention No. 87 on 15 occasions (1995, 1996, 1997, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2009, 2010 and 2015), and decided on three occasions (2000, 2001 and 2002) that its conclusions should be contained in a special paragraph of its Report.
- 37.** In its first comments, as of **1987**, the Committee of Experts referred to the need to amend several provisions of the Basic Labour Act to ensure its compliance with the Convention. ³⁸ Likewise, in its first four reviews (1995, 1996, 1997 and 1999) the Committee on the Application of Standards focused its conclusions on the need to adapt national legislation to the Convention.
- 38.** From **2000**, having initially noted that the new Government expressed high appreciation for the comments made by the ILO, as well as its intention to resolve the legislative issues it had raised, the Committee noted with concern: (i) that the new Constitution of the Republic, of December 1999, as well as certain preliminary bills (especially one concerning the protection of trade union guarantees and freedoms) and some decisions and public statements, posed problems of compatibility with the Convention (in particular, the

³⁷ Throughout this report, the terms “freedom of association” or “right to organize” are used in the meaning contained in Convention No. 87, encompassing the rights enshrined in the Convention both in relation to workers’ and employers’ organizations.

³⁸ Noting with satisfaction in 1991 the introduction of some modifications in response to the comments of the Committee and recalling the need to introduce additional adjustments in its subsequent observations: the requirement of too lengthy a period of residence (more than ten years) before foreign workers may join as trade union officials; the too extensive enumeration of the powers and purposes that workers’ and employers’ organizations must have; the requirement for too high a number of workers (100) to form unions of non-dependent workers and the requirement for too high a number of employers (10) to establish an employer organization.

imposition of the alternation of trade union leaders, the management of electoral processes by the National Electoral Council and the desire expressed by the Government to achieve the unity of the trade union movement); and (ii) that the National Assembly had agreed to convene a national union referendum on 3 December 2000 with a view to unifying the union movement and the suspension or dismissal of the current union leaders – which the Committee considered to be a very serious interference in the internal affairs of unions and totally incompatible with the Convention.

39. Following this review, the Committee on the Application of Standards urged the authorities to refrain from undue interference that would limit the rights of workers' and employers' organizations to promote and defend the interests of their members. In June 2001, the Committee on the Application of Standards: (i) again noted serious divergences between national legislation and the requirements of the Convention, as well as the provisions of the new Constitution that posed problems of compatibility with it; (ii) considered that the situation had deteriorated seriously - having taken note of the presentation of new complaints alleging interference by the authorities in relation to the internal affairs of trade unions; and (iii) requested the Government to refrain from any action aimed at imposing a single trade union and to take the necessary measures to bring national law and practice into full compliance with the Convention.
40. The Government, which indicated when it appeared before the Committee on the Application of Standards that it would accept a direct contacts mission, stated that freedom of association was acknowledged in the process of change in the country. Underlining in this regard that acceptance was reflected in the existence of 3,600 registered trade unions and insisting on the need for urgent re-legitimization of trade union leaders, the Government expressed its desire to respect the Convention; it valued the cooperation of the ILO and asked for trust in the ongoing process.
41. From 6 to 10 May 2002, a direct contacts mission took place in the country, with the following conclusions:(i) it considered that the conditions for the full exercise of trade union rights were not met in the country and noted the existence of a climate of very acute tension between the Government and different parties, media, employers' organizations and many trade union organizations – the Government having convened a commission for national dialogue in which FEDECAMARAS and the CTV were not present (they were considered by the report to be the main organizations existing at that time); (ii) it considered that social dialogue was broken by the lack of recognition by the authorities of the current executive committee of the CTV and their hostility towards the previous board – noting that the Tripartite Commission had not meet for some years and that the Government did not consult with the main social partners; (iii) it invited the Government to consult in depth with the employers' and workers' organizations on matters of mutual interest, including on legislative issues and setting of the minimum wage. The mission underlined in this regard the importance of good faith, trust and mutual respect in the consultations and the need for parties to have sufficient time to express their views and discuss them in depth in order to reach an appropriate compromise, as well as the principle that the rights of employers' and workers' organizations can only be exercised properly in a climate free from violence, pressures and threats of all kinds and that it is incumbent upon governments to ensure compliance with this principle.
42. Both in the 2002 discussion before the Committee on the Application of Standards and in the 2002 observation of the Committee of Experts, the report of the direct contacts mission was noted, in particular the information provided by FEDECAMARAS and the CTV on allegations of violent groups acting with the support of the Government and attacks and threats to social partners. The Committee of Experts, recalling the conclusions of the 2002 Committee on the Application of Standards, requested the Government to take the necessary measures to: ensure that workers' and employers' organizations could fully exercise the rights recognized by the Convention in a climate of absolute safety and to urgently establish

an intense dialogue with all social partners, without exclusion, in order to find solutions to the serious problems concerning application of the Convention. On the other hand, the Committee of Experts noted that, in response to its comments, the Government had dismantled the proposed bills of law from the legislative agenda and requested the repeal of the resolution that forced union leaders to submit a sworn statement of assets at the beginning and end of their term. The Government also informed the Committee on the Application of Standards that it had begun a legislative reform process, stating that it did not support any project to establish a single trade union and affirmed that all of its actions demonstrated a sincere will to move forward. Finally, having noted the information provided by the Government that the term “alternation” contained in the Constitution referred exclusively to the periodic holding of trade union elections, the Committee of Experts requested that the right of trade union leaders to be re-elected should be expressly recognized.

- 43.** The Committee on the Application of Standards re-examined the application of the Convention in the country in June **2003** and, reiterating the concerns and conclusions it had expressed on previous occasions, urged the Government to accept a new direct contacts mission to evaluate the situation and cooperate with the Government and with all of the social partners with a view to ensuring full application of the Convention. In its 2003 observation, the Committee of Experts: (i) took note of the new draft bill to reform the Basic Labour Act that included several provisions that were in line with the comments of the Committee; (ii) reiterated its previous comments on the additional constitutional and regulatory adjustments necessary to ensure compliance with the Convention; (iii) taking up the recommendations of the Committee on Freedom of Association, asked the Government to recognize the executive committee of the CTV; and (iv) expressed the hope that the signature of the agreement of May 28, 2003 would bring to an end the phase of political instability caused by the failed coup d'état of April 2002 and that an intense dialogue with the all social partners, without exception, would begin immediately in order to find solutions in the near future to the serious problems concerning application of the Convention.
- 44.** In June **2004**, the Conference Committee on the Application of Standards decided once again to discuss the application of the Convention in the country. The Committee noted that, according to the Government: the requirement of alternation in union elections did not prohibit the re-election of union leaders; that the draft reform of the Basic Labour Act, covering the issues mentioned by the Committee of Experts, would shortly be the subject of a final parliamentary discussion and that the draft bill on the democratic rights of workers in their unions had been withdrawn from the agenda of the Legislative Assembly. Similarly, the Committee expressed great concern about the growing number of allegations of acts of violence against the social partners and once again urged the Government to take immediate measures, in consultation with the most representative workers' and employers' organizations, on the measures necessary at the level of legislation and in practice to ensure full implementation of the Convention.
- 45.** From 13 to 15 October 2004, a new direct contacts mission to the country took place. In its conclusions, the mission highlighted: (i) that with the exception of episodic exceptions in recent years, the social dialogue on labour issues with the executive bodies of FEDECAMARAS and the CTV had been practically non-existent, so that they were deprived of good visibility, prominence and the ability to defend their interests; (ii) the politicization of relations between the Government and the main social actors, underlining the desirability of debates on labour relations being depoliticized (ceasing to impute each other's behaviours or actions of the past and making each one self-critical) and be more technical and pragmatic, based on strict criteria of representativeness and the real interests of employers and workers; (iii) that the rules of the game should include commitment to equal treatment, deep mutual respect and the representation of the social actors should be determined through objective and transparent criteria; and (iv) the existence of serious problems of practical application - in particular, non-recognition by law of the executive committee of the CTV and the lack of willingness to promote and intensify tripartite or

bipartite dialogue with the leaders of FEDECAMARAS (the only central employers' organization in the country and the most representative) and of the CTV (which obtained 68.73 per cent representation in the 2001 trade union elections), as well as the need to promote dialogue with the leaders of these organizations in order to find shared solutions to problems of common interest.

- 46.** Likewise, at the request of the Committee on the Application of Standards in **2005**, from 23 to 29 January **2006**, a high-level technical assistance mission took place in the country. In its conclusions, the mission: (i) found that the draft reform of the Basic Labour Act was still not approved and that an express provision that allowed the re-election of union leaders had not been included therein; (ii) considered that although there seemed to have been a positive evolution in the area of social dialogue, it suffered from not having stable structures that would make it sustainable and the parties should consider creating an institution in that regard; (iii) noted with concern that a large number of trade union organizations are in a situation of "electoral abeyance" and insisted on the need to establish clear, precise and objective criteria to determine the representativeness of workers' and employers' organizations; (iv) reiterated the need to expressly establish the optional nature of the CNE's intervention in union elections (and prevent decisions being taken by a too small number of workers), and (v) considered that it was the responsibility of the Government to investigate allegations and prevent actions of favouritism or imposition of administrative obstacles by some officials in relation to certain organizations.
- 47.** In its subsequent observations (in **2007, 2008, 2009, 2010, 2012, 2013, 2014, 2015, 2016, 2017**), the Committee of Experts insisted on the need to ensure respect for the Convention in law and in practice: (i) urging the Government to adopt all necessary measures to ensure that employers' and workers' organizations can exercise their activities in defence of the interests of their members in a climate free of violence, intimidation and threats of any kind in particular against the persons and organizations that legitimately defend the interests of employers or workers under the Convention; (ii) recalling the need to adapt legislative provisions in particular: eliminating the obligation of unions to communicate the payroll of their affiliates to the National Registry of Trade Unions (section 388 of the LOTTT); eliminate the imposition on trade union organizations of obligations related to responsibilities that are specific to public authorities (sections 367 and 368 of the LOTTT); a non-judicial authority (such as the CNE) is not allowed to decide the resources related to trade union elections, the principle that electoral abeyance disables trade union organizations for collective bargaining is eliminated, both in legislation and in practice; the obligation to communicate the electoral schedule to the CNE is eliminated, and the obligation to publish the results of the union elections as a condition for recognition (section 402 of the LOTTT and other related provisions) is eliminated in the *Electoral Gazette*; not making the eligibility of the leaders subject to their not having participated in union elections within the established term when they were leaders of another union organization (section 387 of the LOTTT); eliminate the provision of the law that states that non-compliance by members and union members with respect to quotas will not impede the right to vote (section 395 of the LOTTT); eliminate the imposition of certain voting systems on trade union organizations (section 403 of the LOTTT); ensure that a judicial or independent authority determines the areas or activities that cannot be subject to interruptions during a strike for affecting the supply of essential goods or services whose paralysis causes damage to the population (section 484 of the LOTTT); and ensure that the system for the appointment of the members of the arbitration board in the event of a strike concerning essential services will command the confidence of the parties in the system (section 494 of the LOTTT); (iii) reiterating its deep concern about the persistent absence of social dialogue with FEDECAMARAS and with workers' organizations critical of government policy, which translates into the lack of consultation with them before the adoption of important public rules and decisions that affect the economic and social interests of its members - as well as the importance of laying a solid foundation for a respectful, substantial and lasting dialogue with all representative employers' and workers' organizations in the country (so that any legislation adopted on

labour, social and economic issues that affect workers, employers and their organizations, are previously subject to real in-depth consultations with independent organizations of employers and more representative workers, making sufficient efforts to reach, as far as possible, shared solutions); and (iv) expressing the need to eliminate, both in law and in practice, the imposition of structures for workers' organizations that include the participation of representatives of public authorities, such as the Workers' Production Boards(CPT).

- 48.** In parallel, the Committee on the Application of Standards re-examined the application of the Convention in the country in **2006, 2007, 2009, 2010 and 2015** and in its conclusions it asked the Government to take the necessary measures to: (i) modify the basic labour legislation in accordance with the Convention and avoid any interference by the authorities (in particular the National Electoral Council - stressing that its intervention should be possible only when requested by the organizations concerned) in relation to the right of workers' organizations and employers to carry out their activities;(ii) ensure respect for civil liberties and the existence of a climate free from intimidation, threats and violence, as conditions for respecting the rights enshrined in the Convention (noting with concern the allegations of violence and intimidation against the leaders of trade unions and employers' organizations, as well as expropriation of private properties); and (iii) lay the foundations and establish a sustained and constructive social dialogue within the framework of ILO standards and principles with representative organizations of workers and employers, including FEDECAMARAS and guarantee that the latter is not marginalized or stigmatized.
- 49.** The Government questioned the conclusions adopted, noting that they did not reflect the positive progress achieved in the exercise of freedom of association in the country, as evidenced by the high numbers of trade union organizations that had been established and the signing of collective agreements; affirming its commitment to inclusive and productive dialogue with all actors and rejecting exclusive and elite social dialogue (considering that other organizations had been excluded in the past); and questioning the allegations concerning the violation of civil liberties (noting that there is no policy of threats or persecution against employers' organization and trade union leaders and that the Government repudiates all acts of violence and conducts investigations and takes appropriate measures in this regard).

Committee on Freedom of Association

- 50.** *Case No. 2254:* In March 2003, FEDECAMARAS and the IOE filed a complaint with the Committee on Freedom of Association alleging the violation of the freedom of association of FEDECAMARAS, in particular: acts of violence, arrests and intimidation, as well as harassment, threats and the generation of a hostile environment against FEDECAMARAS, its leaders and affiliates by authorities or persons close to the Government; the marginalization and exclusion of trade associations from social dialogue and consultation (especially in relation to important laws directly affecting their interests); Government actions and interference encouraging the development of or favouring other organizations; and the occupation of farms belonging to leading employers without following legal procedures. The Committee has examined Case No. 2254 on 16 occasions (provisional reports), expanding successively to include allegations of new attacks and violations of the principles of freedom of association. Since March 2009, the Governing Body has considered this case to be extremely serious and urgent. The allegations in the case were taken up as one of the main elements of the complaint filed in 2015 under article 26 of the ILO Constitution, which is the subject of this report.
- 51.** Throughout the examination of Case No. 2254 the Government: (i) denied that FEDECAMARAS, its affiliates or their leaders have been persecuted, pressured, threatened, or have been victims of any act of violence due to their status and the exercise of their activity as members of an employers' organization (noting that the attacks of 2008 - bomb at the headquarters of FEDECAMARAS – and 2010 – abduction and aggressions – constituted

facts that were separate from the status of the victims as members of an employers' organization, and that the authorities investigated and disregarded the corresponding responsibilities); (ii) has affirmed its commitment to social dialogue and alleged that it has not failed to recognize FEDECAMARAS as one of the most representative employers' organizations; (iii) while affirming that, while at international level FEDECAMARAS wishes to legitimize its status as an employers' representative organization, in the national plan it acts as a political organization that opposes the legitimately elected Government, having participated in actions using force to end the constitutional order (in particular the coup d'état of 2002). In this regard, the Government has denounced the use of the Committee and other ILO supervisory bodies for specific political purposes in a campaign of attack against the Bolivarian Republic of Venezuela.

- 52.** In its last examination of Case No. 2254 (October 2017): (i) the Committee urged the Government to fully comply without delay with the conclusions of the high-level tripartite mission and asked it again to adopt necessary measures to create a climate of trust based on respect for the business and union organizations with a view to promoting solid and stable industrial relationships, to ensure that FEDECAMARAS can exercise its rights as an employers' organization in a climate devoid of violence, pressures or threats of any kind against its leaders and affiliates and to promote with that organization a social dialogue based on respect; (ii) regarding the abduction and mistreatment in 2010 of the leaders of FEDECAMARAS, Mr. Noel Álvarez, Luis Villegas, Ernesto Villasmil and Mrs. Albis Muñoz (the latter sustained three bullets wounds), the Committee again urged the Government to send a copy of the ruling by which one of the accused was sentenced and to state whether other people were charged (providing information about any related proceedings and the outcome thereof) – also asking the Government to inform it about the status and eventual result of any claim or judicial proceeding (sending a copy of any pertinent judgment) concerning the granting of compensation to FEDECAMARAS and the leaders concerned for the damage caused by these illegal acts. Regarding the bomb attack at the headquarters of FEDECAMARAS in February 2008, the Committee again requested the Government to send its observations regarding the points raised by FEDECAMARAS and to report, in particular, on the outcome of the appeal against the closing of the case and of any investigation carried out to determine whether anyone else was in committing the attack and thus to shed light on its motive and to prevent any similar act; (iii) Regarding the allegations of criminal investigations, attacks and arrests of employers in various sectors, the Committee requested the Government to send detailed information indicating the specific case that would be made against each of the investigated or prosecuted persons and the development and status of the procedures in question; (iv) the Committee insisted on the urgency of the Government immediately adopting tangible measures in the area of bipartite and tripartite social dialogue as requested by the high-level tripartite mission and the Governing Body – a tripartite round table, with the presence of the ILO, to promote social dialogue with a view to the resolution of all pending issues, including issues related to farm seizures, bailouts, occupations and expropriations to the detriment of employers' leaders or former employers; (v) the Committee strongly urged that, as soon as possible, full consultations be held with the most representative workers' and employers' organizations, including FEDECAMARAS, on the draft legislation, or other standards of any kind, on labour, economic or social matters that affect their interests and those of their members; and (vi) the Committee urged the Government to take the necessary measures, including any derogation or regulatory or legislative reform, to eliminate any institution or provision introduced or promoted by public authorities that may supplant independent trade union organizations or interfere in freely-held negotiations between organizations of independent workers and employers.
- 53.** *Case No. 3178:* In December 2015, FEDECAMARAS and the IOE submitted another case to the Committee on Freedom of Association (No. 3178), claiming interference in collective bargaining (imposing negotiations relating to proposals presented by a minority union linked to the governing party and illegal imposition of mandatory arbitration, as well as interference

and irregularities in the arbitration procedure and illegal extension of the resulting award, with acts of violence obstructing access to the workplace in the context of a strike), and intimidation and harassment against the employing entity, its business group, its president and FEDECAMARAS, including threats, harassment, invasion of privacy, confiscations and arrests of managers. The Government responded by denying that it had engaged in collective bargaining or harassed or persecuted the business group or FEDECAMARAS and its leaders, while claiming to have evidence of the participation of the employer in the destabilization of the Venezuelan economy and stressed that, by virtue of the freedom of expression that exists in the country and its complex economic situation, a climate of tension has been generated regarding the declarations and statements of both government representatives and employers' and workers' representatives. The case was the subject of an Interim Report in March 2017, in which, among other recommendations, the Committee, expressing its deep concern over the seriousness of the allegations raised, requested the Government to take the necessary measures to avoid any kind of interference in industrial relations between the employing entity and the workers' organizations operating there; and asked the Government to take firm measures to avoid any kind of statement, threat, harassment or harassment against the corporate group to which the enterprise belongs, its chairman and FEDECAMARAS, and to ensure that a climate of constructive dialogue to promote harmonious labour relations is restored.

- 54.** *Complaints filed by workers' organizations:* Since 2000, national and international workers' organizations have filed numerous complaints to the Committee on Freedom of Association, giving rise to the following 27 cases (and their corresponding reports ³⁹) Nos: 2067 (alleging anti-union legislation, suspension of collective bargaining following a decision of the authorities, convening of a national referendum on trade union issues, hostility on the part of the authorities to a trade union confederation); 2080 (claiming interference by the authorities in a trade union merger); 2088 (alleging dismissals and disciplinary proceedings against trade union officers by the Judiciary, obstruction of collective bargaining, limitations on the use of the union headquarters of the complainant organization, detention of a union officer and surveillance of a union officer); 2154 (alleging unfair dismissals and denial of justice); 2160 (alleging the refusal to register a trade union and anti-union dismissal of its founders); 2161 (alleging anti-union dismissals, acts of anti-union interference and delays in registering a trade union); 2191 (claiming that the authorities of the Ministry of Education suspended the discount on union contributions of union workers affiliated with the Venezuelan Federation of Teachers); 2202 (alleging legislative violation of the collective bargaining right of public servants); 2249 (alleging the murder of a trade unionist; refusal to register a union organization; hostile statements by the authorities against the CTV; arrest warrant against the president of the CTV; promotion of a parallel confederation by the authorities; obstruction of collective bargaining in the oil industry; arrest warrants and criminal prosecution of trade union leaders; dismissal of more than 19,000 workers for their trade union activities; breach of collective agreements; interference by the authorities and the company *Petróleos de Venezuela S.A. (PDVSA)* and anti-trade union acts; delays in proceedings concerning violations of trade union rights; negotiation with minority organizations of public employees while disregarding the most representative ones; and actions by the authorities to divide trade union organizations); 2353 (alleging interference by the authorities in the complainant's trade union elections in the public health sector in Carabobo State; violent seizure of the union headquarters by the security forces, denying access to individuals on one of the lists of candidates to access to trade union headquarters, and improper assignment of more than 300 votes to another list of candidates); 2411 (alleging the enactment of a new statute for the election of trade union leaders against freedom of association and imposition on trade union organizations of the obligation to provide information regarding their administration and register of members (thereby

³⁹ The reports may be consulted at <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:20060:0::NO::>

exposing them to acts of anti-union discrimination); and cancellation of the elections of the executive committee of the CTV of 2001); 2422 (denouncing the decision of the CNE to suspend and withhold recognition of the elections of the complainant union despite the fact that they met all the legal requirements; the refusal to conclude a collective bargaining agreement with the most representative trade union organization; and refusing to issue trade union permits to the executive officials of one of its sections); 2428 (alleging delays and obstruction to collective bargaining of public sector doctors in three public institutions); 2579 (claiming obstacles raised by the authorities to collective bargaining in the Ministry of Education and Sport); 2674 (claiming obstacles to collective bargaining with public sector trade union organizations affiliated to the CTV and actions by the authorities to expropriate or deprive several trade union federations affiliated to the CTV of their premises); 2711 (alleging violent suppression and break-up of a trade union demonstration commemorating May Day and restrictions and interference by the authorities in the exercise of the right of free election of officials of the complainant trade union); 2727 (denouncing the formulation of criminal charges for boycott against six PDVSA workers for protesting in defence of their labour rights; criminalization of the protest and opening of judicial proceedings in several companies and dismissal of officials on the occasion of such protests; murder of three leaders and two union delegates, assassination by hitmen of more than 200 workers and officials in the construction sector, and persistent refusal of the public authorities to bargain collectively in the health, oil, electricity sectors, and in the National University, among others); 2736 (alleging anti-union dismissals, obstacles to the free election of union officials, violations of collective bargaining, restrictions on the right of assembly within the judicial sector; 2827 (alleging breach of collective agreements, anti-union retaliatory measures and obstacles to collective bargaining and strike action); 2917 and 2968 (alleging the adoption of the Basic Act on Labour and Workers (LOTTT) without consultation with representative organizations and with content that is in violation of the Conventions on freedom of association and collective bargaining); 3006 (alleging the dismissal of 25 trade unionists in the communications sector); 3036 (claiming obstacles to collective bargaining, suspension of trade unionists and pressure on workers to resign from the union); 3059 (claiming exclusion of the general secretary of the oil industry trade union federation from collective bargaining, repression of a trade union demonstration and dismissal of a union official without respect for due process); 3082 (alleging the imposition of compulsory arbitration after the breakdown of collective bargaining and violent break-up of a union demonstration with the arrest of trade unionists); 3172 (alleging interference by public authorities in voluntary collective bargaining, by promoting trade union organizations that are close to the Government and discriminating against the complainant organization, as well as acts of violence preventing access to the workplace in the context of a work stoppage); and 3187 (alleging prosecution, detention and criminal prosecution of three steel sector workers in retaliation for their trade union activities).

Complaint submitted under article 26 by Employers' delegates in 2004 (closed in 2011) and the tripartite high-level mission of 2014

- 55.** In June 2004, 23 Employers' delegates of the International Labour Conference filed a complaint under article 26 of the Constitution alleging non-observance by the Bolivarian Republic of Venezuela of Conventions Nos 87 and 98. In November 2004, the Governing Body submitted the matter to the Committee on Freedom of Association asking for its recommendation on whether the complaint should be submitted to a Commission of Inquiry. In November 2005, the Committee on Freedom of Association recommended that the Board of Directors should send a direct contacts mission to the country, in order to carry out an objective assessment of the situation, a recommendation that was adopted by the Governing Body. Between 2006 and 2010, the Committee repeatedly requested the Government to accept the visit of a direct contacts mission, without the Government giving an affirmative answer to that request. In March 2011, the Governing Body decided that the complaint initially filed in 2004 would not be referred to a Commission of Inquiry and that the Director-

General would be requested to send a high-level tripartite mission to the Bolivarian Republic of Venezuela, which would examine all matters pending before the Governing Body in relation to Case No. 2254.

- 56.** The high-level tripartite mission took place in January **2014** and in March 2014 the Governing Body adopted its report, which recommended that the Government prepare an action plan that provides: (1) the establishment of a dialogue round table between the Government and FEDECAMARAS, with the presence of the ILO, to deal with all outstanding issues related to the seizure of farms and expropriations of companies and other problems that arise or may arise in the future related to these issues; (2) the establishment of a tripartite dialogue round table, with the participation of the ILO, which has an independent chairman who enjoys the confidence of all sectors, which duly respects in its composition the representativeness of workers' and employers' organizations, that it meets regularly for the purposes of dealing with any matter related to industrial relations that the parties decide and that has among its main objectives to consult on any new legislation that is expected to be adopted in labour, social and economic matters; (3) discuss laws, bills, other norms as well as socio-economic policy within the aforementioned tripartite dialogue round table in order to bring national legislation into conformity with ratified conventions on freedom of association and collective bargaining; and (4) identify the causes of the problems related to administrative and judicial proceedings affecting workers' and employers' organizations and their representatives, in order to find solutions to resolve all outstanding matters in Case No. 2254.
- 57.** During the discussion of the report before the Governing Body, the Government considered that the report was not completely impartial, it responded to the specific allegations of attacks (noting that the 2010 aggression was a violent act derived from ordinary crime and that judicial proceedings concerning the suspects were ongoing; that the former President of FEDECAMARAS was not under any investigation; neither had he been charged with any crime or cited as a witness; and that the mission had not established any act of violence against the said organization or its leaders). The Government affirmed that: the cases related to land were not about confiscation but about land recovery that was carried out under legal procedures that did not represent acts of persecution against the trade unionists or against the leaders of the employers' associations; social dialogue was widely used in the country and only problematic with FEDECAMARAS, which had declined all invitations to participate in dialogue round tables, except one; and that the recommendation in the report to submit for consultation to a tripartite dialogue round table all new legislation on labour, social and economic matters was unconstitutional since it implied the creation of a supralegislative body.⁴⁰
- 58.** In accordance with the decision of the Governing Body urging the Government to develop and implement the action plan recommended by the high-level tripartite mission, the Committee on Freedom of Association has monitored its application in the framework of Case. No.2254, regretting on several occasions the absence of progress.

Complaint under article 26 submitted by Workers' delegates
in 2016 (closed 2017)

- 59.** In June 2016, six worker delegates of the International Labour Conference filed a complaint under article 26 of the Constitution alleging the non-observance by the Bolivarian Republic of Venezuela of Conventions Nos 87, 95 and 111. At the time of its meeting in November 2016, the ILO Governing Body considered the complaint admissible, at its meeting in March 2017 the Governing Body decided: (a) to transmit all allegations of the complaint concerning Convention No. 87 to the Committee on Freedom of Association for

⁴⁰ See GB.320/PV, paras 148 to 183.

their examination; (b) given that all aspects of the complaint relating to Conventions Nos 95 and 111 had 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. The Committee on Freedom of Association opened a case (No. 3277) to address these issues, having not yet examined them.

Credentials Committee

- 60.** Since 2003, 28 objections have been filed before the Credentials Committee of the International Labour Conference questioning the nomination of the social partners in the delegations of the Bolivarian Republic of Venezuela – as well as two objections before the 17th (2010) and 19th (2018) American Regional Meetings, also questioning the nomination of the delegations of employers and workers in the country.⁴¹
- 61.** Ten of the objections submitted to the Credentials Committee of the International Labour Conference were brought by the Employers' group (the last one in 2013 – 102nd meeting) alleging that the Government had included technical advisors in the Employers' delegation without the agreement of the most representative organization – FEDECAMARAS – and that they came from non-representative organizations of the country's employers (since they did not meet the ILO criteria: to be free, independent and without interference from the Government). In its reports, the Credentials Committee recalled that the Government could not impose the appointment of social partner advisors against the will of the most representative organizations, and observed that the objections arose from the fact that the nominations of representatives lacked the agreement of the only organization for which the condition of most representative remained unchallenged. In this regard, the Committee requested the Government to ensure that the nomination of the Employers' delegation fully complied with the ILO Constitution, recommending and repeatedly calling on the Government to resort to ILO technical assistance in order to move towards the establishment of objective and verifiable criteria on representativeness and regretting and deploring in its final recommendation the long-standing nature of the case. Similar recommendations were adopted by the Credentials Committee of the 17th (2010) and 19th (2018) American Regional Meetings.
- 62.** Other objections have been presented against the Government of the Bolivarian Republic of Venezuela concerning the nomination of the Workers' delegations, disputing observance of the constitutional obligation to nominate them in accordance with the most representative organizations, as well as questioning the independence of the organization on behalf of which the Worker delegate was nominated. The Credentials Committee of the Conference – and of the 17th (2010) and 19th (2018) American Regional Meetings – lamented that the Government did not present objective evidence of the representativeness of the organizations concerned; highlighted the importance of having sufficient criteria and data on representativeness that were sufficiently clear and objective; and urged the Government to resort to ILO technical assistance in this regard.⁴² Based on the recommendations of the last

⁴¹ See https://www.ilo.org/dyn/creds/credsbrowse.list?p_lang=en&p_session=&p_country=VEN.

⁴² Concerning monitoring measures, the Credentials Committee has requested the Government to submit, at the same time as it submits its credentials for its delegation for the next session of the Conference, a detailed report substantiated with relevant documentation on the representativeness of all workers' organizations in the country, as well as the procedure followed to attempt to reach an agreement among the most representative workers' organizations and, if such agreement was not reached, the objective and verifiable criteria established for the nomination of the Workers'

Credentials Committee that examined these issues before the completion of this report (108th Session of the International Labour Conference, 2019), the International Labour Conference decided to renew the monitoring measures in this regard.⁴³

2.3.2. Minimum wage fixing

- 63.** Convention No. 26 entered into force in the Bolivarian Republic of Venezuela on 20 November 1945. The Committee of Experts examined the Government's first report in 1947 and for several years requested the Government to provide statistical information on the number of workers covered by the Convention. Also, taking note that the Labour Act and its regulations provided for the establishment of minimum wage councils composed of workers' and employers' representatives, the Committee regularly invited the Government to take the necessary measures to create, in practice, the commissions provided for in the legislation in order to set minimum wage rates in those industries or parts of industries where there was no effective regime for fixing wages and where wages were exceptionally low. In 1964, when discussing the case before the Conference Committee on the Application of Standards, the Government indicated that the establishment of such commissions was not necessary since there were collective agreements in all branches of industry. Finally, for the first time in 1974, minimum wages for all workers were established by decree.⁴⁴
- 64.** Since that time, the Committee of Experts has repeatedly requested the Government to convene the salary commissions provided for in the law or, in the event that it decided to set minimum wages through legislative measures, to engage in prior consultations with relevant workers' employers organizations. In 1989, the Committee of Experts noted the creation by law in 1984 of the National Commission on Costs, Prices and Wages; however, in the mission report carried out in the country in 1991 it was indicated that it did not fulfil its fundamental tasks.⁴⁵
- 65.** In a direct request adopted in **1999**, the Committee of Experts took note of the reform of the Basic Labour Act (LOT) of 1997 on the mechanisms for fixing minimum wages established by a national tripartite commission responsible for the revision of the minimum wage on 1 January of each year.⁴⁶ Subsequently, the report of the country mission carried out in

delegation. See, for instance, the [Second Report of the Credentials Committee, 108th Session of the International Labour Conference \(2019\)](#), para. 20.

⁴³ The International Labour Conference once again requested the Government to submit, at the same time that it submitted its credentials for the next session of the Conference, a "detailed report substantiated with relevant documentation on: (a) objective evidence regarding the representativeness of all workers' organizations in the country; and (b) the procedure followed to attempt to reach an agreement between the most representative workers' organizations and, if such an agreement was not reached, the objective and verifiable criteria established to designate the Workers' delegation".

⁴⁴ Decree No. 121 of 31 May 1974 on minimum wage fixing was adopted in accordance with the Basic Law of May 30, 1974, authorizing the President to take extraordinary measures concerning economic and financial matters.

⁴⁵ According to the above-mentioned mission report, the commission was made up of a large governmental majority and the workers had only one representative among four; likewise, its decisions and opinions were not binding on the Executive Branch. ILO: *Labour relations in Venezuela: Report of a mission of the International Labour Office*, Labour Relations Series, No. 79, Geneva, 1995, p. 107.

⁴⁶ Article 167 of the Act.

2004⁴⁷ drew the attention of the Committee of Experts to the fact that the said commission had not met for several years.⁴⁸

- 66.** In various observations adopted since **2007**,⁴⁹ the Committee of Experts, while noting with interest the increase in the minimum wage, noted that various employers' and workers' organizations indicated the Government's refusal to convene the national tripartite commission for the revision of minimum wages for several years⁵⁰ and the fixing of the minimum wage by decree, having issued the calls for consultations very late or even after the date of publication of the decree. In this regard, the Committee of Experts underlined the fundamental importance assigned to the consultation procedure and recalled that, although each government may determine in its national legislation the form of consultation, it must, however, be prior to the adoption of the decisions, and they must put employers' and workers' organizations in a position to give their views on the minimum wage in a timely manner and allow the participation of workers' and employers' organizations on an equal footing in the mechanisms for fixing minimum wages for workers.⁵¹
- 67.** In its observations of **2012**, the Committee of Experts took note that the new Basic Act on Labour and Workers (LOTTT)⁵² introduced significant change in the nature and form of the methods for fixing minimum wages, by formally abolishing the national tripartite commission, until then responsible for making concerted recommendations on the adjustment of the minimum wage, and authorizing the Government to set by decree the minimum annual salary before inviting the different social organizations and socio-economic institutions to make their opinions known.⁵³ In successive years, workers' and employers' organizations sent comments highlighting that the new LOTTT gives the Government a primary role in fixing the minimum wage, thus displacing the social partners.
- 68.** In June **2013**, in the context of Case. No.2254 of the Committee on Freedom of Association, the Committee expected that a forum for social dialogue would be established in accordance with the principles of the ILO, having a tripartite composition which duly respected in its composition the representativeness of workers' and employers' organizations and invited to the Government to request technical assistance from the ILO. In this regard, the high-level tripartite mission that visited the country in January 2014 referred to this recommendation of the Committee and recalled "the importance of creating the conditions necessary for

⁴⁷ Report of the direct contacts mission carried out in Venezuela (13 to 15 October 2004), para. 139.

⁴⁸ This report also highlighted that, although the Government consulted workers' and employers' organizations before fixing the minimum wage, it gave them a short response period (in some cases less than three business days).

⁴⁹ In the observation of this year, the CEACR also noted with interest specifically that the new LOT regulation no longer authorized the conclusion of apprenticeship contracts with a reduced minimum wage for workers between the ages of 18 and 25 years.

⁵⁰ It also noted that Decree No. 4447, dated 25 April 2006, which established the Regulations of the Basic Labour Act authorized other modalities for fixing minimum wages.

⁵¹ See in particular, Bolivarian Republic of Venezuela – CEACR, Convention No. 26, observation adopted in 2010.

⁵² Published in the *Official Gazette* of 7 May 2012. The Committee of Experts also noted that, according to an observation sent by FEDECAMARAS, the commission established to draft the said Act did not adequately represent employers' organizations.

⁵³ In accordance with article 129 of the said Act.

initiating tripartite social dialogue with the most representative employers' and workers' organizations on matters relating to industrial relations, which requires a constructive spirit, good faith, mutual respect and respect for the freedom of association, independence of the parties, in-depth discussions for a reasonable period, and efforts to find, as far as possible, shared solutions".⁵⁴

- 69.** In 2014, the implementation by the Bolivarian Republic of Venezuela of Convention No. 26 was discussed within the Conference Committee on the Application of Standards. On that occasion, the Government denied that in the Bolivarian Republic of Venezuela there was an absence of social dialogue regarding minimum wages and reported that on 1 May each year, direct consultations were held with the trade union organization most representative of workers, the Bolivarian Socialist Workers' Confederation of Venezuela Socialist and with trade union organizations in the main economic sectors. It stated that employers were also consulted, including FEDEINDUSTRIA and the National Confederation of Farmers and Livestock Producers of Venezuela (CONFAGAN) and that the same communication was sent to FEDECAMARAS.
- 70.** In its 2014 General Survey, the Committee of Experts included the Bolivarian Republic of Venezuela among the countries that had made progress in fixing a minimum wage for domestic workers and noted that in the Bolivarian Republic of Venezuela, when apprentices perform their work under the same conditions as other workers, they must receive the minimum wage that applies to adults. In the same General Survey, the Commission noted the observations of certain workers' and employers' organizations that the social partners were not consulted with respect to the review of the amount of the minimum wage.
- 71.** Finally, in its observations adopted in 2016 and 2017, prior to the establishment of the Committee of Inquiry, the Committee of Experts noted with concern the repeated observations of several workers' and employers' organizations on the approval, without consultation with the relevant organizations, of the increase in the minimum wage on numerous occasions in recent years. While noting the difficulties caused by considerable price increases and the consequent loss of purchasing power of the minimum wage, the Committee requested the Government to ensure the full application of Article 4 of the Convention with respect to consultation and participation on a basis of equality of the most representative workers' and employers' organizations for the establishment and application of minimum wage systems.

2.3.3. Tripartite consultation on the promotion of the application of international labour standards

- 72.** Convention No. 144 entered into force in the Bolivarian Republic of Venezuela on 17 June 1984. The Committee of Experts examined the Government's first report in its direct request of 1987.
- 73.** In 1991, the IOE and FEDECAMARAS filed a complaint under article 24 of the ILO Constitution alleging non-observance by the Bolivarian Republic of Venezuela of Convention No. 144, among others. In particular, they claimed that employers had not been consulted in connection with the examination of a law on occupational safety and health that was adopted after the ratification of Convention No. 155 with a view to applying this Convention. Indeed, the complainants considered that, if consultation is essential for the re-examination of non-ratified conventions, consultation is also essential to examine the

⁵⁴ See Governing Body, Report of the high-level tripartite mission to the Bolivarian Republic of Venezuela (Caracas, 27–31 Jan. 2014), 320th Session, Geneva, 13–27 Mar. 2014, GB.320/INS/8, para. 52.

application of ratified conventions when adopting new labour legislation. On that occasion, the Committee appointed by the Governing Body to examine the claim recommended, among other things, that despite not being mandatory, paragraph 5(c) of the Tripartite Consultation (Activities of the International Labour Organisation) Recommendation, 1976 (No. 152), which provides for consultations on the development and implementation of legislative or other measures to give effect to international labour conventions and recommendations, and in particular to ratified conventions (including the implementation of the provisions regarding consultation or collaboration of employers' and workers' representatives).

- 74.** In its direct request of 1997, the Committee of Experts noted that the consultation between the Government and representative organizations culminated in the signing of the Tripartite Agreement on Integral Social Security and Wage Policy (ATSSI) and noted with interest that the section concerning relations with the International Labour Organization envisaged requesting technical assistance from the ILO for the development of new legislation on the subject.
- 75.** Since 1997, in numerous comments (direct requests and observations)⁵⁵ the Committee of Experts noted the observations of employers' and workers' organizations, noting that effective consultations were not satisfactorily held within the meaning of the Convention on the issues mentioned in its Article 5(1). In particular, the failure to send or to send in a timely manner the information that had been communicated to the Committee of Experts in the reports, thus affecting the ability of organizations to send relevant observations to the Committee, was pointed out. The Government responded on several occasions that, each year it transmits the reports on the application of ratified and non-ratified conventions, forms, reports, surveys or instruments from the Office and from the International Labour Conference, for consultation with workers' and employers organizations in the country. For their part, FEDECAMARAS and the IOE repeatedly said that the meetings and communications referred to by the Government did not establish a mechanism for consultation or dialogue with the Executive since there are no institutionalized social dialogue bodies.
- 76.** In this regard, the Committee repeatedly recalled that the obligation to consult representative organizations on the reports to be submitted on the application of ratified Conventions, derived from *Article 5(1)(d)* of the Convention, must be distinguished from the obligation to communicate the reports under the provisions of article 23, paragraph 2, of the Constitution. It emphasized that: (i) the tripartite consultations required by the Convention should be carried out in the report preparation phase; (ii) that, when written consultations are carried out, the Government should transmit a draft report to the representative organizations to gather their opinion before establishing a final report, and (iii) that the effectiveness of the consultations presupposes that the representative organizations have all the necessary elements to form an opinion in this regard well in advance of and that they are in a situation where they can express their opinions before the Government makes a final decision (paragraphs 31 and 92–93 of the 2000 General Survey). The comments of the social partners also indicated the absence of bipartite and tripartite consultation, in particular when preparing and adopting several legislative texts, including the very important text of the LOTTT, in May 2012. In this regard, the Government indicated that it had constituted a commission composed of all sectors in the country to discuss the new Basic Labour Act.

⁵⁵ See, among others: Bolivarian Republic of Venezuela – CEACR, Convention No. 144: direct request adopted in 1997, observation adopted in 2001, observation adopted in 2003, observation adopted in 2007, observation adopted in 2008, observation adopted in 2010, observation adopted in 2012, observation adopted in 2013, observation adopted in 2014, observation adopted in 2015 and observation adopted in 2017.

-
77. Similarly, the Committee also recalled the resolution concerning tripartism and social dialogue (adopted by the International Labour Conference at its 90th Session (Geneva, June 2002)), which highlighted, *inter alia*, that social dialogue and tripartism have proved to be valuable and democratic means to address social concerns, build consensus, help elaborate international labour standards and examine a wide range of labour issues on which the social partners play a direct, legitimate and irreplaceable role. Consequently, the Committee hoped that the Government would take the necessary measures to ensure that the consultations required by Convention No. 144 are carried out with “representative organizations” that enjoy the right to freedom of association.
78. In 2014, the high-level tripartite mission that visited the country highlighted that: “the inclusive dialogue recommended by the Constitution of the Bolivarian Republic of Venezuela is fully compatible with the existence of tripartite social dialogue bodies and that any negative experience of tripartism in the past should not compromise the application of ILO Conventions concerning freedom of association, collective bargaining and social dialogue, or undermine the contribution made by tripartism in all ILO member states”.
79. In 2017, the Committee of Experts noted: (i) FEDECAMARAS’ allegation of absence of progress regarding the establishment of a tripartite forum for dialogue with the presence of the ILO; and (ii) the creation of the National Council for Productive Economy on 19 January 2016 (in which, according to the Government, representatives of the Government, workers’ organizations, as well as companies and federations attached to FEDECAMARAS participated – as claimed by employers’ organizations, neither FEDECAMARAS nor the independent trade union sector had been invited to participate). In this context, on several occasions the Committee of Experts regretted that there was no progress in the social dialogue, and requested the Government to provide information on the effective consultations carried out with the social partners on how the procedures required by the Convention could be improved.
80. Finally, the Committee expressed on numerous occasions ⁵⁶ its conviction that the Government and the social partners should commit themselves to promote and strengthen tripartism and social dialogue and implement procedures that ensure effective tripartite consultations on international labour standards, as required by Convention No. 144. In this regard, the Commission referred to the ILO Declaration on Social Justice for a Fair Globalization, 2008, which states that “social dialogue and the practice of tripartism between governments and representative organizations of workers and employers, within and across borders, are now more relevant to achieve solutions and to building social cohesion and the rule of law through, among other means, international labour standards”. ⁵⁷

2.4. Current social and economic context

81. Venezuela’s economy relies heavily on the extraction and export of raw materials, particularly oil. ⁵⁸ Due to different factors, since 2013, the Venezuelan economy has been

⁵⁶ For example, CEACR, Convention No. 144, observations 2008, 2010, 2012.

⁵⁷ See observation of 2008.

⁵⁸ According to the 2017 report of the Organization of Petroleum Exporting Countries (OPEC), the country owns a quarter of the world’s proven reserves of oil and is the tenth world producer of crude oil.

experiencing a strong contraction and, during the last 19 consecutive semesters ⁵⁹ in particular, the Gross Domestic Product (GDP) has had a negative percentage variation, accentuating its reduction as of 2015. According to figures published by the Central Bank of Venezuela (BCV) in May 2019 ⁶⁰: (i) GDP contracted by 3.9 per cent in 2014 compared to 2013, 6.2 per cent in 2015, 17 per cent in 2016 and 15.7 per cent in 2017. As for 2018, the contraction was 18.1 per cent, 17.6 per cent and 22.5 per cent compared to the first, second and third quarters of 2017, respectively; ⁶¹ (ii) GDP for oil activity experienced a 4.2 per cent reduction in 2013/2014, 0.9 per cent in 2014/2015, 9.9 per cent in 2015/2016 and 15 per cent between 2016 and 2017; in relation to the first three quarters of 2018, this activity contracted by 26.1, 26.7 and 25.8 per cent with respect to the same quarters of the previous year; and (iii) activity in the non-oil sector, which includes among other items, manufacturing, mining, electricity and water, construction and commerce and services, the decrease was 3.1 per cent in 2013/2014, 6.2 per cent in 2014/2015, 16.9 per cent in 2015/2016 and 15.2 per cent in 2016/2017; for 2018, GDP for non-oil activity decreased by 17.1, 16.2 and 22 per cent compared to the same quarters of the previous year.

- 82.** Other economic indicators that, according to BCV figures, experienced a strong contraction in recent years were: (i) aggregate domestic demand, that is, spending on consumption, goods and services and investment in the public and private sectors of the country, which fell by 26.3 per cent between 2015 and 2016, 21.1 per cent between 2016 and 2017 and 13.8, 12.5 and 16.4 per cent in the first three quarters of 2018 with respect to the same periods of the previous year; ⁶² (ii) gross capital formation suffered a cumulative fall of 86.7 per cent; and (iii) in terms of the external sector, oil exports of goods and services, which constitute between 97 and 98 per cent of the country's total exports, and major sources of foreign exchange, fell between approximately 51 and 58 per cent between 2015 and 2018. ⁶³
- 83.** This downturn in economic activity has been accompanied by high inflation. According to the figures published by the BCV in May 2019: (i) the cumulative price variation would have been 274 per cent in 2016, 862 per cent in 2017, and 130,060.2 per cent in 2018; and (ii) regarding the year 2019, the estimated monthly price variation for the months of March and April was 34.8 per cent and 33.8 per cent respectively, lower than that recorded for the same months of 2018 which was 40.9 per cent and 55.8 per cent respectively, which would indicate a slowdown in the inflationary spiral. ⁶⁴

⁵⁹ See ECLAC: Economic Survey of Latin America and the Caribbean, 2019.

⁶⁰ See Central Bank of Venezuela (BCV), Statistics: <http://www.bcv.org.ve/#> (in Spanish only).

⁶¹ According to the Economic Survey of Latin America and the Caribbean 2019 published by ECLAC, the cumulative contraction of GDP between 2013 and 2018 was 47.8 per cent.

⁶² One of the components of domestic aggregate demand, *household final consumption expenditure* (mainly private consumption of families, on food, clothing, rent, health, automobiles, leisure, etc.), according to BCV figures, reduced by 19.5 per cent between 2015 and 2016 and by 16.2 per cent between 2016 and 2017; The reduction was 18.2 per cent in the first three quarters of 2018, according to the ECLAC Economic Survey of Latin America and the Caribbean published in 2019.

⁶³ Specifically, Venezuela's oil exports were (in millions of US dollars): 72,117 (2014), 35,535 (2015), 26,282 (2016), 31,767 (2017) and 30,017 (2018).

⁶⁴ While the latest ECLAC report has these same figures, the latest *World Economic Outlook* published by the IMF in 2019 places inflation for 2018 at 929,789.5 per cent. For its part, according to the National Consumer Price Index of the National Assembly (INPCAN), the cumulative annual inflation for 2018 was 1,698,488.2 per cent.

-
- 84.** Regarding the impact of this economic contraction – accompanied by high inflation – on the living standards of the population, the purchasing power of wages, which in May 2018 amounted to US\$31.9 according to the official rate and US\$2.6 according to the unofficial rate, would only cover a tiny percentage of the family basket of goods.⁶⁵ This placed a large part of the population in a situation of food insecurity, despite the creation, in May 2016 of the Local Supply and Production Committees (CLAP), which were responsible for distributing food assistance.⁶⁶ Regarding poverty levels: (i) according to figures from the National Institute of Statistics of Venezuela, the poverty rate, measured by unsatisfied basic needs, decreased from 20.4 per cent of the population in 2014 to 17.3 per cent in 2018 and the percentage of those living in extreme poverty rose from 5.4 per cent in 2014 to 4.3 in 2018;⁶⁷ while (ii) according to the Survey on Living Conditions in Venezuela (ENCOVI),⁶⁸ the levels of extreme poverty in the country, measured according to income levels, went from 23.64 per cent in 2014 to 61.2 per cent in 2017.⁶⁹
- 85.** In recent years, some countries have applied sanctions – initially individually against Venezuelan officials⁷⁰ and, more recently, financial⁷¹ and economic⁷² sanctions against

⁶⁵ According to data from the Documentation and Analysis Centre for Workers (CENDA), the minimum wage of VEF40,000 effective as of 16 April 2019, plus the food ticket, only had a real purchasing power of 3.9 per cent of the basic basket for a household in July 2019 (calculated at VEF1,649,306.75). See <http://cenda.org.ve/default.asp> (in Spanish only).

⁶⁶ In this regard, the High Commissioner’s report states in para. 13 that “information verified by OHCHR confirms violations of the right to food, including the State’s obligation to ensure the population is free from hunger. The main food assistance programme, known as CLAP boxes, does not meet basic nutritional needs”. Likewise, the aforementioned report indicates that “since September 2018, members of the Government have begun to speak about the consequences of the economic crisis and to acknowledge certain aspects of the humanitarian situation, particularly food and medicines shortages”. The report also indicated that the Government affirmed that 75 percent of the annual budget is allocated to social expenditure.

⁶⁷ See INE: http://www.ine.gov.ve/index.php?option=com_content&view=category&id=104&Itemid=45# (in Spanish only).

⁶⁸ Organized since 2014 by a technical team from the Catholic universities: Andrés Bello (UCAB), Central de Venezuela (UCV) and Simón Bolívar (USB).

⁶⁹ In the *Social Panorama of Latin America 2018*, published in 2019, ECLAC highlights the lack of official statistics on social matters for Venezuela in recent years.

⁷⁰ As of February 2015, the U.S. Department of State imposed sanctions with prohibitions on travel and freezing of assets against Venezuelan officials allegedly linked to human rights violations, which were extended in 2017, 2018 and 2019; likewise, the European Union and other countries applied sanctions of the same nature, in particular as of 2018.

⁷¹ Between August 2017 and July 2018, the presidency of the United States issued executive orders (Nos 13808, 13827 and 13835) that prohibit people from that country from: (i) performing transactions that involve the provision of financing; (ii) performing transactions related to the use of any digital or cryptoactive currency issued by the Government of Venezuela, including Petro; (iii) negotiating or exchanging bonds of PDVSA and the Republic of Venezuela; and (iv) buying or negotiating any debt or collateral which is the property of the Venezuelan Government or PDVSA that exceeds 50 per cent; additionally, general licence No. 5 whereby the Treasury Department of the United States authorized the holders of the PDVSA 2020 bond to execute the guarantee constituted by the actions of CITGO (subsidiary of PDVSA in the United States).

⁷² As of November 2018, Executive Order 13850 prohibits all types of transactions related to gold transactions and blocks any assets that the Venezuelan Government exercises with US companies;

companies and public institutions, including PDVSA and the BCV. In this regard, the Annual Report of the United Nations High Commissioner for Human Rights of 4 July 2019 on Human Rights in the Bolivarian Republic of Venezuela highlights that the Venezuelan economy was already in crisis before any sectoral sanctions were imposed, as evidenced by the figures published by the Central Bank of Venezuela published in May 2019; but that the latest economic sanctions further aggravated the effects of the economic crisis and therefore the humanitarian situation.⁷³ Also, according to official figures from the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM), as of August 2019 the number of refugees and migrants from Venezuela amounted to 4,296,777 people,⁷⁴ which, according to UNHCR, would represent one of the biggest displacement crises in the world in recent times.⁷⁵

This includes all PDVSA properties in the United States; as of March, the companies MINERVEN, BANDES and Banco de Venezuela are also included. In April 2019, assets of the Venezuelan State in England and in Colombia were blocked.

⁷³ This is because the majority of foreign exchange earnings come from oil exports, many of which are linked to the US market. See paras 27 and 75.

⁷⁴ Based on the figures reported by the receiving Governments. See the interagency coordination platform led by UNHCR and IOM at <https://r4v.info/en/situations/platform>.

⁷⁵ See <https://www.unhcr.org/venezuela-emergency.html>.

Chapter 3. Procedure of the Commission of Inquiry

3.1. Establishing the Commission

86. On 9 and 10 August 2018, the Commission held its first meeting in Geneva, during which it established the procedure that would be followed for the rest of its work.

Solemn declaration by the members of the Commission

87. At the opening of the meeting, each member of the Commission made a solemn declaration before the ILO Director-General, Mr Guy Ryder. On inviting the members of the Commission to make the declaration, the Director-General emphasized that the ILO Governing Body had placed its confidence in them to carry out a full investigation of the facts of the case, and to adopt conclusions and recommendations “with full objectivity without fear or favour, independently and impartially”. Each member of the Commission made the following declaration:

I solemnly declare that I will honourably, faithfully, impartially and conscientiously carry out my duties and responsibilities as a member of the Commission of Inquiry appointed by the ILO Governing Body at its 332nd Session in March 2018, under article 26 of the ILO Constitution in order to examine 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).

Adoption of the rules of procedure

88. The ILO Constitution does not set out the rules of procedure to be followed by the Commission of Inquiry appointed under article 26. In establishing the procedure, the Commission recalled certain elements that characterize the nature of its work. As previous Commissions of Inquiry had emphasized, the procedure provided for in articles 26 to 29 and 31 to 34 of the Constitution is quasi-judicial. Therefore, the rules of procedure must preserve the right of the parties to an equitable process as recognized by international law. With these considerations in mind, the Commission adopted its rules of procedure, which were brought to the attention of the Government of the Bolivarian Republic of Venezuela and the complainants, and which are set out in Appendix III.

Invitations to the parties and to other stakeholders

89. The Commission invited the Government of the Bolivarian Republic of Venezuela and the complainants to communicate the additional information available to them. In this regard, it emphasized that this information should be related to the issues that were the subject of the complaint within the scope of the agreements concerned, both from the perspective of the employers’ and the workers’ organizations.
90. Similarly, in accordance with its rules of procedure, the Commission invited the parties to designate their representatives and possible substitutes, to act on their behalf before the Commission.
91. The Commission emphasized that it would carry out its work with complete objectivity, impartiality and independence. While recalling that its function was not limited to an examination of the information provided by the parties or in support of their claims, the Commission indicated that it would take all appropriate measures to obtain information on the issues to be examined, in the most complete and objective manner possible.

92. The Commission invited the following national organizations to provide such information:

- (i) employers: the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS); Federation of Artisans, Micro, Small and Medium-Sized Business Associations (FEDEINDUSTRIA); the National Confederation of Farmers and Stockbreeders (CONFAGAN); and Employers for Venezuela (EMPREVEN); and
- (ii) workers: the Bolivarian Socialist Workers' Confederation of Workers (CBST); the Single Confederation of Workers of Venezuela (CUTV); the Confederation of Workers of Venezuela (CTV); the Independent Trade Union Alliance (ASI); the General Confederation of Workers (CGT), the Confederation of Autonomous Trade Unions (CODESA); the National Union of Workers of Venezuela (UNETE); the Autonomous Employment, Salary and Trade Union Defence Front (FADESS); and the Grassroots Trade Union Movement (MOSBASE).

93. The Commission also invited the following to submit information on the issues raised in the complaint: (i) Member States that were members or alternate members of the ILO Governing Body;⁷⁶ and (ii) workers' and employers' organizations that at that time had consultative status before the ILO at an international or regional level: the International Organization of Employers (IOE); the International Trade Union Confederation (ITUC); the World Federation of Trade Unions (WFTU); the Trade Union Confederation of the Americas (CSA); the Association of Latin American Industrialists (AILA), the Caribbean Employers' Confederation (CEC), the Caribbean Congress of Labour (CCL); and the Permanent Congress of Trade Union Unity of Latin America (CEPUSTAL).

94. In addition, the Commission informed the following international organizations, in particular those that are part of the United Nations system, of the decision to institute a Commission of Inquiry to examine a complaint against the Government of the Bolivarian Republic of Venezuela for non-observance of Conventions Nos 26, 87, and 144 of the ILO, inviting them to communicate to the Commission all the information they deemed relevant in relation to the complaint: the Office of the High Commissioner for Human Rights (OHCHR); the Caribbean Community (CARICOM); the Community of Latin American and Caribbean States (CELAC); the Economic Commission for Latin America and the Caribbean (ECLAC); the United Nations Economic and Social Council (ECOSOC); the Southern Common Market (MERCOSUR); the Organization of American States (OAS), the Union of South American Nations (UNASUR); and the United Nations Department of Political and Peacebuilding Affairs (UNDPPA).

95. In accordance with the procedure established by the Commission at its first meeting, copies of the information received was sent to both the Government and the complainants.

3.2. Communications received

96. The Commission received a total of 218 communications, which are analysed in detail in part II of the report, including information in various formats (in addition to a considerable

⁷⁶ Members: Argentina, Azerbaijan, Bahrain, Barbados, Brazil, Canada, Chad, China, Côte d'Ivoire, Ethiopia, France, Germany, India, Islamic Republic of Iran, Ireland Italy, Japan, Republic of Korea, Lesotho, Mauritania, Panama, Peru, Poland, Senegal, United Kingdom, United States, Russian Federation, and Thailand. Alternates: Australia, Bangladesh. Brunei Darussalam, Bulgaria, Cameroon, Czech Republic, Cuba, Ecuador, Eswatini, Finland, Greece, Guatemala, Indonesia, Iraq, Morocco, Mexico, Myanmar, Namibia, Nepal, Nigeria, Uganda, Paraguay, Romania, Rwanda, Saudi Arabia, Switzerland, Turkey and Uruguay.

amount of written documentation, there were numerous videos, photos and audio recordings).

Communications from the complainants

- 97.** The Commission received a communication from the complainants on 18 September 2018, whereby Mr Mthunzi Mdwaba, Vice-President and Employer member of the ILO Governing Body, appointed the IOE Secretary General, Mr Roberto Suárez Santos, as a representative of the complainants for all the issues that would be brought before the Commission and, as his deputy, Ms María Paz Anzorreguy, Director of ILO Coordination at the IOE with the ILO.
- 98.** The Secretary General of the IOE, together with the President of FEDECAMARAS, presented numerous communications with information regarding allegations of non-observance by the Government of the Conventions that were the subject of the complaint. These communications, which included numerous annexes, photos and videos, were received throughout the work of the Commission. Additional communications were specifically received as follow-up to the different videoconferences and meetings that the Commission held with the complainants as well as after the hearings held in Geneva between the parties and the Commission, and during its visit to the country.

Communications from the Government

- 99.** In a communication dated 21 September 2018, the Ministry of People's Power for the Social Process of Work (MPPPST) of the Government of the Bolivarian Republic of Venezuela, while confirming its position as previously expressed before the Governing Body that it did not accept the Commission of Inquiry - because the procedure had suffered from legal defects, lack of transparency and political motivation - presented detailed and updated information to the Director-General of the ILO that it wished to make known in relation to the issues raised under the complaint.
- 100.** In a communication dated 16 November 2018 from the MPPPST, the Government, while affirming the arguments contained in the communication dated 21 September, indicated its formal acceptance of the visit by the Commission of Inquiry to the country, based on its adherence to broad and inclusive social dialogue and as a sign of the belief that it would be possible to move forward by strengthening observance of the ILO Conventions concerned.
- 101.** The Government also proposed to hold a meeting with the Commission of Inquiry in order to obtain more information on the procedure and on the visit of the Commission (indicating that it could be carried out in February 2019), to provide the necessary guarantees and recognizing the independence of the Commission. Likewise, the Government informed the Commission of the appointment of its representatives for everything related to the Commission of Inquiry: Mr José Ramón Rivero, Deputy Minister of the Inspection and Social Security System of this Ministry, and Mr Carlos Flores, Labour attaché of the Permanent Mission of the Bolivarian Republic of Venezuela, based in Geneva.
- 102.** Throughout the process, the Government continued to submit to the Commission numerous communications, with statements, documents and evidence, both in order to defend its position, and in response to specific requests from the Commission. In particular, communications were received after the videoconferences and meetings organized by the Commission with the Government and in follow-up to the hearings and to the Commission's visit to the country.

Communications from national workers' organizations

103. The Commission received numerous communications from national workers' organizations, including: ASI, UNETE, CGT, CODESA, CTV, FADESS and CBST.

Communications from national employers' organizations

104. In addition to the communications received from FEDECAMARAS – sent to the Commission as communications from the complainants, – the Commission received communications from FEDEINDUSTRIA and from the Bolivarian Council of Industrialists, Entrepreneurs and Micro-entrepreneurs (COBOIEM). The Commission did not receive information from any of the other employers' organizations invited to participate in the procedure.

Communications from international organizations

105. The Commission received from OHCHR several recent reports concerning the situation of human rights in the country (“Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017”, 2017; “Human rights violations in the Bolivarian Republic of Venezuela: A downward spiral with no end in sight”, 2018; and the Report of the United Nations High Commissioner for Human Rights on the situation of Human Rights in the Bolivarian Republic of Venezuela, 5 July 2019).

* * *

106. The Commission also took into consideration the communications sent by the parties during the period prior to the establishment of the Commission, as well as the information previously sent to the ILO supervisory bodies on the issues dealt with under the complaint. The Commission also received communications and documents from other actors, such as NGO human rights defenders, with information regarding issues related to the complaint.

3.3. Development of the procedure

Guarantees and methodology

107. The complainants, as well as some other social partners in the country, alleged before the Commission that there was a climate of fear – as evidenced by the allegations of attacks, stigmatization and threats by government actors – and that some witnesses were not willing to make statements for fear of reprisals.
108. In this regard, the Commission, referring to the guarantees requested from the Government mentioned above, urged the witnesses and actors concerned that, in the event of any type of threat or harmful measure or other impediment in connection with their possible participation in the procedure, they should make the Commission and the ILO aware as soon as possible, so that the relevant measures could be taken, including preventive measures. The Commission added that, in the event of such eventuality, it would also be possible to resort to the United Nations protection mechanisms.
109. The Commission, with the support of the ILO Director-General, took the measures at its disposal so that the procedure could be carried out with full guarantees. In this regard, in a communication dated 13 December 2018, the ILO Director-General requested the

Government to formally confirm that: (i) no action or measures would be taken against persons - or their families or organizations – who contributes directly or indirectly to the work of the Commission or in compliance with its mandate; and (ii) the necessary measures would be taken immediately to protect any person or organization in relation to any harmful action that could be suffered due to their contribution to the work of the Commission. Furthermore, in light of the fears of reprisals expressed, the Commission decided not to include the names of any of the witnesses in order to ensure full confidentiality of their identities.

110. The Government, in a communication dated 7 January 2019, responded positively, highlighting the non-application of measures or actions against natural or legal persons participating in the Commission's proceedings. Throughout the procedure, the Government reiterated its commitment to provide all the necessary guarantees for the survey, including the possibility of any person to participate in the work of the Commission without fear of reprisals.
111. Expressions of fear of reprisals persisted, however, in particular in relation to participation in the hearings and the visit to the country and the Commission was informed that some people did not come to testify because they were afraid. Similarly, a group of union representatives who had met with the Commission, reported to the ILO that they had been subjected to intimidation, with brief police retention and threats, due to their meeting with the Commission in the Bolivarian State on 10 July 2019. The International Labour Office immediately intervened with the Government, recalling the agreed guarantees and the importance of taking all necessary measures to investigate, avoid and repair any reprisals for the participation of these trade unionists in the Commission procedure. The Government responded by means of a communication dated 1 August 2019, detailing the investigation of the allegations, denying their truthfulness and providing assurances that no retaliatory measures had been taken.
112. The Commission acted with due diligence to assess the reliability and credibility of the sources and compared the information collected in order to confirm its validity. Also, both during its information-gathering meetings and during the hearings phase, the Commission asked the witnesses to take the following oath: "I solemnly declare, on my honour and conscience, that I will tell the truth, the whole truth and nothing but the truth".

Regular discussions, meetings and interviews with the parties and other stakeholders

113. Throughout its work, the Commission held numerous meetings and regular discussions to assess the issues raised in the complaint in the light of its findings, listen to the testimony of the parties and other stakeholders, make the relevant decisions regarding development of the procedure, as well as discuss the merits of the litigation and, subsequently, proceed to write its report.
114. In the stages prior to the hearings and the visit to the country, the Commission interviewed a total of 88 people (sometimes meeting several times with the same witnesses), including representatives of the Government and officials of different administrations and other State authorities (in particular from the MPPPST, the Foreign Ministry, the National Trade Union Register (RNOS), CNE and the Prosecutor's Office), leaders of employers' organizations and members of national employers' organizations and chambers, trade unionists and leaders of numerous national workers' organizations, as well as other non-governmental organizations with information regarding the issues that are the subject of the complaint.
115. The Commission held a second meeting in Geneva from 14 to 16 January 2019 to meet with the parties, evaluate the information received during the written phase, define the scope of

the allegations raised in the framework of the Conventions concerned and prepare the following phases. The Commission held preliminary hearings on 15 January 2019 with each of the parties, in which it took note of their testimony and addressed with them both matters related to the procedure and to the substance of the complaint.

- 116.** The Commission planned to make a visit to the country from 9 to 17 February 2019, in order to collect information on the subject matter of the complaint within the scope of the conventions concerned, both from the perspective of the employers' organizations as well as those of workers. However, in the light of the conclusions of an evaluation of the United Nations Department of Safety and Security (UNDSS) and despite the willingness expressed by the Government to receive it, it was not possible for the Commission to carry out this visit on the planned dates.
- 117.** Pending the establishment of new dates for a visit to the country, the Commission continued to collect information in contact with the parties and other relevant actors – including civil society actors with knowledge of the issues raised in the complaint. This included receiving additional written information, and numerous videoconferences and face-to-face meetings: (i) videoconferences (23 and 29 April 2019) and bilateral meetings (7 May 2019) with representatives and officials of the Government and of the public authorities concerned (including the MPPPST; the Ministry of People's Power for Foreign Affairs (MPPRE); the Prosecutor's Office; and the CNE); (ii) videoconferences (18 and 22 March 2019) and bilateral meetings (8 May 2019)⁷⁷ with witnesses of the complainants; and (iii) videoconferences with members and officials of numerous national workers' and employers' organizations (30 April, 6 and 7 May 2019).
- 118.** As a technical innovation with respect to the previous commissions and which was used throughout the procedure, the Commission resorted to the use of encrypted communication mechanisms for both messaging and audio and video, in order to facilitate access to witnesses and progress its work before visiting the country.

Hearings

- 119.** In the light of all written information and oral testimony collected, the Commission decided to hold hearings in Geneva with the presence of representatives of both parties, in accordance with its rules of procedure. The hearings took place from 8 to 10 May, were attended by a total of 15 witnesses (many of them through videoconferencing) and allowed an open and respectful debate between the parties with the expression of opposing views on each of the issues raised in the complaint. The Commission regretted that the Bolivarian National Intelligence Service (SEBIN), the General Directorate of Military Counterintelligence (DGCIM), the Scientific, Penal and Criminal Investigations Authority (CICPC) and the Government Special Actions Forces (FAES) did respond with respect to its requests for them to attend the hearings.

Country visit

- 120.** In order to gather additional information on the ground, the Commission made a visit to the country from 7 to 13 July 2019. During the visit, the Commission held several meetings with the relevant authorities that answered its requests (MPPPST, RNOS, CNE, the Procurator's Office, the Ministry of People's Power for Agriculture and Land, the National Land Institute

⁷⁷ Representatives of the Bolivarian National Intelligence Service (SEBIN) and the Scientific, Penal and Criminal Investigations Authority (CICPC) were also present on that occasion, but the representative of SEBIN only intervened very briefly and without referring to the merits of the issues and the representatives of the CICPC provided no answer.

and the Office of the Attorney General), witnesses for the complainants and representatives of national employers' and workers' organizations. The visit also included access to the corresponding administrative archives, in particular the RNOS, the National Land Institute (INTI) and the CNE. During the visit, the Commission interviewed a total of 123 witnesses, and received copious documents from them, as well as from the parties.

121. It should be noted that, in addition to its work in the capital, on 10 July, the Commission moved to Bolívar State and Carabobo State in order to obtain additional information on the allegations of non-observance of the Conventions received throughout the procedure, with the cooperation of the trade union organizations that had raised the respective allegations.⁷⁸ This allowed the Commission to hear testimonies from those directly affected by the issues raised from different areas of the country, many of whom travelled to one of the places to which the Commission had located. With regard to certain witnesses who could not travel to any of these places, the Commission continued to use video and audio communication mechanisms to interview them. Based on all this, the Commission was able to meet and meet with employers' and workers' representatives not only based in Caracas but also in the states of Anzoátegui, Barinas, Bolívar, Carabobo, Falcón, Guárico, Lara, Sucre, Táchira, Trujillo, Yaracuy and Zulia.

122. The Commission expressed appreciation to the MPPPST for its reception and support, as well as for the availability of the other authorities that met with it and provided information and the logistical and security support provided. The Commission regretted, however, that its requests had not been honoured for meetings with: (i) SEBIN; the DGCIM; the CICPC; and the FAES, as meeting with these authorities was one of the fundamental priorities of the Commission's visit to the country, in order to offer them the full opportunity to express themselves as to the allegations that concerned them and to allow them to be seriously questioned concerning the numerous testimonies gathered by the Commission; neither did these authorities provide written responses to the allegations; (ii) Mr Rubén González, the Commission having already expressed interest to the Government in this regard at its first meeting in January 2019, and reiterated the request successively; and (iii) the regional prosecution and judicial authorities responsible for the case concerning this union official, and for other proceedings such as those concerning the workers of Ferrominera and CVG Industria Venezolana de Aluminio C.A. (CVG VENALUM). The Commission also lamented that, at the conclusion of its visit, it did not receive satisfactory responses from the Prosecutor's Office, on the follow-up concerning numerous other serious allegations, despite repeated requests made at the various meetings held by videoconference in April and May 2019, as well as during its visit to the country.

⁷⁸ At the time of its closing meeting with the Minister of Labour, on the afternoon of July 12, 2019, the Commission received from the Government a letter dated the same day, transmitting at the request of "a group of workers" of Ferrominera describing themselves as "Ferrominera workers assaulted by Rubén González", electronic documentation in which they reported being victims of attacks by other workers allegedly linked to Rubén González. In the same vein, after the mission was closed, the Bolivarian Workers Union of Ferrominera Orinoco (SINBOLTRAFE) (denounced by multiple witnesses as a parallel organization related to the Government – see section 4.1) stated before the press that the Commission had not met with them during its visit to Bolívar State. The Commission must clarify in this regard that: (i) it is highly unusual to receive allegations of workers from the Government and not through their own organization or trade union headquarters; and (ii) neither these allegations nor any request for a meeting with these workers or with SINBOLTRAFE was addressed directly to the Commission neither by the workers concerned, nor by SINBOLTRAFE. However, despite not having been referred by a regular mechanism, in order to gather information in the most complete and objective way possible and taking into account all the points of view concerned, the Commission fully took into account the allegations of these workers, set out in detail in the information forwarded by the Government.

Deliberation, adoption and transmission of the report

- 123.** After visiting the country and given all of the written and oral information collected by the Commission, it decided that it had the necessary information to proceed with the drafting of its report. The Commission met again in Geneva from 1 to 5 September 2019 in order to proceed with the finalization of the drafting; it adopted the report on 17 September 2019 and then submitted it to the ILO Director-General for transmission to the Government and to the Governing Body of the ILO, in accordance with article 28 of the Constitution of the Organization.

Acknowledgements

- 124.** The Commission wishes to express its gratitude to the Government, in particular to the MPPPST, for its willingness to collaborate with the Commission and for the support provided by its officials, both in Geneva and Caracas. The Commission would also like to express gratitude for the collaboration and efforts of the social partners and the many witnesses who participated in their work, often having to overcome their fears and make great efforts to meet with the Commission, in order to provide the most complete information possible on the issues raised in the complaint.

Part II. Information on the factual issues investigated by the Commission

- 125.** According to its mandate, the Commission's examination was limited to the issues that were the subject of the complaint within the framework of the Conventions concerned. As decided at its first meeting and as indicated in its first communication to the parties, the Commission addressed these issues from the perspective of both employers' organizations and of workers' organizations.⁷⁹
- 126.** This part of the report contains an analysis of the information examined by the Commission. It includes, in particular, written communications, documentation and oral testimonies submitted by the complainants, the Government, national employers' and workers' organizations and other entities and persons concerned, as described in relation to the procedure in chapter 3.
- 127.** The allegations examined by the Commission cover both recent events and issues that have been raised with the ILO by the social partners since 2000. Following the practice of previous Commissions, the Commission has taken into account the information that had already been provided to the Organization's supervisory bodies and to ILO missions in the country on the subject matter of the complaint (see section 2.3).⁸⁰
- 128.** The information collected on the factual issues investigated by the Commission is structured as follows: (i) chapter 4 examines the general allegations of state interference in the independence of employers' and workers' organizations and in the relations between them; (ii) chapter 5 concerns specific allegations of attacks, persecution and harassment of the social partners, as well as other violations of civil liberties; and (iii) chapter 6 deals with allegations of the lack of tripartite consultation, particularly in relation to minimum wage-fixing and promoting the application of international labour standards, as well as exclusion from social dialogue.

⁷⁹ The information presented by the workers' organizations was considered to the extent that it concerned issues raised in the complaint (in this regard, allegations of favouritism to organizations that are close to the Government and of discrimination and interference with non-closed organizations led the Commission to examine complaints of interference in the registry and in the electoral processes of trade union organizations). Workers' organizations raised additional issues in relation to other matters, in particular in the field of freedom of association and collective bargaining, which, in the Commission's criteria, went beyond the subject of the complaint and, therefore, the Commission did not examine them.

⁸⁰ Since many of these issues have already been examined by the various mechanisms that make up the ILO's system of application of standards, the Commission has focused its work on the examination of the most serious or problematic allegations, as well as on the major current issues, as long as it has been appropriate to deal with the subject matter.

Chapter 4. Allegations of state interference in the independence of employers' and workers' organizations and the relations between them

129. The complainants denounced to the Commission multiple actions and situations of interference by state institutions – and actors close to the Government – in the independence of employers' and workers' organizations and the relations between them. Similar complaints of interference were presented by numerous workers' organizations, highlighting interference by creating and fostering a parallel structure related to the Government political project was accompanied by the persecution of trade union leaders who questioned public policies or proposals for collective agreements of Government employers.
130. In general, the Government denied these allegations, stating that it has promoted and extended freedom of association and that, in both law and practice, respect for the independence of employers' and workers' organizations is fully established.
131. The information collected on this category of allegations is structured as follows: (i) allegations of favouritism and promotion of parallel organizations that are close to the Government, as well as obstacles to the functioning of independent organizations, including in terms of electoral and registration processes of trade union organizations; and (ii) allegations of interference in relations between employers' and workers' organizations.

4.1. Favouritism and promotion of organizations close to the Government, as well as obstacles to the operation of other organizations

132. The complainants alleged that from the time Hugo Chávez Frías became President of the Republic, the Government of the Bolivarian Republic of Venezuela favoured the development of parallel employers' organizations, creating, promoting and financing institutions to gain their support for its political position, while trying to weaken the most representative employers' organization, FEDECAMARAS. Various workers' organizations made similar allegations concerning the creation of parallel organizations and favouritism towards organizations that are close to the Government – as well as allegations of obstruction of the functioning of organizations not close to the regime, by the Government and entities under its influence. The Government denied these allegations of favouritism, obstruction or promotion of organizations that are close to the Government. It affirmed that, despite the partisanship of FEDECAMARAS and its actions of political opposition, the authorities had demonstrated their effort in resolving the differences with this organization and had continued to recognize it as a representative employers' organization. The Government also indicated that as of 1999, the protection of freedom of association had improved and stressed that the CBST was the only workers' organization that had demonstrated greater representativeness.

4.1.1. Allegations concerning employers' organizations

133. The **complainants** questioned the so-called independence of several employers' organizations that they considered to be parallel or close to the Government and denounced their promotion by the latter. In this regard, they provided oral testimonies and documents,⁸¹ including public statements and information published in the media, to illustrate how the

⁸¹ Communication from the complainants, 24 September 2018, Annex 5.

entrepreneurs in these organizations had been maintaining a close relationship with the Government and its political entities, and had pressured other employers to align with the government programme. The complainants added that, by virtue of this privileged relationship, these employers enjoyed preferential treatment in access to financing, services and other facilities provided directly by the State and its companies, while the unconditional support that organizations that are close to the Government had provided to the Government had been used by the latter to make it appear that employers were participating in its political project.

- 134.** The complainants stated that the most important leadership within the parallel organizations had been exercised by FEDEINDUSTRIA, an organization founded in 1972, which represented only part of a subsector of the industrial sector, and that it had chosen to join the Government. They highlighted, by way of illustration, that the presidency of FEDEINDUSTRIA had been held for 15 years (from 2001 to 2016) by Mr Miguel Pérez Abad, who was fully politically linked to the Government party and who had held, since 2012, multiple government positions of the highest level. In this regard, he was appointed by the Government as Minister of Industry and Commerce and Sectoral Vice-President of the Economy; as Minister for Foreign Trade and International Investment; and President of the Bicentennial Bank of the People, of the Working Class, Women and Communes, Banco Universal, a position that the complainants alleged, gave preferential links to FEDEINDUSTRIA and other official employers' organizations to financial facilities that were not available to other independent organizations.⁸² As a public and well-known example of this discriminatory treatment, they referred to public statements by the President of the Republic stating "FEDECAMARAS, there are no more dollars for you".⁸³
- 135.** Similarly, they emphasized that, while at the international level, in the ILO, the Government recognized that FEDECAMARAS was the most representative organization, (nominating the Employers' delegate to the International Labour Conference), at the domestic level, it continued to favour pro-Government organizations, as evidenced by the fact that Mr Pérez Abad, on behalf of FEDEINDUSTRIA, was the only Employer member appointed to the Higher Labour Council, which operated from May 2012 to May 2015 (see section 2.2.5). The complainants added that Mr Orlando Camacho, the next President of FEDEINDUSTRIA, has been holding both positions as a member of the Business Sector of the National Constituent Assembly (ANC) promoted by the Government (as Vice-President of the Commission on the Economy) and as the general coordinator of the Network of Entrepreneurs of the Somos Venezuela Movement – a political party founded in June 2017 which supports the Government and which is led by its general secretary Ms Delcy Rodríguez, former President of the ANC and Executive Vice-President of the Bolivarian Republic of Venezuela.
- 136.** As additional examples of organizations allegedly promoted by the Government – often referred to in the media as representatives of "Bolivarian entrepreneurs" – the complainants cited: (i) EMPREVEN, created in 2002, stressing that this organization had appointed President Chávez as honorary President, it had its headquarters in public buildings and received financing from state banks and appeared not to be active; (ii) COBOIEM, created in 2010, stating that it had no known representation and its President was a member of the

⁸² They highlighted other positions that showed his connection to the Government and its party: alternate member of the Council of State, appointed by the President of the Republic Hugo Chávez Frías on 20 April 2012; Presidential Commissioner of the General Economic Staff, appointed by President Hugo Chávez in January 2015; Chief of Staff for fair pricing, appointed by President Nicolás Maduro on 17 February 2016

⁸³ Public address by the President of the Republic, Nicolás Maduro, 22 April 2015.

ANC, created by the Government to replace the legitimate National Assembly; (iii) CONFAGAN, created in 2000, specifying that it was created to displace FEDENAGA (the affiliate to FEDECAMARAS in the livestock sector), which has openly declared its support for the Government and its political programme⁸⁴ and that, although it appeared to be operational, its core membership was much lower than that of FEDENAGA; and (iv) the Confederation of Socialist Entrepreneurs of Venezuela (CONSEVEN), created in 2007 – highlighting that it included EMPREVEN and CONFAGAN and that its directors included the leaders of national and regional government (such as the Governor of Cojedes State).

137. The complainants claimed that none of those organizations could be considered free, independent, impartial and free from government interference. They stressed that these were organizations promoted and favoured by the Government to counterbalance FEDECAMARAS and that they had never been able to demonstrate to the ILO, by themselves or through the Government, their supposed representativeness, since they had not justified to date sufficient membership, under objective and verifiable criteria. They recalled that the International Labour Conference, when approving the reports of the respective Credentials Committees, had been suggesting since 2004 that the Government should use the technical assistance of the Office to undertake an analysis of the representativeness of these parallel trade union and employers' organizations, and also from the point of view of the workers, an offer which the Government had ignored to date.

138. As concrete examples of favouritism towards certain organizations and the lack of independence and political activism in favour of the Government by those organizations, the complainants provided testimonies in the hearings from employers' leaders whose respective organizations had withdrawn from FEDEINDUSTRIA because the latter had assumed the political line of the Government and forced them to be politically active in their unions and companies, such as putting up government emblems when carrying out events at headquarters. These employers' leaders affirmed that they had to withdraw due to the political pressures they received from FEDEINDUSTRIA; they were threatened that if they did not adhere to the prescribed guidelines and activism they would not have access to the raw materials controlled by the State. One of the leaders pointed out that several companies affiliated with their organization in the metalworking sector had formed a consortium to obtain raw materials, access to which was managed by the Government, and, by the mere fact of not being aligned with the political line of FEDEINDUSTRIA and the Government (for example, by not putting up posters supporting the Government) government officials had denied them access to raw materials. As a consequence, those companies had had to close, since their only option was to obtain raw materials outside the country and then compete with the other companies linked to the Government that did have access to the state-controlled raw materials. This employers' leader indicated that the policy of requiring companies to support the Government had become more marked about eight years ago, when other activities such as attending party meetings or the use of party colours and uniforms had begun to be demanded. He also stated that, within FEDEINDUSTRIA, the person who exacerbated the pressure was the then President Pérez Abad.⁸⁵ The Commission heard

⁸⁴ Among other public documents, the complainants refer to the presentation of the organization on its [official website](#), in which the president of this organization declares that he promotes twenty-first century socialism together with President Hugo Chávez.

⁸⁵ Hearings, Geneva, May 8–10. These allegations were confirmed by other witnesses during the Commission's visit to the country, which highlighted how FEDEINDUSTRIA was then discussing modifications to its statutes, which envisaged taking the adjective "apolitical" from the definition of the Federation in its article 2, in addition to the requirement to follow the national communication strategy. They affirmed that, after the statutes of FEDEINDUSTRIA were amended in May 2010, their chamber was expelled from this employers' federation (on the pretext that they had failed to attend meetings). Meeting in Valencia, 10 July 2019.

similar statements during its visit to the country. In this regard, a leader of a chamber of commerce in the clothing sector alleged that employers close to the Government were favoured in terms of access to foreign exchange. He related how, given the exchange control situation that had existed in the recent past, to acquire foreign exchange in order to have access to the inputs needed for production, the entrepreneurs were subject to a raffle. His chamber realized that employers affiliated with FEDEINDUSTRIA were doing better, it was easier for them to win these draws, in addition to receiving better treatment and contracts with the State. Therefore, in order to facilitate this access to foreign exchange, the chamber tried to subscribe to FEDEINDUSTRIA, but the latter declined the request alleging that since the chamber was already attached to FEDECAMARAS, the statutes of FEDEINDUSTRIA did not allow it to be accepted.⁸⁶

- 139.** The complainants informed the Commission that in contrast to parallel organizations or those close to the Government, FEDECAMARAS – founded in 1944 – maintained a solid structure with an organizational presence at the national and regional levels of the country; it (directly or indirectly) grouped together more than 320 chambers of the 15 main sectors of the economy (including the primary, secondary and tertiary sectors: agriculture, banking, commerce, construction, real estate, energy, industry, social media, mining, livestock, insurance, telecommunications services, transport and tourism). This large membership base, as the complainants emphasized, was not even remotely achieved by any of the above-mentioned parallel employers’ organizations linked to the Government. This had been ascertained on several occasions over the years by the ILO Credentials Committees, which had recognized FEDECAMARAS historically as the most representative organization. On the other hand, the complainants reported that, after the complaint, they had received from the authorities three applications for registration as an employers’ organization – which they declined after considering that the provisions of the LOTTT regarding registration formalities, in particular the referral of information on members, had been questioned by the CEACR as they were incompatible with Convention No. 87.
- 140.** Finally, in response to the Government’s accusations, representatives of FEDECAMARAS highlighted during the hearings that, as they had stated on different occasions, including through public statements by two FEDECAMARAS Presidents, the organization did not participate as such in the events of 2002, that it was an individual action of its President that the organization never authorized and was reflected as such in its minutes, and that at no time had FEDECAMARAS assumed or encouraged a coup d’état.
- 141.** In its communications and testimonies to the Commission,⁸⁷ the Government denied these allegations and stated that FEDECAMARAS, rather than an employers’ organization, was an insurgent organization with marked political interests opposed to the Government, as history had shown. It affirmed that before the year 2000 a union dictatorship prevailed under the hegemony of FEDECAMARAS and the CTV, in which decisions were made without consulting the workers. According to the Government, the most emblematic case was the loss of retroactivity of social benefits, carried out in a betrayal of the labour movement by a tripartite round table in March 1997; and since that time the expression “tripartite” or “tripartite round table” had become anathema to the workers and to any honest person in the country. The Government stressed that, subsequently, FEDECAMARAS and in particular

⁸⁶ Meeting in Caracas, 8 July 2019.

⁸⁷ Government communications of 5 March and 21 September 2018. Meeting with representatives of the Government, Geneva, 15 January 2019. Videoconference with representatives of the Government on 23 April 2019. Hearings from 8 to 10 May 2019.

its then President, had led the attempted coup d'état of 2002,⁸⁸ as well as the oil strike at the end of the same year, and stated that its leaders used mechanisms at odds with peace and the legal order, carrying out their work in a partisan manner in pursuit of their particular interests.⁸⁹ It also argued that FEDECAMARAS, as an institution, had never condemned those events, or the violence of the 2017 protests by the Venezuelan right that had negatively affected its members. It claimed that one of their chambers (CONINDUSTRIA) had refused to recognize the constitutional President, Nicolás Maduro, a position that had not been questioned by FEDECAMARAS, and that the latter had claimed to recognize the National Assembly as the only democratically elected power in the country.⁹⁰ The Government affirmed that FEDECAMARAS had acted in alliance with the IOE and opposing governments, not in pursuit of the well-being of Venezuelan businesses but of their own political, capitalist and petty interests in opposition to the workers, having managed to involve the ILO, causing it to lose credibility, seriousness and objectivity in its actions as the international guiding organization of the world of work.⁹¹

142. The Government pointed out that, however, it had turned the page in relation to the attempted coup d'état of 2002 and demonstrated the continuous effort it had been making to resolve the existing differences with FEDECAMARAS, through social dialogue and recognizing it as a representative organization of Venezuelan employers. In this regard, it stressed that the Government did not encourage or generate anti-business actions, but adopted measures and norms that encouraged productive development and free enterprise.

143. The Government also denied that FEDEINDUSTRIA was an organization close to it or that it had received privileged treatment. It said that this organization was limited to maintaining a fruitful social dialogue with the Government, complying with the Constitution and laws of

⁸⁸ The Government highlighted as facts that in its judgment proved the political action of FEDECAMARAS and other organizations, such as the CTV: the 61-day oil strike and the attempted coup in 2002. These accusations concerning FEDECAMARAS were repeated in the Government's various written and oral communications.

⁸⁹ As stated by the Government in its communication of 12 September 2016, proof of this was that executives and representatives of that organization demonstrated in favour of the referendum revoking the mandate of the President of the Republic and made statements in the media pointing on the need to revoke the elected President; also, in a press release published on the website of the said organization, its president supported the protest called by the opposition parties held on 1 September (2016) (called Toma de Caracas). Also, in its communication of 20 February 2018, the Government referred to a statement dated 17 February 2018 issued by FEDECAMARAS, in which it issued a call to ignore and not participate in the presidential elections, which in the Government's opinion was evidence of the political interests of this organization.

⁹⁰ Video with statements by the President of FEDECAMARAS provided by the Government in its communication of 7 May 2019.

⁹¹ In the same vein, the CBST stated on several occasions that in 2002, FEDECAMARAS had actively participated in the coup d'état with the President of FEDECAMARAS against the President of Venezuela for 48 hours and that after that event the said organization had dedicated itself to promoting and directing the employers' strike and oil sabotage that had had a negative impact on national economic development, taking on the role of an opposition political party, without respecting the legislative framework and undermining the stability and quality of life of the Venezuelan people (as silent accomplices of the decline in production and hyperinflation). The above-mentioned trade union confederation (the CBST) added that, in 16 years, none of the leaders of FEDECAMARAS had made statements of regret with respect to their behaviour in the 2002–03 coup and sabotage and they did not recognize the legitimate Government of Nicolás Maduro. In this regard, the representatives of the CBST confirmed having participated in demonstrations against FEDECAMARAS. The CBST communication received on 7 January 2019, videoconference on 7 May 2019.

the country. The Government, on the other hand, could attest that both FEDEINDUSTRIA and the CBST defended their members (particularly regarding contracts and collective disputes). The Government also denied the allegations, made during the hearings, that some public officials had provided facilities to companies that are close to the Government or discriminated against companies that did not adhere to the guidelines of their party.

144. The Government stressed that neither FEDECAMARAS nor FEDEINDUSTRIA had registered as employers' organizations, nor provided information regarding their representativeness to the RNOS, so it was not possible to determine their representativeness and, therefore, in order to follow up on the recommendations of the Credentials Committees, the RNOS had requested FEDECAMARAS and FEDEINDUSTRIA to comply with the registration formalities provided for in the LOTT. However, they were still treated with consideration and respect by the National Executive, which continued to insist that they agree on the composition of delegations to the ILO.⁹² Also, at the meeting on the composition of the delegation for the 19th American Regional Meeting of the ILO, FEDECAMARAS and FEDEINDUSTRIA had recognized each other as the most representative employers' organizations.⁹³ In this regard, during the hearings, the Government urged FEDECAMARAS to establish a broad delegation for the 108th (Centenary) Session of the International Labour Conference in which the various employers' organizations in the country could participate. The Government stressed that it did not want to interfere in the internal decisions of these organizations and that the calls it made were simply due to the requests by the Credentials Committees of powers to form a broad delegation.

145. Regarding the point of view of the **other employers' organizations**, in its communication to the Commission, FEDEINDUSTRIA indicated that it lacked information to confirm or deny the contents set forth in the complaint, while reiterating its commitment to promoting the private business sector; it claimed to represent a growing business organization that has understood the historical moment and that works for national productive development.⁹⁴ Likewise, in its oral statements to the Commission, FEDEINDUSTRIA stressed that: (i) it had more than 23 sectoral and regional chambers and more than 4,500 small and medium-sized affiliates in the country (noting in this respect that the representativeness of any employers' organization had not been examined in the previous 15 years and stating that it was in favour of measuring representativeness in an objective manner as recommended by the Credentials Committees); (ii) it entered into dialogue with the Government (and for that reason it was joined by businessmen and women) but it was independent of the Government; and (iii) its role was as an economic actor, assuming the role of promoting the growth of its companies. On the other hand, although they did not send written information to the Commission, in the framework of meetings that took place during the visit to the country: (i) COBOIEM noted that it had a business register, and that it represented the business community at all levels, including the presidential level (it had access to all levels), and that in the past it had attended the International Labour Conference but that, for the 2018 Conference FEDECAMARAS had vetoed its participation; (ii) EMPREVEN denied receiving preferential treatment from the Government, noting that all employers' organizations were treated in the same way and expressing criticism that FEDECAMARAS

⁹² Communication of 29 April 2019.

⁹³ 19th American Regional Meeting, ILO, 2–5 October 2018, [para. 22](#).

⁹⁴ Communication from FEDEINDUSTRIA, 17 September 2018.

had blocked their participation in the Conference.⁹⁵ No communications or statements were received from the other national employers' organizations referred to by the complainants and which had been invited to provide information to the Commission.⁹⁶

4.1.2. Allegations concerning workers' organizations

146. Various **workers' organizations**, in particular the CTV,⁹⁷ denounced in their communications a policy of fostering trade union parallelism, claiming that, through the Ministry of Labour, the Government had prompted the creation of thousands of new pro-Government trade unions in order to disconcert and unravel the legitimate union leadership of the workers. After coming to power in 1999, the Government questioned the representativeness of the traditional social partners, attacking the leaders of the CTV as a "trade union mafia" and imposing the holding of a trade union referendum.⁹⁸ The CTV considers that the Government's boast of the increase in trade union organizations since taking power (from approximately 2,000 organizations in 2001 to over 6,000 in 2007) reveals the extent of state policy directed at the creation of parallel trade union organizations in workplaces where independent trade unions existed. It complained that, having failed to seize control of the traditional organizations, the Government had launched a policy of trade union parallelism to seize power from the CTV – it explained that although the Government had created many more trade unions, it had not increased the trade union membership rate.

147. Concerning this allegation, it was drawn to the attention of the Commission that Government leaders, including at the highest level, had made statements questioning the independence of trade union organizations within the context of their project for the implementation of a socialist production model. For instance, the statement by President Chávez in 2007 that: "... the trade unions do not have anything to do with the party or the Government, they want to be autonomous; it is a kind of blackmail and it turns out that we have now, we had in the past, and we continue to have going forward trade unions that are insipid and without character ... that have lost sight of the revolutionary, historical struggle of the working class,

⁹⁵ Meeting in Caracas, 11 July 2019. A representative of the Business Integration Council also attended the meeting with EMPREVEN, who, also denying that there was favouritism, said if at any time there had been participation of the business sectors without political distinction it was with "this Government".

⁹⁶ On the other hand, it has been brought to the Commission's attention that several academic publications, from different perspectives, have analysed the question of the relationship between business organizations and the Government since 1999. See Nicolás Esteban Grimaldi: "Empresarios Frente al Chavismo, Un estudio de las corporaciones empresariales en la República Bolivariana de Venezuela (2002–2008)", in *Americanía. Revista de Estudios Latinoamericanos*. New Era (Seville), No. 7, 2018, p. 199–227 – analysing the position of two of the main business entities of the Bolivarian Republic of Venezuela, FEDECAMARAS and FEDEINDUSTRIA, in relation to the Chávez Government during the period 2002–08; or N. Arenas (2009): *Las organizaciones empresariales venezolanas bajo el gobierno de Hugo Chávez (1999–2007): ¿De la sociedad civil nacional a la internacional?*, Cuadernos del CENDES 26.71 – stating that entities such as EMPREVEN or CONFAGAN were created to ensure loyalty to the Government.

⁹⁷ Communication of CTV of 24 September 2018.

⁹⁸ See section 2.12 in fine. Also, S. Ellner: "Tendencias recientes en el movimiento laboral venezolano: Autonomía vs. control político", in *Revista Venezolana de Economía y Ciencias Sociales*, Vol. 9, No. 3, p. 157–178, 2003.

as long as they are autonomous.⁹⁹ The Commission was informed of such statements made by the highest level Government officials challenging the independence of unions in the context of its socialist production model project.

- 148.** The CTV, and others who gave evidence to the Commission, highlighted the process that led to the creation of the CBST, a pro-Government organization founded at the end of 2011 with the support of President Chávez and with links to the Government party (the United Socialist Party of Venezuela (PSUV)).
- 149.** According to information provided to the ILO supervisory bodies, after the oil strike of 2002–03, which had been supported by several existing trade unions, a new entrant erupted onto the scene – a new pro-Government Bolivarian confederation of workers: UNETE. This new organization was recognized by the authorities as the most representative; according to the credentials of the Workers’ delegation of the country submitted to the ILO, as leaders of the organization had been nominated Workers’ delegates to the Organization (currently the subject of a complaint to the Credentials Committee of the International Labour Conference).
- 150.** With regard to this period, representatives of UNETE¹⁰⁰ told the Commission how they had then enjoyed the support of the Government. In this regard, a witness described how, under the guidance of the Government, a parallel trade union federation had been created which could act with full powers. This federation could bypass the mechanisms of the CNE and, despite never having held any elections, it was from the beginning able to conclude a collective agreement with the public administration. This illustrates how the trade unions of the Government enjoyed great freedom and flexibility in relation to the application of the standards (they could find ways to negotiate agreements without having held elections – while the trade unions that are not close to the Government are required to have up-to-date electoral processes). Similarly, a witness related how, at that time, the President of the Republic had contacted him to ask him to devote his time to the creation of trade unions affiliated to the Government party. These witnesses from UNETE specified that the creation of trade unions and parallel federations were being made initially with the hope of creating a new trade union movement. However, they pointed out that they subsequently realized the deception because the reality did not correspond to the original project. In this regard, the social control of the companies brought within the new trade union was converted into military and political control. They said that they were not subservient, but many of the new leaders forgot the workers and the trade union movement and passed into the ranks of the

⁹⁹ Speech by President Hugo Chávez Frías delivered on 24 March 2007. This central issue of trade union autonomy was discussed in Caracas on 16 and 17 July 2007 in the framework of the seminar “Towards a Trade Union Constituent Assembly”, organized by the Latin American Social Sciences Research Institute (ILDIS) and the National Promotion Committee for the said constituent assembly. In support of the seminar, Orlando Chirino, as national coordinator of the National Union of Workers, proposed that “the struggle for autonomy is a matter of life or death for the future of the revolutionary process, not only in Venezuela but in any place on earth”. He pointed out that “President Chávez himself reopened this debate by stating in a speech that trade union autonomy was a poison inherited from the Fourth Republic and would announce a battle against this important criterion which existed within the trade unions”. O. Chirino: Independence and autonomy of the trade union movement. See also C. A. Carballo Mena, 2018, op. cit., p. 76 at <https://controlobrero.org/luchas-obreras/119-sobre-la-consigna-de-autonoma-sindical> (in Spanish only) and <https://www.aporrea.org/imprime/n93050.html> (in Spanish only).

¹⁰⁰ Meeting in Caracas, 11 July 2019.

Government.¹⁰¹ The creation of favouritism for parallel trade unions that are close to the Government was denounced to the Commission by many other witnesses, both at the regional and sectoral levels.¹⁰²

- 151.** From 2011 onwards, a faction within UNETE that enjoyed the support of the Government (Bolivarian Socialist Workers Party (FSBT)) withdrew over a disagreement concerning the role of the trade unions in promoting the socialist model.¹⁰³ For the FSBT, the trade unions should be subordinate to the PSUV and to the Government programme. From the time of its withdrawal from UNETE and in order to replace it, as those who wanted to transform the UNETE into an appendix of the Government had not prevailed, the FSBT proposed the creation of a Bolivarian trade union organization, the CBST. On 10 November 2011, President Hugo Chávez – with the then Minister of Foreign Affairs, Nicolás Maduro – announced the launch of the CBST, following which the president of the new trade union organization, Mr Wills Rangel, declared the support of the leadership of the organization to President Chávez.¹⁰⁴ As of 2012,¹⁰⁵ the CBST was considered by the Government to be the most representative and designated to lead the country's Workers' delegation to the

¹⁰¹ Several witnesses reported other cases of trade unionists who had initially been close to the Government's political statements but who, having distanced themselves or made criticism, became subject to attacks by the authorities and groups that are close to the Government (threats, attacks, loss of trade union premises, etc.).

¹⁰² In this regard, in the education sector the creation of parallel organizations (and favouritism towards them – for example, giving them special privileges in collective bargaining) and the non-recognition or obstacles imposed on independent organizations were denounced. Witnesses recalled the need to defend independent and genuine organizations representing teachers, whose importance was highlighted by the ILO/UNESCO 1966 Recommendation concerning the Status of Teachers. As an additional example in the industrial sector, the Commission received complaints concerning the creation and support of the Government to a parallel union in the company Ferrominera, managed by the state-owned conglomerate Corporación Venezolana de Guayana (CVG). Several witnesses who appeared before the Commission during their visit to the city of Puerto Ordaz (Bolívar state), on 10 July 2019, indicated that the Government had imposed a parallel union (SINBOLTRAFE) and claimed that the headquarters premises of the original union (SINTRAFERROMINERA) had been passed to the union linked to the state employer. They also claimed that the company's board met only with this parallel union (SINBOLTRAFE). They added that the genuine union, SINTRAFERROMINERA, had been dismantled, as its members were prevented from acting, whether because they were subject to precautionary measures or arrest warrants, forced into early retirement or indirectly dismissed, without notification, removing them from payrolls, or because they are prevented from entering the company where the union headquarters are located (the allegations of attacks and persecution of SINTRAFERROMINERA workers by public authorities, as well as information received from other workers, are examined in the framework of chapter 5). Commission meetings in Valencia and Caracas, 10 and 11 July 2019.

¹⁰³ On the discussions on Bolivarian trade union trends, the Commission was informed, among others, of publications such as the following: R. López Sánchez: The workers' movement in Bolivarian Venezuela. Trend configuration: autonomists against Leninists, Open Space, Vol. 21, No. 1, p. 145–181, 2012.

¹⁰⁴ See the description of the creation of the CBST on the website of the Government party, PSUV (<http://www.psuv.org.ve/temas/noticias/hace-cuatro-anos-nacio-central-bolivariana-socialista-trabajadores-video/#.XamQIZIzZph>) (in Spanish only), as well as in pro-Government social media (<http://blog.chavez.org.ve/temas/noticias/nace-central-bolivariana-socialista-trabajadores-trabajadoras-2#.XamQ7pIzZph>) (in Spanish only).

¹⁰⁵ ILO: [Final list of delegations](#), International Labour Conference, 101st Session, Geneva, June 2012, p. 104.

Conference and the trade union movement that remained under UNETE was dissociated from the Government line.

- 152.** In this regard, the representative of UNETE reported that the Government sought to manipulate its organization and that, when its independence proved too troublesome, because UNETE defended trade union autonomy, they had to “take it out of the game”. Thus, according to UNETE, “from above” and with President Chávez leading an assembly with the presidents of the federations, and without the support of the membership, the CBST was created. The representative claimed that through the MPPPST the Government had interfered so that its unions would militate under the CBST and that for the past eight years the trade unions of UNETE had been excluded from collective bargaining. UNETE also claimed that trade unions had been organized to bring an end to some companies; that the national legislation opened the door to arbitrary decisions, imposing criteria that allowed the recognition of representativeness to be in the hands of the authorities; and that the whole labour administration was corrupt. He also stressed that the only objective mechanism for determining representativeness would be the holding of free trade union elections.¹⁰⁶
- 153.** On the other hand, the CBST, in its communication and statements before the Commission, stated that its confederation resulted from a process of unification of federations and grouped more than 900 unions from across the country. The CBST claimed to be the trade union movement that had the largest number of workers and the largest labour force of the working class in the nation (including more than four million in the public sector and more than one million workers in the private sector). Their representatives stated on several occasions before the Commission that, according to its statutes, the organization enjoyed autonomy from any government (the statutes of the CBST establish in this regard the purpose of “sustaining the autonomy and independence of the urban and rural working class and those involved in fishing, of this confederation and of the Bolivarian socialist trade union movement in general, in opposition to the capitalist employers, their values, their State and their political parties”).¹⁰⁷
- 154.** The organization added that it had a very harmonious and well-coordinated relationship with the current Government, with President Chávez himself being present during its founding meeting (as a guest, said the representatives of the CBST, who denied that such presence could be interpreted as a demonstration of dependence). In particular, the CBST stressed that it had a policy of dialogue and sought agreements with the Government. For example, if one of its grassroots unions had a conflict with a government body, the CBST intervened with a higher body to resolve the conflict, or if a union affiliated with the confederation had a problem concerning electoral abeyance, the CBST established communication with the authorities in order to solve the problem.¹⁰⁸

¹⁰⁶ Videoconference of 29 April 2019. Hearings of 9 May 2019. Meeting in Caracas, 11 July 2019.

¹⁰⁷ Article 2 of the statutes of the CBST, whose provisions also highlight the vocation of the organization: “to develop a new type of unionism, closely linked to the political struggle, and therefore to the historical objective of the working class, which is none other than the construction of socialism, which manages to definitively banish the conciliatory trade unionism model”, and they attribute to the organization numerous public functions – such as “supporting the organization of the National Militia”, “supporting the growth and expansion of state enterprises” or promoting the constitution and coordination of workers’ councils or prevention delegates.

¹⁰⁸ The CBST communication of 26 December 2018, videoconference of 7 May 2019, meeting in Caracas, 11 July 2019.

155. In its written communications and oral statements before the Commission,¹⁰⁹ the **Government** denied the above-mentioned allegations of favouritism, interference or partiality. Regarding the nomination of representatives, it emphasized that, for the formation of international delegations, the Government had encouraged the organizations to agree and to make delegations as broad as possible (an agreement that had occurred several times between employers – with the delegate attributed to FEDECAMARAS and also including FEDEINDUSTRIA). In the absence of agreement (as had occurred in the case of the workers' organizations) and in response to the comments of the credentials committees, which required the Government to explain the mechanisms used for the formation of delegations, the three criteria used by the Government to determine the representativeness of trade union organizations were: (i) affiliation (in particular the federations that group the organizations); (ii) participation in the collective bargaining processes, measured by the number of collective agreements (usually the organization to which the federation or union concerned belongs can be identified by its text); and (iii) its public and published activities (forums, conferences, etc.), including its capacity to mobilize for the celebrations of 1 May. In addition, additional criteria for the verification of representativeness had been put in place – such as territorial extension or presence in the country. In this regard, it stressed that in all cases, the CBST appeared to be the most representative: (i) it was the only organization that had provided information to the Government to verify its representativeness – every year it sent both detailed information about its affiliates and its participation in collective bargaining; and (ii) if the additional criteria outlined above were used, the Bolivarian organization also appeared to be the most representative (for example, in comparison to the multiple marches organized by the CBST for 1 May, the other organizations had not organized any in 2019). The Government considered that, given the latest conclusions of the Credentials Committee of the American Regional Meeting in 2018, the authorities were on the right track, since the Credentials Committee had considered that there were no grounds for the complaints that had been presented and it had not upheld them. Furthermore, the Government specified that in order to determine representativeness for the purposes of collective bargaining or representation, the list of affiliates was verified and, in case of doubt, a referendum was held among all workers (it was often the case that organizations were able to reach agreement among themselves – with the referendum being used as a resource in exceptional cases).

156. The Government stated that the CBST had emerged from the decision of the majority trade union directorates in the country to reunify the Venezuelan trade union movement from its grassroots (understood as the grassroots of unions and federations active in the defence of workers' rights). The Government added that it had a working relationship with the CBST and the fact that there were people who could leave the Government and enter the CBST or its political affiliations (the CBST defended revolutionary approaches of the left) did not harm the defence of the rights of workers or the autonomy of trade union organizations. In this regard, the Government indicated that it had insisted that the CBST and other organizations should agree on the formation of delegations to the ILO.¹¹⁰ The Government emphasized in this regard that, although some members of the CBST and FEDEINDUSTRIA had been part or still were part of the Government, when these representatives performed these functions they took on institutional roles in an impartial manner and stressed that this did not imply any kind of favouritism: the Government sent them the reports on the agreements and consulted them on the minimum wage in the same terms as the other organizations.

¹⁰⁹ Meeting of 9 January 2019; communication of 23 April 2019; meeting of 7 May 2019 and hearings from 8 to 10 May 2019, among others.

¹¹⁰ Videoconference with Government representatives, 23 April 2019.

157. The Government reiterated that the other organizations had been unable or unwilling to provide information (or that for a long time they had not updated information) on their representativeness¹¹¹ and stated that if the Commission managed to get these organizations to provide such information, the authorities would be grateful to resolve the issue of representativeness. In this regard, the Government stated that it disagreed with the CEACR recommendations on the sections of the LOTTT related to registration – noting that it had failed to demonstrate that such provisions limited freedom of association. Likewise, the Government regretted that there were few trade union organizations that worked on a daily basis to defend workers’ rights in a real way (some had their leadership abroad and there was no evidence that they promoted trade union presence in the country). In addition, as for the past, the Government stressed that the CTV and its corrupt bureaucracy, which was remote from its grassroots, had unduly monopolized the representation of the workers. At present, the Government affirmed that the CBST had a presence in the 23 states in the country and in most of the 335 municipalities (unlike most of the trade union organizations); the CBST was the only one involved in the real work of building discussions on collective agreements (it did not appear from government records that other organizations had participated in these discussions); and there were very few media references to trade union organizations other than the CBST. However, the Government indicated that, despite not having updated information on the actual representativeness of the other organizations and despite having outstanding issues regarding their leadership, it had continued to convince members of these other organizations to discuss their possible representation at international conferences and regional meetings of the ILO.¹¹²

158. Concerning the Commission’s question as to why it would not have resorted to ILO technical assistance in determining representativeness, as successive credentials committees had been recommending since 2004, the Government stated that it had accepted the recommendations of the credentials committees; that it had not refused to receive assistance; that it had relied on the representative criteria mentioned above (and that it was for this reason that it had insisted that trade union organizations should register with the RNOS – inviting both FEDECAMARAS and FEDEINDUSTRIA to do so – and to send updated information on their levels of affiliation); that it believed that the report of the Credentials Committee of the 19th American Regional Meeting, held in Panama City, 2018, had not upheld an objection against the Government; and that for the 108th (Centenary) Session of the International Labour Conference it was working to strictly comply with the provisions of the credentials committees. In this regard, the Government repeatedly insisted that the credentials committees had emphasized that the Government’s duty was to seek ways to make delegations as broad as possible. The Government had made the delegation to the 108th (Centenary) Session as broad as possible and claimed that, following

¹¹¹ The Government provided the following information in June 2019 to the ICC Credentials Committee, subsequently relaying it to the Commission on June 28, 2019: “The CBST had 29 affiliated federations and a total of 1,221,987 worker members. It was followed by CODESA, with ten affiliated organizations (federations and trade unions) and 1,829 workers, according to the latest update, dated May 19, 2006; CUTV, with 11 affiliated organizations (federations and trade unions) and 1,569 workers, according to the latest update, dated 21 January 1987; the CTV, with 25 affiliated organizations (federations and unions) and 574 workers, according to the latest update, of 31 March 2017; the CGT, with six affiliated organizations (federations and unions) and 37 workers, according to the latest update, dated 29 April 2005, and UNETE, with an affiliated organization (a federation) and seven workers, according to the latest update, on 5 April 2003”.

¹¹² Meeting with representatives of the Government, 15 February 2019.

FEDEINDUSTRIA's statements at the hearings before the Commission, FEDECAMARAS would, in retaliation, have excluded FEDEINDUSTRIA.¹¹³

* * *

159. Various national workers' organizations (ASI, UNETE, CTV, CGT and CODESA)¹¹⁴ claimed before the Commission that there were other institutional mechanisms promoting favouritism, discrimination and state interference to control trade union activity and influence the configuration of the map of trade unions in the country. They stated that, since 1999, the Government had developed complex control structures covering both regulations and the actions of different institutions under the influence of the Government.¹¹⁵ They highlighted, in particular, the interference of the authorities in registration and in trade union elections and the effect that it had on the right of workers to establish the organizations that they deemed appropriate and to join those organizations, as well as the right of those organizations to organize their administration and their activities and to formulate their programmes of action. They claimed that both the RNOS and the CNE were used by the Government to restrict the right to freedom of association and protection of unionization by hindering the process for registration of independent organizations and their executive committees. They denounced an intrusive control of the legal system by the Public Ministry and the RNOS. Finally, they stressed that in this control structure and interference the Government had the support and subordination of the Supreme Court of Justice (TSJ), which, apart from in exceptional cases, always ruled in favour of the Government or official trade unions.¹¹⁶

Interference with respect to the registration and recognition of organizations

160. Regarding the alleged interference in the registry, several confederations and multiple organizations claimed that the obstacles concerning registration in the trade union registry included a system of prior authorization, with very wide discretion on the part of the RNOS.¹¹⁷ In this regard, it was recalled that, for a long time, specific examples of denials and unjustified delays in registration had been raised with the ILO supervisory bodies. Among others, cases Nos 2160, 2161 and 2249 (see section 2.3.1).

¹¹³ Communication of 12 July 2019.

¹¹⁴ Communication from the ASI of 29 August 2018. Communications from UNETE, CGT, CODESA and CTV of 24 September 2018. Communication from the Guild of Trade Unions and Employers' Organizations (UASG) (UNETE, CTV, CGT, CODESA) of 26 September 2018.

¹¹⁵ In this regard, several witnesses referred to the reports of the Venezuelan Programme of Education and Action on Human Rights (PROVEA), which for more than ten years has been denouncing how in recent governments a legal structure was set up to criminalize the exercise of freedom of association (see, among others, 2019 PROVEA report on the situation of labour rights). It was created on 15 October 1988, and according to the United Nations Human Rights Council it is an independent and autonomous non-governmental organization whose objective is to promote and defend human rights, in particular economic, social and cultural rights.

¹¹⁶ Communication from the CTV of 18 March 2019.

¹¹⁷ Videoconference with testimony from UNETE and the ASI of 30 April 2019 (and communication from ASI of 21 March 2019); as well as the trade union witnesses at the hearings from 8 to 10 August 2019. The representation of UNETE – as an organization that had once been close to the Government – stressed that the RNOS enjoyed absolute discretion and that hundreds of requests had been blocked by that registry.

161. By way of illustration, the Commission's attention was drawn to a recent case: the rejection of the registration application of the ASI – an organization that was not related to the Government and affiliated to the CSA/CSI. The ASI informed the Commission, with detailed supporting documentation, that the Government had unreasonably ignored its request, noting that: (i) on 19 February 2016, the application for registration and the draft constitution of the ASI had been submitted to the RNOS in accordance with the provisions of the LOTTT;¹¹⁸ (ii) in order to find out the status of the application, in February 2016 the President of the ASI met with the Minister of Labour, who informed him, after calling the director of the RNOS, that it was in the process of being reviewed – various officials from the ASI attended the RNOS to ask about the administrative process and received the reply that the authorities were reviewing a significant number of registration requests that were ahead of the request by the ASI, and that changes in the authorities and the replacement of officials had delayed the process; (iii) on 16 March 2016, the president of the organization met with the Minister of Labour and presented a written request for information on the status of the registration application; a new meeting took place on 30 March 2017 in order to ask about the situation – in both cases the Minister, after calling the director of the RNOS, informed him that the file was being reviewed; the new organization continued to ask the MPPPST for information on the status of its request for registration;¹¹⁹ (iv) it was not until 26 October 2017 that, after several visits to the MPPPST, it was reported that there was a correction order had already been issued. The representatives of the ASI came that same day to be notified and had to wait three hours for the director of the RNOS to arrive because the ASI file was locked in his desk and it was not with the other files in the archives of the registry – the ASI considered that the authorities had hidden the order and did not want to issue it, which was confirmed upon delivery, when it could be verified that more than one year and seven months had elapsed since its date of issue; (v) the order of correction (No. 2016-6323, adopted on 15 March 2016 but notified only on 26 October 2017) required the correction of a list of missing information or omissions indicated in its text within thirty days. These included: the date of issue of the identity card with name and surname for each of the proposers of an announcement published in the press; the starting time of the assembly which should not coincide with the one established in the announcement (a delay of four hours), as well as corrections related to the requirement to include the list of affiliates and the statutes of some of the proposer unions and to correct formulations contained in the statutes. Thus, in order to ensure complete harmony with the law, the statutes should refer to obligatory compliance with the legal provisions cited by the RNOS in its order – such as sections 412, 413 and 414 of the LOTTT; (vi) on 14 November 2017, the ASI complied with everything ordered in the correction order, by means of a correction letter with all the additional documentation required and having even carried out a new assembly (with a new

¹¹⁸ On 7 November 2015, the call for its constituent assembly was published in the *Diario Ultimas Noticias*, and it took place from 30 November to 2 December 2015 and in which 205 grassroots unions, three national federations and three national trade unions were present, with 407 delegates, the statutes were approved and the first executive committee and other bodies elected. The announcement published in the press, the charter and statutes, the list of attendance, the list of promoter organizations according to the format published by the MPPPST, the copy of the affiliation minutes, the payroll of the national executive committee and other institutions and bodies were attached; copies of the identity cards of all the members of these bodies, the programme of the constituent assembly and its regulations, notifications to public bodies of the assembly, minutes of approval of affiliations of national federations and promoters and all documents, resolutions and agreements approved in the assembly.

¹¹⁹ In a communication dated 9 May 2017, sent to the Commission, which reminded the Minister that no reply had yet been received. Meanwhile, the MPPPST included the ASI in invitations regarding the discussion on the formation of the delegation of workers to the 2017 International Labour Conference – to which the ASI responded by proposing the secretary general, Ms Leída Marcela León, who was accredited by the Government as part of the delegation, but could not attend because the Government did not grant the corresponding *per diem*.

convocation with all the required details) in order to comply with all aspects indicated by the order; (vii) the ASI noted that in this process the authorities had been particularly obstructive in making registration difficult: in addition to demanding requirements and documents that were not required by law, in a country with difficulties in printing documents, it did not accept electronic filing and required photocopies of a large number of documents (some not relevant, such as photocopies of ballot papers from affiliates) – the ASI had to ask for financial help to prepare all the required documentation, which had to be delivered with a wheelbarrow; (viii) a response to the correction letter was never received, despite the fact that on several occasions (for example, on 23 April 2018) applications for status and granting of union registration were submitted to the MPPPST and the RNOS; (ix) it follows that, due to the independence of the ASI (it could not be accused of any kind of politicization), the Government never wanted to legalize the organization and used all kinds of tricks and delays in this regard – to the point that it acknowledged orally before the leaders of the ASI that it was not a legal issue but a political one, which depended on the decision of the President of the Republic; (x) During this process, under pressure from the CSA, government representatives (including the then Minister of Labour) met with the secretary general of the CSA and admitted that it was a political issue and that they would legalize the ASI because they had no alternative, but that the decision depended on the President of the Republic; however, the Government did not keep its word as to its discussions with the CSA and persisted in its decision not to legalize the ASI. The ASI clarified that for these reasons and because of the subordination of powers in the country – with the Executive controlling the judicial system – it was limited to applying to administrative authorities and it did not go to the jurisdictional courts; and (xi) despite the unjustified rejection of its application for registration, the ASI had almost half a million members and remained very active.¹²⁰

- 162.** The ASI, as well as other confederations, stressed that this was not the only case and that, as part of this favouritism and discrimination by the Government which had been raised in the employers' complaint, other trade unions had difficulties in obtaining acceptance of their registration, as had been reported to the Committee on Freedom of Association in the past.¹²¹ Regarding the obligations for trade unions registered in the registry, several workers' organizations – as well as the complainants – criticized the obligation contained in the LOTTT to communicate the payroll of their RNOS affiliates (sections 385 and 388), confirming the fears that The CEACR had made progress in this regard. They stressed that this obligation entailed the communication of a large number of personal information about affiliates and the submission of updated lists every year and that, in an environment of attack and discrimination against unions not close to the Government, this information could not only be used to facilitate reprisals from the authorities, but also deterred workers from joining. Additionally, it was a very cumbersome burden for unions. In this regard, it was indicated by way of illustration, how a national trade union of some 6,000 members could take between two and three months to complete this process that was required annually. They also criticized the application of the requirement to deliver management reports (accountability) approved in general assembly, which if they were not accepted by the

¹²⁰ As an additional allegation of non-recognition of trade union organizations that are not close to the Government, the ASI referred to the situation of the National Union of Officials of Professional Legislative Workers and Workers in the National Assembly (SINFUCAN). It reported that ever since the Executive was established as the employer of the National Assembly workers in January 2017 – with the administrative intervention decreed by the TSJ, the ASI said that the Government as a new employer had failed to recognize the representation and legitimacy of SINFUCAN and did not allow the latter to access union discounts, as well as that the CNE put obstacles to its electoral process and did not respond to requests to authorize the convocation to union elections.

¹²¹ Similarly, the ASI referred to cases of rejection of the registration of the organizations SIUNPROTEC and SINTRANDECOS. Meeting in Caracas, 11 July 2012.

authorities – in which they could exercise discretion – also prevented the union from operating. The Commission also received numerous complaints of obstacles to registration and in relation to the procedures required for a union to be effectively recognized during its interviews with trade unionists from different regions.¹²²

- 163.** In addition, multiple complaints of abuse of discretion and partiality of the RNOS in relation to trade union organizations that are not close to the Government were submitted to the Commission – from a failure to reply or to deliver necessary documents and certificates to the trade unions, to issuance of resolutions contrary to freedom of association. In this regard, the SIDERNAC trade union denounced how the RNOS, on the instruction of the Government, blocked the recognition of its elections held in 2016, by refusing to hand over the name change certification document required by the CNE to recognize the elections, a document that the trade union only managed obtain more than a year later, thanks to the support of “a *Chavista* friend”. Yet a pro-government trade union with only 15 members received recognition and no formalities were required.¹²³ Another example of a documented allegation denouncing RNOS actions contrary to freedom of association was raised by the Single Union of Oil, Petrochemical, Gas and Allied Workers of the state of Falcón (SUTPGEF), the oil trade union. This trade union reported how the RNOS had, through an administrative order, forced the restructuring of its executive committee once its secretary general, Mr Iván Freites, had been removed from office.¹²⁴
- 164.** For its part, in its communications to the Commission, the **Government** claimed that freedom of association in Venezuela had improved once President Chávez had taken office. The number of trade union organizations had increased from just over one hundred to more than 3,000 by 2007; registration procedures ceased to be discretionary and trade union

¹²² SUTPGEF alleged that its secretary general had been fired because of statements he had made in relation to a serious oil accident in 2012 (the Government’s version was that it was sabotage and the secretary general reported that it was actually an accident caused by a failure to respect basic safety standards). It stressed that the action of the RNOS forcing his removal was part of the reprisals of the authorities for the actions of the trade unionist. Meeting in Caracas, 11 July 2019, detailing the RNOS order of 30 April 2014.

¹²³ Various witnesses presented similar allegations of interference against organizations that are not close to the Government. In this regard, SINTRAINCES stressed that the MPPPST authorities had not responded to the reports that, according to the LOTTT, this union presented for 2016 and 2017. ASI communication of 21 March 2018. Meetings in Caracas, 11 July 2019.

¹²⁴ In this regard, the testimonies of trade unionists from Carabobo outlined the difficulties endured since the creation of the RNOS, claiming that the registration authorities did not reply to statutory procedures and to reports that trade unions were obliged to submit in order to continue existing legally and that they obstructed registration. As an illustration, one of the witnesses referred to the order of 2 January 2014 (referred to the Commission), whereby the RNOS had identified several reasons why the trade union SUNSTTRASSE CARABOBO could not be registered, including minor issues (such as replacing the term “associates” with “male affiliates and female affiliates” in the statutes) or highlighting an application of the law that seemed destined to hinder the procedure, when the authorities could have opted for an interpretation of the statutes according to which it complied with the law (such as explaining that the provisions of the statutes that indicated that it is not an obligation to pay the union fee and that then defines the amount of the contribution, are compatible with article 412 of the LOTTT, which establishes that it is an authorization granted by the worker to the employer). On 5 September 2014, the promoters reported the correction of the deficiencies set out in the order of correction, but no statement of any kind was obtained from the authorities, and therefore the trade union organization was not registered. Meeting in Valencia, 10 July 2019.

officials were no longer persecuted.¹²⁵ A Government representative¹²⁶ denied the allegations concerning obstacles to registration procedures and, as for the ASI, stated before the Commission that: (i) the ASI tried to register but that the supporting documents were of poor quality and were not sufficient to constitute a confederation; (ii) the Government requested a corrected application for registration, but that the quality of the documents in the corrected applications was even worse; and that (iii) the Government had not closed consideration of the file concerning that organization and maintained informal contact with the CBST so that the latter could examine with the ASI how the situation could be resolved; and (iv) despite not being approved as a trade union organization, it was included in one of the country's delegations to the International Labour Conference.¹²⁷

165. In reply to subsequent questions from the Commission and in light of the documentation received concerning the application for registration, the Government: (i) confirmed that it was true that it had taken more than one year and seven months to notify the order requesting the correction of the registration request – and confirmed that in that period of time the ASI had visited the RNOS on many occasions, seeking information and receiving no response, even when the order had already been issued. By way of explanation, the Government indicated that, in order to address the problems raised by the application, discussions had been held in parallel with the CSA (a regional organization of which the ASI is a member and which had insisted on resolving the situation) to achieve the formal registration of the ASI. The Government stated that, pending a way to formalize the registration, without committing any violation of the legal system, it had indicated to the CBST the importance of including the ASI in delegations to international meetings and hoped that it could be accredited for the 108th (Centenary) Session of the International Labour Conference; (ii) in response to questions about whether the objections set out in the correction order were compatible with Convention No. 87 (such as having begun the constituent assembly a few hours later than stated in the announcement, or that the type of organization to be created had not been specified (when it was clear from the file that a trade union confederation was being constituted)) the Government stated in general that these were simple requirements that were demanded of all trade union organizations. The Government indicated that since 2013 some 500 organizations had complied with the legal requirements, and that this was done to protect the organizations and to give them legal status – thereby avoiding a situation in which an employer counterpart might subsequently allege a legal breach and file a challenge before the courts to repudiate the workers' organization concerned; (iii) in view of the Commission's finding that the documents provided in the ASI application appeared to meet all of the requirements with respect to the correction order, the Government admitted that no formal response had been given to it and reiterated that it shared the opinion of its officials, who had considered that the application did not comply with legal requirements and promised to share the respective technical report with the Commission – while expressing its hope that the situation could be resolved and the registration formalized; (iv) the authorities' report on the correction letter, subsequently submitted by the Government, indicated that it was impossible to register the ASI because it had not fulfilled two requirements: (1) it had not signed the payroll of members of six of the member trade union organizations and the documentation had not been signed by the executive committee; and (2) it had not amended the statutes to include certain procedures and quota issues in

¹²⁵ Government communication of 21 September 2018. Executive report.

¹²⁶ Meeting with Government representatives, Geneva, 15 January 2019. Hearings of 8 to 10 May 2019.

¹²⁷ Meeting with Government representatives, Geneva, 15 February 2019.

accordance with the law (sections 412 to 414 of the LOTT).¹²⁸ During the hearings before the Commission, the Government acknowledged that it had not communicated this information to the ASI, but pointed out that the ASI could have filed a judicial appeal challenging the lack of administrative response, and reiterated that it was seeking a solution so that the confederation could be formalized.

- 166.** Regarding the obligation that the LOTT (principally section 388) imposes on organizations to communicate detailed and updated membership information (name and surname, identity card, nationality, age, profession or trade and address of members), the Government stressed that it was data to ensure the real existence and representativeness of organizations. It affirmed that it was also carried out in response to the requirements of the credentials committees for objective mechanisms to determine representativeness. It stressed that it was a simple process that involved the use of a simple update form. The Government did not share the opinion of the CEACR – as it had challenged these provisions – as it considered that the regulations and practices related to registration did not limit the exercise of freedom of association or were they contrary to Convention No. 87.¹²⁹
- 167.** A few days before the Commission arrived in the country, the Constitutional Chamber of the TSJ issued a ruling resolving the *amparo* appeal that had been filed in 2013 by several union officials, together with the organization Venezuelan Program of Education Action in Human Rights (PROVEA) against several provisions of the LOTT, on the grounds that they were contrary to the Constitution and violated freedom of association. The TSJ found that the provisions and procedures of the LOTT relating to registration which had been challenged in the *amparo* appeal were constitutional and in accordance with trade union autonomy.¹³⁰ Regarding the obligations to update payrolls and submit financial accounts established in section 388 of the LOTT issues, the TSJ ruled that they did not violate union autonomy and rather offered legal certainty to trade unions and their members.
- 168.** In addition, in response to the Commission's requests for empirical information, the Government provided the Commission with the statistical data presented below:¹³¹
- (a) *the number of decisions concerning non-registration* (in which registration was not authorized) which had occurred from 2013 to 2018 (a total of 1,287) together with the number of new trade unions registered in those years (a total of 776):¹³²

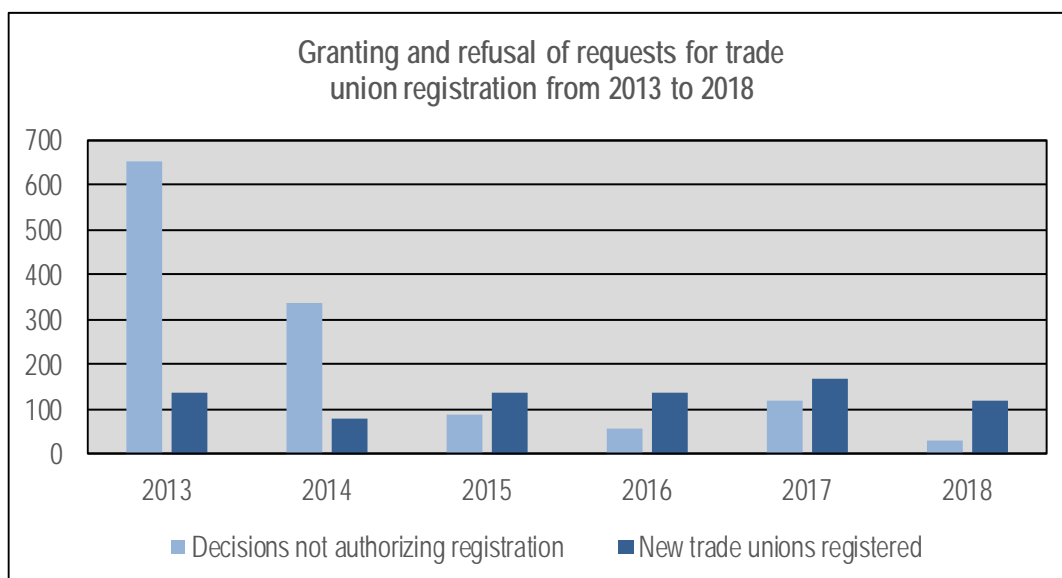
¹²⁸ Videoconference with Government representatives on 23 April 2019. This version of events was confirmed in a communication dated 19 April 2019.

¹²⁹ Additional report from the Government to the Commission dated 30 April 2019.

¹³⁰ Constitutional Chamber of the Supreme Court of Justice, judgment No. 0170, issued on 4 July 2019.

¹³¹ Communications received between 8 and 12 August, during the Commission's visit to the country. Although initial data were presented for 2019, they are shown up to 2018 in order to be able to compare full years. In the case of divergence between communications, the Commission has taken into consideration the most recent communications sent by the Government.

¹³² The partial figures for 2019 should also be noted. The MPPPST reported that the total number of new registrations since the creation of the RNOS as of July 2019 was 851, with 75 new registrations and only two recorded measures concerning non-registration in the first half of the year.



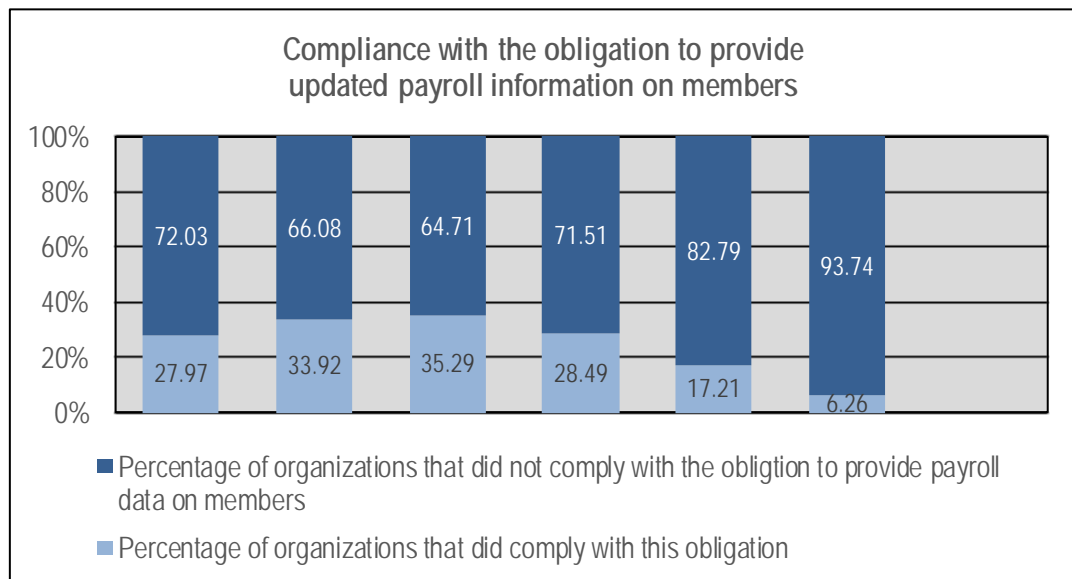
Source of data: MPPPST, 2019.

- (b) *Compliance with the obligation to submit payroll information and reports* (section 388 of the LOTTT) in relation to the total number of registered trade unions (the MPPPST had previously specified that 52 per cent of trade union organizations in the country considered themselves to be “active” and 48 per cent “inactive”, although the terms were not defined):

Year	Total number of registered trade union organizations (total)	Organizations that had complied with the obligation to provide updated payroll information on members	Organizations that had complied with the obligation to provide reports
2013	18 303	5 120	5 125
2014	18 384	6 235	6 234
2015	18 519	6 536	6 605
2016	1 8654	5 315	5 315
2017	18 824	3 240	2 320
2018	18 943	1 185	1 185

Source of data MPPPST, 2019.

Regarding the obligation to update payroll data concerning members, the trend with respect to compliance is reflected in the following table:



Source of data: MPPPST, 2019.

Interference in electoral processes

169. Several **workers’ organizations**¹³³ claimed that favouritism with respect to organizations and options that are close to the Government and the obstacles to the functioning of independent organizations had been particularly insidious with respect to the interference of the authorities in trade union electoral processes. They recalled that the 1999 Constitution gave the CNE competence to organize and control the elections in workers’ trade unions, a competence that the CEACR considered incompatible with Convention No. 87, in response to which the Government argued that the intervention of the CNE in trade union elections was optional.¹³⁴ In this regard, multiple trade union organizations told the Commission that resorting to the CNE was not really voluntary and emphasized that it was not conceivable for them to hold elections without fully involving the CNE. They emphasized that both the Electoral Chamber of the TSJ and the Public Ministry had confirmed the need to have recourse to the CNE in order to hold elections – omitting any mention that it was an optional possibility. The labour inspectorate also required in its list of documents necessary for the presentation of collective bargaining the “*Electoral Gazette* or ballot issued by the CNE through which the validity of the executive board of the trade union is certified”.¹³⁵

¹³³ In particular, the CTV (communication of 18 March 2018), the ASI (communication of 21 March 2018) and UNETE (videoconference of 30 April 2019). Likewise, witnesses of the CTV in the videoconference of 6 May 2019 and in the hearings from 8 to 10 May 2019.

¹³⁴ In this regard, the Public Ministry, as reflected in judgment No. 107 of the TSJ – Electoral Chamber of 28 July 2016 (file No. 2015-000120, date: 28 July 2016), stressed that, in a case of electoral abeyance, the Electoral Chamber should convene the CNE “as the governing body of the electoral process that must be convened in the present case, given the confession of electoral abeyance”. See also the position of the TSJ in the judgment of 15 May 2019 of the Electoral Chamber of the TSJ, file No. AA70-E-2018-000056.

¹³⁵ Requirement contained in the Labour Inspection list detailing the requirements for the presentation of collective agreements that several witnesses delivered to the Commission. Meeting in Caracas, 11 July 2019.

170. In addition, they denounced the excessive complexity of the procedure and claimed that it was necessary to comply with numerous requirements established in the election regulations approved by the CNE itself, regulations that greatly hindered the conduct of elections and under which the CNE retained in any case certain electoral functions. To this were added burdensome requirements imposed by the CNE, such as the fact that documents must be certified by the MPPPST or that four physical copies and one electronic copy of all documentation must be submitted. Given the current situation in the country, this generated costs and difficulties that were too onerous for some grassroots unions. For instance, for a national trade union such as the National Union of Workers of the National Institute for Socialist Training and Education (SINTRAINCES) – which had a recognized history and experienced members, organizing elections involved a year of paperwork and negotiations, not counting the additional time that the bureaucratic process could take until the publication of the results by the CNE, which could easily be more than an additional year. In conclusion, unlike in the past, when trade unions organized their elections autonomously, the CNE through its regulations, procedures and interventions improperly enjoyed the power to authorize and organize union elections, which it exercised with clear favouritism towards the organizations close to the Government, to which the regulations with the same requirements were not applied, there were no delays, etc. and discriminating against the other organizations, with respect to which it suspended, annulled or simply discouraged electoral processes due to its onerous procedures.

171. Various workers' organizations stressed to the Commission that it was customary that, on the expiry of the term of office of the executive committee of some trade unions, particularly when they were not going to win an option related to the Government, the CNE did not give effect to the electoral processes, or requests for recognition and publication of results – so the leadership was considered to be in abeyance and many unions were paralyzed. The Government relied on the fact of the “electoral abeyance”, endorsed by the Supreme Court of Justice, in order to ignore certain trade union organizations and refuse to negotiate with them.¹³⁶ In contrast, neither the trade unions related to the Government, nor the elections in which they won the nominations close to it, experienced undue problems or delays in the electoral processes or the recognition of their results by the authorities. They obtained it much faster, sometimes in a month, compared to the long duration of up to several years for non-related trade unions or the candidatures they had been able to obtain. Although a few trade unions had been allowed to organize elections without going through the CNE, it was because those organizations were close to the Government. As a result of this interference and discriminatory treatment, the Government could conduct mock collective bargaining with trade unions or groups that were close to the Government and did not independently represent the interests of the workers. Likewise, they stressed that any worker could paralyze the elections by raising an appeal before the CNE or the TSJ and obtain resolutions or partial judgments, in particular from the Electoral Chamber of the TSJ, which were almost always against the trade unions or independent candidates in electoral disputes, such as those related to the designation or performance of the electoral commissions. Finally, the application of electoral abeyance was also discriminatory – although the MPPPST was strict with unions that were not close to the Government, flexible formulas outside the law were allowed in relation to organizations close to the Government in order to facilitate negotiations.

172. As examples of this interference by the CNE, the ASI reported, with detailed documentation, two cases in which it claimed that, despite having carried out electoral processes that met all the requirements established by law, the CNE had not published its recognition of the electoral process. As a result, these unions had been prevented from operating since, without recognition of the elected executive committees they could not bargain collectively,

¹³⁶ The LOTT requires that in order to carry out collective bargaining, private organizations must have “executive committees that operation within their statutory period” (article 437).

denouncing the breach of the agreements: ¹³⁷ (i) SINTRAINCES had scheduled its elections for 29 March 2016, having complied with all legal requirements in 2015 (including notification to the CNE on 21 October 2015, publication in press of the announcement on 31 October 2015, convening an assembly for the election of the Electoral Commission on 3 November and sending the respective notifications to the CNE). The CNE ordered the electoral schedule to be changed and postponed the process on up to 13 different occasions – finally the elections were held on 30 August 2016. However, despite having presented all the necessary documentation, the CNE had not published the recognition of the elections in the *Electoral Gazette*. The MPPPST had also not acknowledged any application or documents making a request. However, in October 2017 it had acknowledged a collective agreement project for a government-linked trade union – thereby promoting trade union parallelism and ignoring SINTRAINCES, which had a current collective contract and had 6,020 affiliated workers; and (ii) the Single Union of Public Employees of the Carabobo State Government (SUEPGEC) carried out its electoral process complying with all legal requirements between December 2013 and June 2014 (notifications to the CNE, announcements in the press, election assembly, etc.) and with the participation of a CNE official to supervise the electoral process. However, the CNE never published the acknowledgment and maintained inaction and silence in this regard (on 17 November 2014 and on other occasions communications were submitted to the CNE requesting a response but none was received). At the beginning of July 2019 (just before the Commission’s visit to the country) the union visited the CNE to request certification of its electoral process, and the CNE officials responded that it had not yet been signed by the directors.

173. The CTV, as well as UNETE and other trade union organizations interviewed directly by the Commission, ¹³⁸ also referred to several specific examples in which they reported the obstruction of electoral processes and of the renewal of the executive committees of independent trade unions:

- (i) On 12 January 2005, the CNE annulled the elections of the governing bodies of the CTV and, since that time, it has placed an infinite number of obstacles to the realization of a new electoral process in order to prevent the renewal of the governing bodies of this confederation. The Executive Committee had been trying to hold elections for eight years but the CNE was putting obstacles in its way– all the processes required by the law and the authorities had been carried out, including the renewal of the congress four years ago, although a challenge was filed before the TSJ that interrupted the process. The electoral commission of the CTV had reached the eighth step of the process, but could not continue because the CNE did not supply the preliminary list needed for it to continue. First, the CNE verbally justified it by referring to the existence of a procedure before the Electoral Chamber of the TSJ. However, the said court decided in judgment no. 2016-000094, of 16 April 2018, to order the electoral commission to carry out all the necessary steps to continue with the electoral process. The CTV continued to send communications to the CNE

¹³⁷ In other cases, electoral abeyance had prevented basic procedures such as the management of their bank accounts. In this regard, the fact that the SOIE trade union of Lara, had not received recognition of its new executive committee by the CNE meant that it could not withdraw funds from its bank since the bank required the certification of the CNE to change the signature of those who were authorized to withdraw funds – the union tried to open an account in another bank to receive salary payments for members but this other bank also required the CNE certificate in order to open a new account. This illustrated to what extent recognition by the CNE might be necessary since even external institutions, such as private banking, required such recognition to allow trade unions to take steps such as allowing a new executive committee to manage union funds.

¹³⁸ Meetings in Puerto Ordaz, Valencia and Caracas during the visit of the Commission to the country (7–12 July 2019).

requesting the required preliminary listing, as well as a meeting to reschedule the electoral schedule, and as of July 2019, no response had been received;

- (ii) in the Ministry of Foreign Affairs, trade union elections were suspended due to a challenge submitted to the CNE by the official candidate, which is why the executive committee of the trade union is now in “electoral abeyance”;
- (iii) the trade union of the state-owned telephone and telecommunications company, CANTV of Caracas had not been able to carry out elections since 2009 due to the obstacles introduced by the Government and the CNE, which led to the expiry of the executive committee in 2014. The last elections, set for the 29 April 2015, were finally suspended and then the process was annulled and the CNE ordered it to start again. There had only been elections in small CANTV unions, in the interior of the country, controlled by managers from Bolivarian telecommunications control centres;
- (iv) in the United Steel Workers Union (SUTISS), the union elections, where 13,600 workers were due to participate, had been suspended since 2015. In the past the union, which was rather close to the Government, had challenged the rules that required the participation of the CNE (and they had tolerated it) but on this last occasion they had had to defer to the CNE, under the threat from the public company that if they did not do so, they would not be recognized. Three workers were used by the authorities to file an *amparo* appeal (proof of this is that these workers did not even know the content of the *amparo*, and that the suspension decision argued that notifications had not been made, when the process was public and well-known). Since the precautionary suspension decision issued by the Supreme Court in January 2015 the process was blocked (the final judgment was never handed down) and the executive committee was paralyzed (as a result of missing members – two of its members had died, the company refused to accept the incorporation of the new members and the restructuring of the Committee had not been allowed by any means – while some of its members had become political operators of the Government). This suited the public company (Siderúrgica del Orinoco Alfredo Maneiro (Sidor)) since, in this way, instead of having to deal with the entire union, it communicated only to the secretary of the organization, who at the same time was the vice president of social development of the Venezuelan Corporation of Guayana (CVG) (a public corporation of which the Sidor company is a part), which implied a clear conflict of interest when working as an employer;¹³⁹
- (v) in the Federation of Workers in the Electric Industry (FETRAELEC), elections were held over ten years ago. The Federation had an electoral commission and had completed all the paperwork required to hold elections, but neither the CNE nor the TSJ had allowed them to take place;
- (vi) the tenure of the executive committee of the Workers’ Trade Union of the Electrical Industry of the state of Aragua had expired three years previously. It had held assemblies and made all kinds of submissions to the Ministry of Labour and the CNE, without success. It had asked in vain for a copy of the electoral file and, in particular, for the document setting out the election results;
- (vii) the electoral commission of the Federation of Associations of University Professors of Venezuela (FAPUV) had repeatedly provided the appropriate electoral documents to the CNE (such as electoral plans), but it had been systematically rejected in order to prevent the renewal of its executive committee and weaken the Federation: although in the past it had discussed the labour agreement, since 2004 the Government refused

¹³⁹ Meeting in Bolívar with the trade union officials concerned, 10 July 2019.

to discuss it with the Federation (arguing that the Federation was not registered as a union) and, instead, negotiated with minority trade union organizations that were close to it (this situation of exclusion led to an action of protest and indefinite unemployment, in which there were physical attacks in universities that were never investigated; currently the Government used the excuse of electoral abeyance – but instead negotiated with a new pro-government minority federation that had not held elections either;

- (viii) the National Federation of Health Workers (FETRASALUD), with around 120,000 members, however, was able to hold elections in June 2015 (the current period expires in 2020) although recognition and publication of the election results by the CNE took up to a year or two, in open discrimination towards their unions, since the results concerning pro-government organizations were published a month after their elections. Subsequently, in its role as the employer, the Government itself refused to enter into discussions with FETRASALUD and its unions alleging that it was in default;
- (ix) the Metropolitan Unitary Trade Union of Public Employees (SUMET-HUC) was also able to conduct its elections, on 15 September 2016, governed by the CNE, with its protocol and general schedule, but the votes themselves were organized by the trade union. It was difficult, however, to carry them out: on several occasions they were delayed because of minor issues: because of a missing position, because there were protests, because the CNE was busy, or because national elections were being held at the time. The elections were delayed for four years, and in the meantime the trade union was not recognized by the employer, as it said it was in electoral abeyance;
- (x) the steel company SIDETUR (which was expropriated by the State) did not recognize SIDERNAC, the majority union (with 424 members), and refused union officials the time necessary for them to carry out their employers' organization activities. Likewise, the CNE and the Ministry of Labour did not recognize the results of their elections, which took place on 26 October 2016, under the pretext that the union had changed its name (it was previously SUTRASUSICARIS).¹⁴⁰ On the other hand, the company did recognize a minority but official union, which had only 15 members;
- (xi) the electoral commission that organized the elections of 22 February 2017 to elect the executive committee of the Workers Union of the state-owned company Metro de Caracas (SITRAMECA) refused to accept the presentation of a candidate to avoid competition with the official candidate that the President of the Republic himself supported – those affected filed an *amparo* appeal but the Electoral Chamber of the TSJ denied the requested precautionary measure. Various pieces of evidence were provided to the Commission attesting to the numerous abuses and manipulations perpetrated during the procedure with the sole objective of maintaining power within

¹⁴⁰ Despite having all the documents up to date (with the change of name reflected in the statutes, ratified by the assembly and all certified by the RNOS) the CNE required an additional RNOS certificate to prove that it was the union in question (a document that RNOS refused to deliver for months – and did not provide until more than one year later, on 14 December 2018). On the same day, the trade union submitted the document (order) to the CNE, which despite having obtained all the documents requested, did not respond to the application for recognition (a year and seven months had passed without response). In June 2019, the union made several attempts to submit to the CNE the formal notification of the announcement concerning new union elections, but the official in charge refused to accept the documentation (and verbally requested them to gather together documents that should have been sent by the electoral commission, laying a trap whereby he later claimed that the union was usurping the functions of the electoral commission). Meeting in Bolívar, 10 July 2019.

the SITRAMECA trade union and its pro-government candidate (as reflected in a tweet by the President of the Republic celebrating the victory).¹⁴¹

During its visit to the country, the Commission gathered from trade unionists in many regions of the country both additional information on the aforementioned cases, as well as multiple new complaints of interference in the electoral processes by the public authorities.¹⁴²

174. For its part, the CBST¹⁴³ confirmed before the Commission that organizations could apply to the CNE, although it argued that those who did not want to do so could freely develop their own electoral processes. It affirmed that article 293 of the 1999 Constitution (attributing the function of organizing trade union elections to the electoral Commission) was favourably received by many trade unionists who wanted to renew the union structure which, according to the CBST, had been bureaucratic and parasitic and did not allow the views of the grassroots to be expressed, so ways were sought to force elections to be held. Subsequently, in response to the observations of the ILO, the CNE defined two ways of conducting elections: one in which it maintained full authority and another in which the CNE simply recorded the final results but did not intervene in the development of the electoral process. In response to the allegations of opacity and complexity of the application process through the CNE, the representatives of the CBST referred to the desirability of guaranteeing the speed of the procedures and pointed out that it might be necessary to develop the right not to go to the CNE and to be able to assert it against the institutions that still did not recognize electoral processes carried out without the assistance of the CNE. On the other hand, they considered that some trade unionists, without properly following the established procedures, had used this issue politically to attack the Bolivarian governments.

175. In response to these allegations of interference in the electoral processes, representatives of both the **Government** and the CNE¹⁴⁴ stated before the Commission that: (i) under section 402 of the LOTT the mandates of the executive committees cannot exceed more

¹⁴¹ A subway trade union leader told the Commission (with the support of detailed documentation and audiovisual media) how: in the electoral process, armed motorists and SEBIN agents appeared photographing and intimidating people to support the pro-government candidate; when the pro-Government candidates were not appointed to the electoral commission, shots were fired; some people were targeted and subjected to death threats, as well as being subjected to dismissals and other forms of repression (see chapter 5); the assembly in which the election was voted was abroad and the photos showed that the government-related group was not in the majority. The vote was held by show of hands and at night where it was very difficult to verify the results and the photos provided appeared to show the inclusion of people who were not subway workers but who had come to raise their hands in favour of the pro-government candidate. Meeting in Caracas, 11 July 2019.

¹⁴² Meetings in Valencia, Puerto Ordaz and Caracas, 10 and 11 July 2019. In this regard, the Union of Workers of the Venezuelan Institute of Social Security of Lara State, denouncing interference from the authorities (including the director of the Hospital) in the electoral process in order to prevent the independent candidate from winning, through: the absence of response from the CNE to their requests, coercion of the electoral commission, anti-union dismissals, aggressions and other tactics to hinder the electoral procedure and harassment of union officials. The FUSBEC also reported that the CNE had not issued the electoral certification of the union of the Venoco lubricants company (now nationalized as PDVSA Vassa) despite having held elections that even had the support of the Electoral Chamber of the TSJ, which had decided in favour of the complainant workers.

¹⁴³ Meeting in Caracas, 11 June 2019.

¹⁴⁴ Videoconference with representatives of the Government and the CNE of 23 April 2019. Communication of 30 April 2019. Hearings from 8 to 10 May 2019. Meetings with the MPPPST and the CNE of 9 July 2019.

than three years without elections (to re-elect them or to elect new members) – otherwise they cannot perform tasks that exceed the internal administration (among other things, they cannot enter into collective bargaining); (ii) the participation of the CNE in trade union electoral processes was not obligatory but merely optional and the trade unions could also conduct their elections autonomously; (iii) in the processes accompanied by the CNE, any affiliated worker could file appeals – but an appeal did not suspend the electoral process (unless it was requested and approved by the CNE) – and it would be very unusual for them to do so, currently there were only four cases of suspensions in force)¹⁴⁵ – although until the remedies were resolved the electoral process was not certified and, consequently, the existence and treatment of challenges could lead to electoral abeyance and to the trade union being unable to operate; (iv) the delays in the publication of certifications that had been experienced in recent times were due to the migration process towards an electronic publication of the *CNE Gazette*,¹⁴⁶ however it was possible for a union to obtain a certification from the competent Director in the CNE; (v) Failure to opt for the accompaniment of the CNE did not entail any legal consequence with respect to the recognition of the executive committee or the ability of the trade union to carry out its functions – the unions that did not want to go to the CNE could organize their elections autonomously. If the elections were held autonomously instead of through the CNE (to obtain recognition of the electoral project and the executive committee), the unions would apply to the RNOS in order to obtain the corresponding certification (the MPPPST sent a copy of the model order created in this regard), and the RNOS would proceed to verify that the electoral procedure had complied with the provisions of the statutes, as well as any term established in the law; (vi) as evidence, the Government repeatedly cited two cases in which the assistance of the CNE had not been sought – that of the Caracas subway union and SUTISS.¹⁴⁷ In response to the question as to whether there had been other cases, the MPPPST provided a list of 15 additional unions that had carried out autonomous electoral processes without the intervention of the CNE;¹⁴⁸ (vii) before the Government assumed power in 1999, the CTV and other trade union confederations did not call elections and reached agreements with the employer sector that were damaging to workers – this had resulted in requests from the trade union movement to regulate union processes – and hence the origin of the constitutional provision – which along the way had been adjusted, so that

¹⁴⁵ The cases cited were those of: SUTRASALUD CARABOBO (2015), SUTRACORPSML (2016), SUNOFUTRAJUP-MPPRE (2016) and SINTRA-BAUXILIUM (2017).

¹⁴⁶ During the visit to the country in July 2019 the Commission was informed that the last edition of the *Gazette* was published in February 2019.

¹⁴⁷ The Government submitted as evidence the registration order of the executive committee of SITRAMECA concerning the elections held on 22 February 2017. The Commission was able to observe that the RNOS certification document affirmed that the CNE had certified the said elections. The MPPPST clarified that it was an error, as evidenced by the initial document of the electoral procedure, in which SITRAMEC notified the CNE of its intention to proceed to hold elections without the assistance of the CNE.

¹⁴⁸ The Single Union of Drinking Water, Sanitation, affiliated and related to Guárico State, SUTEPDRMASC, SINTRABEALPVE, SINTRAFCA, SIUNTRA-AJEVEN, SINUBTTRASDEINSA, SUNTRALCHARA and SUTTTRAPURE (all affiliated to the CBST); the SIBTRAMETROMARA (affiliated to the Bolivarian Federation of Workers and Related Transport Workers), the National Union of Workers, Marxist, Proletariat and Working Class of the Construction, Wood, Heavy Machinery, Roads and Similar Industries (affiliated to the National Unitary Federation of Bolivarian Construction, and Related Workers) and SUSTBIUTCEZ (affiliated to the Federation of University Workers of Venezuela); and SAEPINC, UTRABOTUNAL, SINTRAPC and SIAEOP (these last four are not affiliated with any organization or federation). In all cases, the electoral processes took place between 2017 and 2019.

at present the CNE only acted at the request of a party;¹⁴⁹ (viii) the CNE considered that the delays produced were mostly due to internal conflicts within trade unions (noting that the variations were also due to the different electoral schedules established by each trade union – such as how many days were scheduled for the election campaign) and that in the absence of challenges, the average duration of the proceedings was about five or six months, from the approval of the electoral project to the certification;¹⁵⁰ (ix) in view of the allegations made by the trade unions, the Government, although it expressed total ignorance and surprise regarding some of the issues raised (such as the problems of trade union executive committees with their banks due to the absence of CNE certification), acknowledged that it might be convenient to carry out a campaign to provide information about the optional nature of the appeal to the CNE;¹⁵¹ and (x) because default was an important issue that affected a large number of trade unions, the MPPPST indicated that, in order to alleviate the problem and avoid harm to workers, it would allow alternative collective bargaining mechanisms not provided for in the law, such as round table forums, or in the case of federations in default, trade union coalitions.¹⁵²

176. In addition, in response to the demands of the Commission for empirical information, the Government and the CNE provided the Commission with the following additional statistical data:¹⁵³

- (a) The length of time between the date on which the vote took place and the date of the resolution approving the recognition (for processes carried out with the assistance of the CNE from the second quarter of 2018 to June 2019). Out of a total of 348 procedures, of which 87 were contested, lengths of time ranged from a minimum of twelve days to a maximum of 920 days (with an average of 223 days). Those longer than 285 days correspond to processes that had been the subject of at least one challenge. These statistics do not reflect the entire electoral process since they do not take into account the different phases prior to the vote, in relation to which many trade unions reported that the electoral process had been excessively delayed or blocked.¹⁵⁴

¹⁴⁹ In the same vein, the CBST defended the regulated electoral processes (as well as the periodic information on registration of affiliation) as part of its “struggle before the revolution with yellow unionism or union mafias that cheated workers with false promises. and they never kept accounts”. Regarding the fulfilment by its unions of these obligations, the CBST stated that the majority of its unions were up to date and, consequently, were not affected by electoral abeyance. Videoconference of 7 May 2019.

¹⁵⁰ Estimate provided orally by the CNE. From the empirical data provided later by this institution, it is clear that the average is almost six months, counting only the period from the date of the elections (not counting the multiple phases beforehand) to the approval of the resolution on recognition.

¹⁵¹ The Commission received no response to some of the complaints described above, such as that of the SIDERNAC trade union in the company SIDETUR (in which it was claimed that there was Government interference by both the CNE and the RNOS to prevent the holding and recognition of elections).

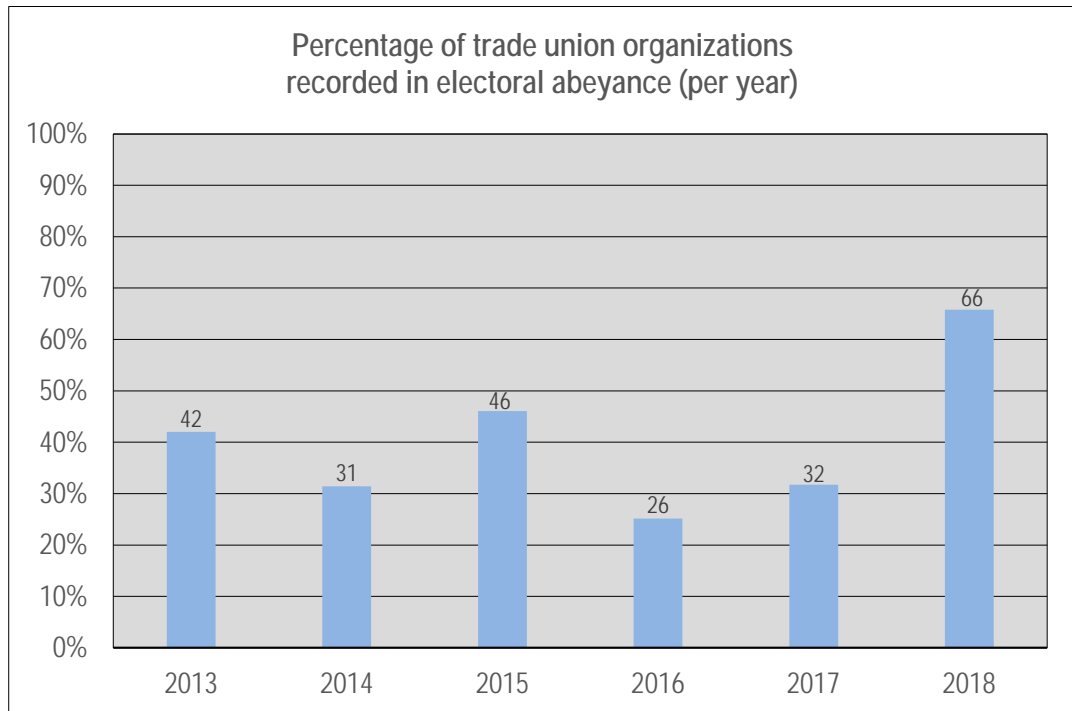
¹⁵² Meetings in Caracas, 8–12 July 2019. The MPPPST referred to the situation of the federation of the FUPTV oil sector trade union as an example.

¹⁵³ Communications received between 8 and 12 August 2019, during the Commission’s visit to the country. Although initial data were provided for 2019, they are shown until 2018 in order to be able to compare full years.

¹⁵⁴ These prior phases include: the announcement concerning the elections, the constitution of the electoral board, the preparation, presentation and publication of the electoral project, the consideration

Nor do they include the subsequent steps to certification – notification and publication, which are also subject to allegations such as non-performance or delay.

- (b) *The number of organizations in a situation of electoral abeyance:* the information is summarized below, showing, from 2013 to 2018, the percentage of unions in electoral abeyance, taking as a reference the total number of unions that were registered in each year: ¹⁵⁵



Source: MPPPST, 2019.

- 177.** In response to the allegations concerning the specific situations raised, the Government and the CNE stated: (i) regarding SINTRAINCES, the electoral process of 30 August 2016 had been certified by publication in the *Electoral Gazette* of 16 October 2018 (the elections were accompanied by the CNE and there were seven challenges all of which were declared inadmissible); (ii) regarding SUEPGEC several resources were declared inadmissible and the June 2014 electoral process was certified in February 2019 (it had not yet been published in the *Election Gazette* but the union was able to request certification from the CNE); (iii) as regards SUTISS, it was one of the unions that had never met with the CNE ¹⁵⁶ and in its last electoral process, three of its members had submitted a challenge to the Electoral Chamber of the Supreme Court, to the effect that there had been defects in form and substance in the announcement concerning the election and requesting a precautionary measure of suspension. The Government representative stated to the Committee that the process had

of observations submitted to it, the issuance of the preliminary electoral register and its challenges, the nominations and corresponding time limits, the closing report and designation of witnesses.

¹⁵⁵ The absolute numbers of trade union organizations in electoral abeyance are: 7,687 (year 2013), 5,780 (year 2014), 8,535 (year 2015), 4,693 (year 2016), 5,973 (year 2017) and 12,460 (year 2018). In addition, the Government believed that, by 2019, 48 per cent of trade unions would be inactive.

¹⁵⁶ The Government sent copies of the voting document of the last election conducted by SUTISS without the support of the CNE in 2011 (the RNOS did not exist then and the practice was to attach the record of the results to the trade union's file, without receipt or certification). Government Communication of 10 July 2019.

been suspended pending the introduction of the required corrections. On 13 January 2015, the Electoral Chamber of the TSJ approved the injunction and suspended the election process (six days before the date scheduled for the start of the vote), “until a final judgment is issued.” In response to the Commission’s questions on the status of the procedure more than four years later, the Government indicated that there was an appeal regarding an extension from one of the lawyers acting in respect of the case and that the respective order was pending;¹⁵⁷ that the complainants had not demonstrated any diligence before the courts in order to resolve the internal situation of the trade union; and that in spite of the situation of electoral abeyance, the company’s workers had discussed and approved a collective contract on 6 July 2017; (iv) regarding SUMET-HUC, the Government stated that the electoral process of 15 August 2016 was published in the *Electoral Gazette* of 12 May 2017; (v) concerning the elections of the Union of Telecommunications Workers and Related Industries of the Capital District (STTIT) for the period 2015-2018, the Government submitted CNE resolution No. 160512-057, of 12 May 2011, which had ruled in favour of the challenge filed by a worker against the election of the electoral commission (previously the CNE had decreed that the procedure should be suspended); (vi) as regards FAPUV, on 17 November 2011, observations on the electoral commission by the CNE had been officially delivered to the electoral project and to date no response had been received; (vii) as regards FETRAELEC, on 18 March 2016, the electoral commission suspended the electoral timetable because of the “negotiation of the collective agreement”; the last action in the electoral file was on 31 January 2017, submitted by workers affiliated with organizations belonging to FETRAELEC, in which there were various irregularities in the electoral process; (viii) regarding FETRASALUD, on 7 April 2016, the CNE approved the certification of the electoral process held on 29 June 2015, which was published in the *Gazette* of 19 May 2016; and (ix) regarding the CTV, a Government representative expressed regret concerning the situation and explained that the problem was due to the fact that, in the midst of a situation of default, some of the principal officials in the organization had died and when the electoral process had begun there were internal disputes among the executive committee on how to choose the new senior officials and some members had submitted a challenge to the TSJ, which it had resolved in April 2018, giving rise to the appeal (which annulled the initial announcement for non-compliance with the statutes of the organization and requested the electoral commission that had carried out all the procedures to continue with the electoral process). It was an internal problem relating to the CTV (the Government stated that the CNE had never intervened but that the electoral commission of the CTV had asked the CNE for advice on how to conduct its elections) and members of the trade union confederation had informed the Government that they were still working out how to solve it. Despite this, the Government continued to include the CTV in discussions regarding the international delegations that would attend ILO meetings.

4.2. Interference in relations between employers’ and workers’ organizations

178. The complainants, as well as several trade union confederations, claimed in their communications and statements to the Commission that the Government had established new forms of state intervention that entailed undue interference in the relations between employers’ and workers’ organizations, as well as in the life and autonomy of the latter.¹⁵⁸ They referred to the institution of the Workers’ Production Boards (CPT) as a case in point

¹⁵⁷ One of the documents provided by the Government, was a request for extension dated 6 May 2015, which by a decision dated 2 June 2015, had already been rejected by the TSJ.

¹⁵⁸ Communications from the complainants of 24 May 2016 and 30 August 2017. The ASI communication of 29 August 2018. Communication from UNETE, CGT and CODESA of 24 September 2018.

in this regard and the most recent attempt by the Government to control collective labour relations. They also claimed that in the past the Government had attempted to introduce or use other institutions as vehicles for interference by the Government and by the party of the Government – in particular the Workers Councils (sections 497 and 498 of the LOTTT), the Occupational Health and Safety Councils, as well as the Female Brigades and the General Staff of the Working Class (a body chaired by the President of the Republic and which coordinated with the Workers’ Production Boards). In reply, the Government denied that these institutions interfered in relations between employers’ and workers’ organizations or in the life of trade unions and stressed that the civil and military union represented by some of these new institutions was intended to prevent production from being diverted for illegal purposes.¹⁵⁹

4.2.1. Workers’ Production Boards (CPT)

179. The **complainants** alleged in their written submissions and oral testimonies that it was intended to replace the worker–employer relationship with a worker–government relationship, which obstructed the exercise of freedom of association of employers and workers.¹⁶⁰ They stressed that the Workers’ Production Boards, as well as the Local Supply and Distribution Committees (CLAP) or the Women’s Brigades, were structures aimed at securing the loyalty of workers in the service of and for the purposes of the Government, thereby complicating and making unworkable the operation of the legitimate labour relationship between workers and employers in the private sector. They claimed that, under Decree No. 2535, of 8 November 2016, the Workers’ Production Boards had been created with the aim of “promoting the participation of the working class in a leading role, in the management of productive activity from public and private labour entities, which will support the Great Sovereign Supply Mission, in order to guarantee timely access to goods, food, medicines and other products essential for life” (section 1). The Workers’ Production Boards were composed of three workers and four Government representatives with the overall mission of being “the body responsible for conducting the review, approval, control and monitoring of the fundamental programmes and projects of the productive process of the entities of work” (section 3). The complainants claimed that the Workers’ Production Boards were used as a mechanism for state intervention in business development, thereby obstructing the operating capacity of companies and the exercise of freedom of association. They claimed that the unions were hierarchically subject to supervision and control by the Workers’ Production Boards, which was detrimental to freedom of association for workers and employers, since it was not clear what was the valid structure of workers’ representation through which working conditions should be negotiated.¹⁶¹ According to some witnesses, under the political model advocated by the Government, the paradigm of freedom of association, in which workers’ and employers’ organizations defended the respective

¹⁵⁹ Meeting with Government representatives, Geneva, 15 January 2019.

¹⁶⁰ Written communications of 24 May 2016, 30 April 2017 and communications in the context of Case No. 2254 submitted to the CFA. Videoconference with representatives of the complainants, 22 March 2019.

¹⁶¹ The complainants further state that, for similar purposes, on 17 January, the Female Labour Brigades were created and on 18 March 2017, the General Staff of the Working Class was formed, a governmental body led by the President of the Republic, whose aim was to visit all of the CPTs in companies throughout the country.

interests of their members, was replaced by mechanisms that allowed Government control of the production process.¹⁶²

180. Regarding the operation of the Workers' Production Boards, the complainants stressed that, in practice, there was no clarity regarding their designation and sphere of activity. In this regard, a representative of a leading business group affiliated with FEDECAMARAS told the Commission how an MPPPST official visited enterprises and announced that certain persons were members of the Workers' Production Board (without any transparency as to their performance or election, when in theory they should have been appointed by an assembly – which had not happened) and demanded that the company should give them information (including on issues that, according to the LOTTT itself, should have been given to the unions). The representative of this business group said that for the moment they had been able to avoid the actions of the Workers' Production Board, by administratively questioning the appointments before the MPPPST, based on the regulations governing the Workers' Production Boards, but that other companies had not had not been so lucky. Other witnesses denounced control by Government authorities, arbitrariness and lack of guarantees in the elections – without transparency or due process. They pointed out that, while they were being set up, a representative of the MPPPST arrived at the place of work without prior notification, and announced that elections would be carried out on the spot, without following the correct procedures, with a vote by show of hands, without even verifying that the elected candidates met the eligibility requirements established in law. Another witness stated that, in another company it was the CBST that appointed the members of the Workers' Production Board – without respecting the rules related to that institution. All this contrasted with the highly regulated nature and the numerous procedural stages required for union elections under CNE rules. Several witnesses concluded that, although the Workers' Production Boards had not been fully rolled out at present (far from the ambitions of the law under which they had been established, the second provision of which stated that there should be at least one Workers' Production Board per place of work within ninety days from the date of its publication on 6 February 2018), and although its implementation could encounter resistance in places where there were strong independent unions, there were some experience principally focused on strategic sectors such as food (in which there was already tight control by the State, including through the armed forces). They stressed that it was important to be alert in case they were established in a more widespread manner, due to their control by the Government and their possible interference in collective relationships between workers and employers (highlighting in this regard their constitution and operation under the control of the MPPPST and the central office linked to the Government, the presence of the militia, etc.).

181. FEDEINDUSTRIA indicated to the Commission¹⁶³ that its representatives were invited to consult on the Constitutional Act on Workers' Production Boards (LCCPT) within the framework of the ANC workers' commission, at the invitation of Francisco Torrealba and without the presence of other business organizations. During the consultations, FEDEINDUSTRIA expressed its opinions, including doubts as to whether its functions could overlap with those of the trade unions and about the inclusion of a militia in the

¹⁶² The Commission learned that these mechanisms – referred to in the 2012 LOTTT as workers' councils and subsequently evolving as Workers' Productive Councils, have their programme set out in the Second Socialist Plan 2013–09 (Homeland Plan Act) under which they are to strengthen their presence in productive units as part of the great historical objective of "continuing to build the Bolivarian socialism of the 21st century, in Venezuela, as an alternative to the destructive and savage system of capitalism" (section 2.1 and subsection 2.1.4.3) – and without making any reference to the functions of workers' or employers' organizations.

¹⁶³ Videoconference of 7 May 2019.

composition of the CPT. They indicated that they were not opposed to the introduction of methodologies that helped production and stated that, to their knowledge, CPT had not been installed in the companies affiliated to FEDEINDUSTRIA.

- 182.** Regarding the **workers' organizations**, UNETE, CGT and CODESA ¹⁶⁴ condemned the introduction of the Workers' Production Boards as an interference of the Government in labour and trade union matters. They stressed that they were subject to regulations in January 2018 under legislation published on 6 February 2018, which had not been subject to consultation (the LCCPT, adopted by the ANC). They considered that given the "civic–military" composition of the Workers' Production Boards, the resulting interference in labour relations was not only governmental but also military. These trade union centres denounced that the creation of the Workers' Production Boards constituted a violation of freedom of association, as was clear from their mission (which includes the promotion of workers' cooperation in the workplace – section 12 – or contributing to the socialist model – section 4), its composition (its representatives elected directly under the direction of the Government and enjoying excessive privileges) and management (considered at a higher level than the unions – section 17). With this configuration, in the opinion of the above-mentioned organizations, the Workers' Production Boards could prevent a strike by calling it a boycott or marginalize the actions of trade union organizations – although, in order to maintain appearances, the law by which they were governed declared otherwise. The Commission was informed that, in addition to the CPT, other State bodies such as the security forces or SEBIN were used as control and interference mechanisms to avoid union actions (such as strikes) that could affect productive activity. Illustrations were given of the presence of such mechanisms in health and other sectors, to discourage protest action. In the hearings before the Commission, representatives of UNETE, a trade union confederation that had initially been close to the Government, stated that when the idea of the workers' councils was introduced, UNETE had hoped that it could work in the recuperated enterprises so that the workers could participate in production. However, UNETE pointed out, these and other institutions were completely taken over and the Workers' Production Boards (as well as the original workers' councils and the Occupational Health and Safety Councils) were used at will by the Government against independent trade unions.
- 183.** In its written communication and oral statements, ¹⁶⁵ the CBST stated before the Commission that the proposal to establish the Workers' Production Boards had originated with the organized working class (through the CBST) to address the need for production, in the face of the attitude of sabotage espoused by private entrepreneurs and FEDECAMARAS, and they were based on direct management of the social work process. In 2014, the CBST had agreed to promote this form of organization to supervise production so that, if an enterprise artificially lowered production, it would be reported to the competent bodies. In a congress held by the CBST in 2017, the organization proposed an Act on Workers' Production Boards, which was prepared and approved by the ANC. Its objective was to regulate the constitution, organization and operation of the Workers' Production Boards, so that they, in turn, were able to promote, elevate and control the processes of production, supply, marketing and distribution of goods and services to meet the needs of the population. The law enshrined the democratic exercise by allowing for the election of its members in assemblies of male and female workers. The CBST alleged that, despite this, the business sector continued to ignore this concept. It stated that there were currently 1,035 Workers' Production Boards, principally in the agri-food, chemical–pharmaceutical and personal and household hygiene products industries. The CBST said that the Workers' Production Boards were actively integrated within the trade union structure – although, the CBST said, they were not trade unions and the CBST could not affiliate them at the present time. The CBST

¹⁶⁴ In particular, the communication of 24 September 2018.

¹⁶⁵ Communication of 26 December 2018. Videoconference of 7 May 2019.

emphasized that, from the logic of the revolution, there should be no tension or contradiction between the labour of the trade unions (representing the workers) and the Workers' Production Boards (defending production). Without ruling out that there could have been friction between the two institutions in some places, the CBST acted as guarantor of dialogue between them. The CBST organized both Workers' Production Boards and unions. In addition, it had a "situation room" for all Workers' Production Boards in the country located at the headquarters of the CBST, which functioned as a "national command post" to which all Workers' Production Boards reported productive anomalies. Often members of the Workers' Production Boards members were affiliated with CBST unions. The CBST considered that in the event of a strike, the Workers' Production Board should stay out of the dispute, but it could contribute to enforcing the established protocols to guarantee a correct stoppage and a resumption as soon as possible. As for the composition of the Workers' Production Boards, the CBST claimed that its seven members were elected by assembly – and confirmed one of them had to be a member of the militia. This was not a problem since, in the Bolivarian Republic of Venezuela, almost all the workers were members of the militia, and the representatives of the CBST who met with the Commission were an example, but if there were none they would look for a worker who could join the militia training process. Regarding the creation of the General Staff of the Working Class, the CBST stressed that it was a body that promoted standards where the CBST-CCP intervened directly, informing the Government about production indicators. It was an important institution in the framework of the momentum of production, which was created by the President of the Bolivarian Republic of Venezuela in 2017 with the fundamental objective of ensuring efficient and effective production, where workers as the main protagonist could counter sabotage by some employers and workers who joined the plan to destabilize production and undermine the Venezuelan people. In addition, the General Staff had the task of providing inputs to the national Government to generate policies aimed at improving production.

- 184.** For its part, the CTV ¹⁶⁶ stated that the Workers' Production Boards, as well as other initiatives, such as workers' councils, were part of the Government's attempt to introduce "supervision by workers" through which it could promote its political programme. Although the councils had been the subject of official literature and legal regulation, they had never been well defined and so far the experiences in introducing the councils and the supervision had not been successful or stable. The official press stated that control of the councils had originated with the Bolivarian workers and they had been promoted by various Government institutions. According to the CTV, so far, in practice these workers' councils and control mechanisms had not produced tangible results, they had rather made matters more opaque. As concrete examples of attempts to establish these mechanisms, the CTV referred to: (i) the creation in 2012 of workers' councils in the Ministry of Foreign Affairs (but the trade union had opposed their taking on union functions); (ii) in the state-owned company BAUXILUM, members of the workers' council, appointed by the company, who were responsible initially for purely business functions and who also exercised union functions, began systematically excluding the union – subsequently, the company itself felt the need to limit their activities; (iii) in the state telephone and telecommunications company CANTV, a type of workers' council was created, called the Bolivarian Telecommunications Command, composed of a vice-president and several managers of the company, including human resources and labour management; (iv) in the health sector, several workers' councils had been created; and (v) at the headquarters of the National Parks Institute there was a workers' council, but it did not work (there was another one in the Mérida delegation of that institute, which had operated as an employer union reporting to the director from 2010 to 2012, but it then disappeared). Finally, the CTV stressed that the inefficiency of these anti-trade union initiatives had led to a deepening of the government strategy to create parallel trade union organizations. The ASI also indicated to the Commission that, even if the introduction of the Workers' Production

¹⁶⁶ Communication of 18 March 2018.

Boards had not been an attempt by the Government to assert control, it had been demonstrated that, in some cases, they had undermined the function of trade unions. In this regard, the trade union confederation indicated that in an enterprise belonging to the state-owned automobile sector, the Workers' Production Board wanted to remove the incumbent trade union – a unionist who had opposed that initiative had been fired.¹⁶⁷

185. In response, the **Government** told the Commission that it denied the allegations of interference and affirmed that only workers' organizations could discuss collective contracts and that the functions of the Workers' Production Boards (or of the other institutions mentioned, such as the Occupational Health and Safety Councils) and the unions were different. The Workers' Production Boards were limited to productive issues and did not interfere with the functioning of the unions, as the LCCPT had clarified. The Government pointed out that the relationship between these institutions and the unions was one of coexistence – interacting and supporting each other, as was the case between the unions and the Occupational Health and Safety Councils (which also could not intervene in collective bargaining).¹⁶⁸ Subsequently, in response to the Commission's questions,¹⁶⁹ the Government indicated: (i) regarding implementation, that as of May 2019 there were 1,035 Workers' Production Boards in the country; (ii) in terms of concrete action, in a situation of economic warfare and of blockade and in the face of difficulties in accessing to spare raw materials, the CPT issued reports on production and the problems that affected it, so that the national Government could contribute efforts with the employer (if boycotts were alleged, any evidence was passed to the National Superintendence for the Defence of Socioeconomic Rights (SUNDEE) so that the correct formal procedures could be followed); and (iii) in terms of their practical impact, they had contributed to improving production in three companies (Pastas Sindoni, The Portuguese Sugar Company and Pifano Laboratory).¹⁷⁰

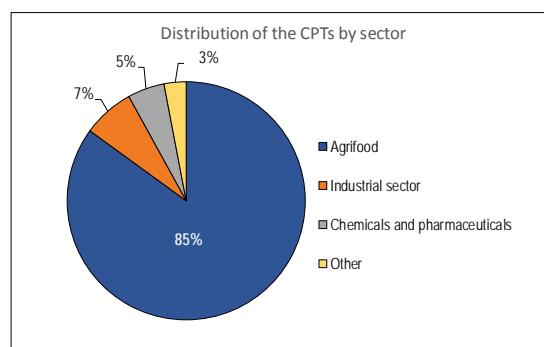
186. The **complainants** reported other forms of government interference in relations between employers' and workers' organizations. In particular, they condemned the interference of

¹⁶⁷ Meeting in Caracas, 11 July 2019.

¹⁶⁸ Meeting with representatives of the Government, Geneva, 15 February 2019. Under Case No. 2254, the Government had stated that: (i) the Workers' Production Board are an established institution under the LOTTT in order to promote the participation of the working class in a leading role in the management of productive activity; and that ii) in no case did the creation of the Workers' Production Board replace the unions or work in opposition to them; they were conceived as a form of worker participation in the real and effective supervision of the productive processes in their places of work.

¹⁶⁹ Meetings of 7 May and hearings of 8 to 10 May 2012.

¹⁷⁰ During the visit to the country, the Government provided additional statistical data on the Workers' Production Boards (CPTs), including their distribution by sector, reflected in the table below:



the Government in the employer's labour relations in the Polar group of companies – affiliated to FEDECAMARAS – in which the Government had shown preference to a minority union linked to the Government party, in the context of collective bargaining in the Polar Brewery (the principal manufacturer and distributor of beer and malt in the country).¹⁷¹ They alleged that the Government had imposed the negotiation of a project presented by the minority trade union linked to the Government (ignoring the greater representativeness of another trade union), that there had been acts of violence obstructing access to the workplace in the context of a strike, illegal imposition of mandatory arbitration, as well as interference and irregularities in the arbitration procedure and an illegal extension of the resulting award. The complainants also reported a campaign of intimidation and harassment against this employer and its business group (along with attacks on FEDECAMARAS), including threats, harassment, invasion of privacy, confiscations and arrests of managers.¹⁷² All these allegations were the subject of Case No. 3178 submitted to the CFA (see chapter 2) in which the CFA expressed deep concern about the seriousness of the interference and requested the Government to take the necessary measures to avoid any type of interference in industrial relations between the employing entity and the workers' organizations present in it. The facts denounced were also the subject of another complaint presented to the CFA by the trade union that claimed to be the most representative, to the effect that the public authorities had interfered in collective bargaining by favouring pro-Government trade union organizations (Case No. 3172). In this case, the CFA noted that the Government did not deny the assertions or the information provided by the complainant trade union in support of its allegations of the Government's support, through its party, to the pro-Government trade union to the detriment of the complainant trade union (such as the support of public authorities for the actions of the pro-Government trade union). The Committee highlighted, among other issues, the importance of: (i) respecting the majority will of the employees of the employing entity regarding their representation in collective bargaining and, for this purpose, of the trade union organization that is the most representative, through an objective verification of representativeness; and of (ii) avoiding any type of interference in industrial relations between the complainant organization and the employing entity. In the same vein, the complainants referred to other cases of interference in the relations between employers and workers during the hearings, including the military presence in the collective bargaining processes and showed illustrative images of this presence, which they found intimidating and which made free negotiation impossible.

* * *

- 187.** In general, both the complainants and several workers' organizations and non-governmental organizations stated before the Commission that the Government's interference in the independence of employers' and workers' organizations was part of a broader government strategy to control the powers of the State and social actors in order to promote its own political project. In this regard, they highlighted the control by the Government of the other public authorities – including the Judiciary – in particular its principal organ, the TSJ¹⁷³, and other powers – such as the Electoral Power and, in particular the CNE – as well as its attempts to control the Legislative Power with the usurpation of the functions of the National Assembly through the ANC. They claimed in this sense that there was confusion between the State, the Government and the Government party – which had undermined trust and was

¹⁷¹ Interview with representatives of the complainants, 22 March 2019.

¹⁷² These allegations are dealt with in chapter 5.

¹⁷³ By way of illustration, the CTV referred to the statements of magistrate Mr Christian Zerpa, who fled to the United States, detailing how the Government controlled the decisions taken by the Supreme Court.

one of the reasons why the Bolivarian Republic of Venezuela was subject to one of its worst crises.

- 188.** They stated before the Commission that the Government had been developing an institutional architecture, including military elements (in what the Government called a civic–military union), which restricted freedom of association and the independence of employers’ and workers’ organizations through multiple mechanisms: (i) the confusion and absence of clear boundaries between the State, Government and the Government party (also with respect to the trade union confederation related to the Government – the CBST); (ii) the judicial authorities, in particular the Supreme Court, were not independent (in relation to land seizures or to the investigation of attacks and aggression against leaders of employers’ organizations and trade unions) and supported the Government (allowing the use of judicial procedures to intimidate trade unionists, restrict their freedom and dissuade them – through the imposition of alternative measures to prison such as reporting requirements); (iii) other authorities were also instrumentalized by the Government (such as the Electoral Power to neutralize unions not close to the Government); and (iv) the Government sought to create – with greater or lesser success – a multiplicity of instances of surveillance and control to avoid dissent and promote its political project, such as the introduction of mechanisms such as CPTs, the militarization of companies – delivering their address to military commanders close to the Government, the use of so-called “collectives” as armed civilian groups close to the Government, etc.).
- 189.** For its part, the Government denied these claims – affirming the existence of the separation of powers and arguing that the Government could not be held responsible for the actions of social agents (such as collectives) or spokespersons of its party.¹⁷⁴
- 190.** Several workers’ organizations, in particular the CTV, told the Commission that, in order to dismantle all the anti-union scaffolding that the Government had introduced in the legislation, a draft basic act on freedom of association, collective bargaining and social dialogue, had been presented to the National Assembly, in response to the comments of the ILO supervisory bodies, in order to limit the possibilities of state action against freedom of association and open a way for union activity in full accordance with Convention No. 87.¹⁷⁵

¹⁷⁴ Meeting with the Commission of 15 January 2019.

¹⁷⁵ CTV communication of 18 March 2019.

Chapter 5. Allegations of violence, intimidation, bullying and other breaches of civil liberties against FEDECAMARAS and other social partners

- 191.** The Commission received numerous allegations from the complainants and workers' organizations denouncing actions taken against employers' and unions' leaders and organizations which were incompatible with the civil liberties implicit in the exercise of freedom of association, including: (i) physical violence against persons and headquarters; (ii) harassment, stigmatization and bullying; and (iii) arbitrary judicial action and breach of due process guarantees.
- 192.** The Commission noted that in the replies of the Attorney General's Office to these allegations, contained in a document provided by the Government to the Commission during its visit to the country,¹⁷⁶ the following general and procedural observations were made: (i) it had not always been possible to fully identify several alleged victims as the numbers on their personal identity cards had not been provided, thus preventing their identification by computer; (ii) when a case is under investigation, proceedings may be reviewed only by the accused, their counsel or the victims, and all investigative acts are not available to third parties, as required by section 286 of the Code of Criminal Procedure (COPP),¹⁷⁷ and (iii) it was not possible to reply as the allegations had not been the subject of a complaint to the relevant institutions, specifically the Human Rights Directorate of the Public Prosecutor's Office, which was the recommended course of action.
- 193.** In this regard, the Commission noted the following: (i) throughout the investigations, and whenever possible, the Commission presented the Government with the personal identity card numbers of the great majority of persons cited in the report, the exceptions being those who had been killed, in which case, given the impossibility of contacting the families of the victims, many of whom were out of the country or reluctant to meet with the Commission for fear of reprisals, the Commission supplied the names and surnames of the victims, together with other information such as date and place of death, trade union position and job sector; and (ii) many witnesses who appeared before the Commission said that they considered it dangerous to approach the public authorities, either to report acts of violence against themselves, frequently perpetrated by the State security forces, or to request documents relating to the allegations, because of the risk of government reprisals; other witnesses told the Commission that they had intended to report acts of violence to the relevant authorities, mainly the Scientific, Penal and Criminal Investigation Corps (CICPC), but that the report had not been accepted or they had not been provided with proof of receipt.
- 194.** Concerning the length of time taken for investigations into punishable acts, the Attorney General's Office stated that: (i) it depended on the complexity of the acts; (ii) if no charges were brought under an investigation, a time limit was set for the completion of enquiries to determine whether the evidence existed to convict anyone; (iii) the time limits established in the COPP only ran from the moment that a defendant had been identified and charged; and (iv) when there was insufficient evidence to corroborate the facts, the file could be closed pending new evidence.

¹⁷⁶ Document (with annexes) delivered by the representative of the Attorney General's Office to the Commission during its visit to the country (8–12 July 2019).

¹⁷⁷ The document from the Attorney General's Office also stated that the parties had enjoyed full constitutional, legal and administrative guarantees.

195. The Commission also noted that, in many of the allegations presented below, in particular those relating to physical violence and harassment, the complaints refer to the involvement of groups of armed civilians or paramilitaries allegedly supported and funded by the Government, known in Venezuela as *colectivos* or *colectivos armados*.¹⁷⁸ In this regard, the complainants stated that the connection between the Government and the armed *colectivos* was open and well known to the public, since they carried a type of weapon identical to those carried by government troops and agencies and generally moved about in the unmarked white trucks also used by officials of government agencies.¹⁷⁹

5.1. Physical violence against persons and headquarters

5.1.1. Allegations concerning employers

196. In their written communications, the complainants denounced cases of physical violence against employers' leaders and their headquarters, two of which had been before the Committee on Freedom of Association for several years, namely the attack on the headquarters of FEDECAMARAS in February 2008 and the attack on Mr Albis Muñoz Maldonado and other FEDECAMARAS leaders in October 2010. The complainants also denounced an attack on the headquarters of the Táchira State Stockbreeders Association (ASOGATA) on 18 May 2017.

Attack on FEDECAMARAS headquarters in 2008

197. The **complainants** informed the Committee on Freedom of Association¹⁸⁰ that in the early hours of 24 February 2008, an explosive device was detonated on the ground floor of the FEDECAMARAS building in Caracas, killing Mr Héctor Amado Serrano, the metropolitan police inspector who was planting the bomb, and severely damaging the premises. The complainants also stated that pamphlets for the Venceremos Guerrilla Front, to which the attack on the employers' headquarters was attributed, were found at the site, adding that, according to information in the local press, the Front included members of the Chavist 23 January group, who were paid by public bodies and operated as part of the metropolitan police.

198. In its report, the High-level Tripartite Mission of 2014¹⁸¹ stated that FEDECAMARAS had reported that: (i) on 26 February 2008, a complaint was filed with the Attorney General's Office; (ii) on 26 August 2009, the Attorney General's Office issued a ruling ordering the

¹⁷⁸ Throughout this report, the Commission will refer to these groups as *colectivos*. The OHCHR report on *Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017* stated: "OHCHR received numerous and consistent accounts that indicated armed *colectivos* operated with the acquiescence of, and sometimes in coordination with, security forces and local authorities. Security forces did not protect people *from* armed *colectivos* and either left the scene when armed *colectivos* arrived or did nothing to stop them." p. 30.

¹⁷⁹ To illustrate this statement, the complainants provided the Commission with a video dated 12 March 2019 showing a message broadcast on national television by President Maduro concerning a nationwide power outage, in which he called upon the Bolívar-Chávez combat units and the *colectivos* to resist actively and to inform, assist and promote solidarity. Videoconference with the complainants, 18 March 2019.

¹⁸⁰ FOA Case No. 2254, Interim Report No. 350, June 2008, para. 1,602.

¹⁸¹ Report of the High-level Tripartite Mission to the Bolivarian Republic of Venezuela (Caracas, 27–31 January, 2014), Governing Body, 320th Session, Geneva, 13–27 March 2014, para. 14.

case to be closed for lack of evidence needed to establish a guilty party; and (iii) FEDECAMARAS appealed against that decision; and (iv) on 6 May 2010, the CICPC announced the detention of police officers Mr Juan Crisóstomo Montoya and Ms Ivonne Márquez. The complainants also alleged ¹⁸² that Mr Montoya had been a member of an armed *colectivo* linked to the Government and had died in February 2014, and that the role of Ms Márquez in the case was never clarified.

199. The **Government** informed the CFA ¹⁸³ that: (i) the investigation began ex officio in a timely manner, under the Attorney General's Office; (ii) Mr Juan Crisóstomo Montoya González and Ms Ivonne Gioconda Márquez Burgos were detained on 6 and 10 May 2010, underwent normal procedures and were placed in precautionary pre-trial custody in a preventive detention centre in the Caracas metropolitan area; and (iii) on 20 June 2010 they were formally charged with the offences of public intimidation and misuse of identification (Mr Montoya) and the offence of public intimidation in the second degree (Ms Márquez), the preliminary hearing being held on 20 July 2010 at which both defendants fully admitted the charges. ¹⁸⁴

200. In communications to the Commission, the Government stated ¹⁸⁵ that: (i) the case had been dismissed by a decision of 23 July 2010 owing to the death of the main defendant, Mr Serrano; (ii) once the public oral proceedings had concluded on 1 November 2013, the court issued an acquittal verdict in favour of the accused, Mr Crisóstomo Montoya González, who died on 12 February 2014, and Ms Ivonne Márquez, ¹⁸⁶ terminating the coercive measures hanging over them; (iii) representatives of the Attorney General's Office filed an appeal against this decision on 9 July 2014 on which a ruling is still awaited; (iv) on 15 January 2019, the Attorney General's Office requested the Appeals Court of the Criminal Judicial Circuit to issue an appropriate statement, since five years had passed since the oral proceeding had taken place, in accordance with section 448 of the COPP; (v) because of the death of Mr Juan Montoya a case had been launched with the Attorney General's Office; and (vi) section 286 of the COPP prohibits the provision of any substantive information about a case while it is still at the investigation stage.

201. The Commission noted the following additional elements following a reading of the text of the judgment of acquittal: (i) a series of events involving the detonation of similar home-made explosive devices had occurred in different parts of the capital on previous occasions in 2008; ¹⁸⁷ (ii) in each case a pamphlet of the Venceremos Guerrilla Front, the leftist people's army, had been found together with a message criticizing the then President

¹⁸² Videoconference with the complainants, 18 March 2019

¹⁸³ FOA Case No. 2254, Interim Report No. 375, June 2015, para. 610.

¹⁸⁴ The 2014 high-level tripartite mission noted in its report that the CICPC had stated that it had not been able to determine the motives for the attack and recalled that it had occurred at a time when similar attacks were being carried out on several embassies (para. 13).

¹⁸⁵ Communications of 9 March 2016 and 7 June 2019 containing documents relating to the case, and Videoconference of April 2019.

¹⁸⁶ The Government provided the Commission with the acquittal judgment of Messrs Montoya and Márquez of 10 June 2014, the CICPC certificate of corpse removal (Mr Serrano) of 4 March 2008, the CICPC autopsy report on Mr Serrano of 28 February 2008, the acquittal decision of 23 July 2010 (Mr Serrano) and the document containing the appeal of 9 July 2014 against the judgment of acquittal.

¹⁸⁷ At the base of the George Washington monument on 13 February, alongside the Apostolic Nunciature on 14 February and on the ground floor of the José María Vargas building on 18 February.

of the Republic and stating that the explosions were part of a “symbolic” operation; (iii) Messrs Montoya and Márquez had been accused in connection with that series of events following an examination of Mr Serrano’s mobile phone, which revealed incoming and outgoing calls to those persons at key moments relating to the detonations, and the light of statements from witnesses with direct knowledge of meetings between those persons at locations where subsequently components were found that could be used to manufacture explosives; and (iv) the acquittal was based on the lack of sufficient evidence to prove that they were guilty of committing the illegal acts being investigated.

- 202.** The Commission also noted that: (i) the Attorney General stated that ¹⁸⁸ Mr Montoya had been conditionally released immediately after the public oral proceedings in November 2013, although the Commission did not have access to the release document for Mr Montoya, who was assassinated before judgment could be rendered; and (ii) the appeal against final judgment, which was admitted, states, *inter alia*, that the judgment, in its analysis of each of the testimonies given by the trial bodies which attended the proceedings, remained silent about “what was said by witnesses, by the police officers who carried out urgent and necessary procedures at each and every one of the event locations, and by the experts who assessed items of possible relevance to the crime collected from the various locations”.

Attack against FEDECAMARAS leaders in 2010

- 203.** Concerning the attack on FEDECAMARAS leaders on 27 October 2010, the **complainants** informed the Committee on Freedom of Association that in Caracas a group of five armed and hooded men shot at, abducted and abused Ms Albis Muñoz, former President of FEDECAMARAS, Mr Noel Álvarez, then President of FEDECAMARAS, and Mr Luis Villegas and Mr Ernesto Villasmil, respectively the organization’s chief executive and treasurer. ¹⁸⁹ In the report of the 2014 high-level mission ¹⁹⁰ and in written and oral communications to the Commission, ¹⁹¹ the complainants stated that: (i) on 27 October 2010, the car in which these members of FEDECAMARAS were travelling was intercepted by a truck, from which a man leapt out and began firing at Ms Muñoz; she and the others were then made to get out of the car and climb into the truck; ¹⁹² (ii) Ms Muñoz, who was bleeding

¹⁸⁸ Meeting between the Commission and a representative from the Office of the Attorney General of the Republic during the Commission’s visit to the country from 8 to 12 July 2019.

¹⁸⁹ In a communication to the CFA dated 3 November 2010, submitted in the context of Case No. 2254, the complainants stated that, given the way in which the attack was conducted, everything indicated that the purpose of the attack was to remove the leadership of FEDECAMARAS, although at the time it was made to seem like abduction.

¹⁹⁰ Report of the 2014 high-level tripartite mission, para. 11.

¹⁹¹ Face-to-face meeting between the Commission and the complainants in Geneva on 8 May 2019 and hearings in Geneva the next day; communication of 9 May 2019 with documents accompanying the hearings and documents submitted during the Commission’s visit to the country from 8 to 12 July 2019.

¹⁹² One complainant who witnessed the events told the Commission that: (i) following a meeting at FEDECAMARAS headquarters between Ms Muñoz, the then President of the organization and its chief executive and treasurer, they all went to a restaurant and on their return, at around midnight, a large light-coloured truck cut across their vehicle, after which an armed person got out and fired three shots at Ms Muñoz, who was seated next to the car driver; (ii) the attacker, who did not look like a common criminal and was well dressed and smelled pleasant, approached the vehicle, pulled Ms Muñoz out and pushed her into the truck; (iii) a second attacker forced the other FEDECAMARAS members in the car to get out and climb into the rear of the truck; and (iv) a third

heavily,¹⁹³ was dumped by the road near the Pérez Carreño Public Hospital¹⁹⁴ and the other FEDECAMARAS members were deposited elsewhere; (iii) the victims' car, despite being a very good make, was abandoned at the side of the road and not stolen,¹⁹⁵ like the wallet of Ms Muñoz which was found discarded elsewhere;¹⁹⁶ (iv) Ms Muñoz had been planning to travel to Geneva in the days following the attack to submit serious allegations, backed by proof, to the ILO Governing Body, and thus it was assumed that the motive for the attack was to prevent her from making that journey.

- 204.** With regard to the judicial treatment of the case, the complainants stated that: (i) the Attorney General's Office charged three persons, namely Mr Andrius Ramón Hernández Velázquez, Mr Antonio Silva Moyega and Mr Jaror Manjares; (ii) on 28 November 2010, Mr Hernández Velázquez, allegedly the person who fired the shots at Ms Muñoz, was shot dead by the CICPC after failing to respond to a call to raise his hands in the air, after which, on 23 December 2012, the Attorney General brought charges against the remaining two defendants; (iii) Mr Silva Moyega, the driver of the truck, was tried and sentenced on 21 September 2015;¹⁹⁷ (iv) Mr Jaror Manjares, who had helped the FEDECAMARAS

attacker took the wheel of the car and both vehicles left the scene. Meeting between the Commission and the complainants in Geneva on 8 May 2019 and hearings in Geneva on 9 May 2019.

¹⁹³ The above-mentioned witness stated that the attacker who had fired and who was travelling with Ms Muñoz in the rear of the truck, made a phone call after noticing that she was bleeding in which he referred to her as "la Señora", which the witness took as a sign that the attacker recognized her.

¹⁹⁴ According to the witness, Ms Muñoz was accompanied inside the hospital by the owner of a small kiosk near the place where her attackers had dumped her, whereupon she lost consciousness; he added that the staff who treated her informed Ms Muñoz that when someone was brought to the hospital in such condition the attackers would return to finish them off, and they advised her family to remove her from the hospital, which they did.

¹⁹⁵ The complainants stated that the defendants were charged, inter alia, with abduction, aggravated theft of a vehicle and criminal association. The Commission was able to confirm this on reading the text of the judgment convicting Mr Antonio Silva Moyega.

¹⁹⁶ A second witness to the events who appeared before the Commission during its visit to the country (8 to 12 July 2019) corroborated this allegation, stating that the vehicle was not stolen although it was a very good make, inside it was found the treasurer's briefcase containing documents and currency, and it was intact when recovered; he asserted that the attackers did not demand a ransom at any time and that the then President of FEDECAMARAS had all his money in his wallet on getting out of the truck. This witness related that when all the FEDECAMARAS members were in the truck, one of the attackers received phone calls, among them one in which someone told him that if they did not free all the captives, they would die, to which he responded "OK, OK, OK, we will let the filth go"; the witness added that the attackers had held a discussion among themselves as to who had fired the shots.

²² During the hearings held in Geneva in May 2019, the complainants handed the Commission the text of the judgment condemning Mr Silva Moyega, which the CFA had been requesting in vain from the Government for years together with other documents pertaining to this case. The judgment describes the events thus: "when they arrived at FEDECAMARAS headquarters, *their passage was suddenly blocked by a truck-type vehicle ... from which alighted several unknown persons*, among them a man named Andrius Ramón Hernández Velázquez, ... carrying a firearm and *violently gesticulating at the persons in the vehicle from outside*, an action that was interrupted abruptly by the car driver, ... Mr Ernesto Amado Vilasmil, as he tried to reverse to avoid being intercepted, at which moment ... Hernández ... fired several shots, wounding Ms Albiz Muñoz, who was seated next to the driver, *for which reason the vehicle was stopped*, and they were then forced to alight from the vehicle and transferred to the truck in which the accused were travelling. ... the vehicle to which the victims were transferred was approached by ... Mr Jaror Manjares (who), after abruptly forcing the victims to alight, withdrew from the scene ... the truck ... was driven by ... Mr Antonio José Silva Moyega (who) threatened to kill the victims and ... demanded VEF300,000 from them ... in exchange for

members to alight from the car and climb into the truck, escaped from prison; and (v) Ms Muñoz was never asked to appear before the court examining her case and did not recognize the person who had shot her among the accused, although, according to the facts presented, she had been able to see her assailant's face from very close up.¹⁹⁸

205. In written¹⁹⁹ and oral²⁰⁰ communications, the **Government** stated that: (i) the investigations started immediately and two persons belonging to a criminal gang specializing in robbery were detained; (ii) Mr Antonio Silva Moyega admitted his part in the events, for which he was tried at open and oral proceedings in September 2015 and sentenced to 14 years and five-months' imprisonment; (iii) Mr Jaror Manjares escaped from a prison called the Simón Bolívar Centre for Training the New Man, went on the run and was made the subject of an arrest warrant issued by Interpol on 25 October 2015, so that the case remains open pending new evidence leading to the capture of the second accused person; (iv) Mr Hernández Velázquez died on 27 November 2010 after resisting and confronting officials from the CICPC; (v) from the investigation it was evident that the attackers' modus operandi had been typical of criminal gangs of that time, namely to browbeat the victims and shoot at the tyres of the car, except that in this case the shots had wounded Ms Muñoz; the judgment did not identify a motive other than intent to commit the common offence of abduction for profit and did not find any motive relating to the victims' status as leaders of FEDECAMARAS; and (vi) the victims did not attend on the dates set for the court proceedings, despite having been duly notified.²⁰¹

Attack on ASOGATA headquarters

206. The **complainants** told the Commission²⁰² that: (i) on 18 May 2017, the headquarters of the Táchira State Stockbreeders Association (ASOGATA) were attacked by a group of heavily

their freedom; en route the unknown persons released ... Ms Albiz Muñoz ... and, after driving for several minutes through Caracas, made phone calls to a friend of the victims, Mr Lope Mendoza, requesting him to pay VEF300,000 ... and, when he refused ... the parties were abandoned on the highway ...”.

²³A second witness who appeared before the Commission in this case added that the other members of FEDECAMARAS who were in the rear of the truck were threatened with death, had a pistol pointed at their heads and were beaten, and that they were not in a position to identify their attackers as it was dark and they had been told to keep their heads down.

²⁴ Communications of 9 March 2016 and 25 June 2019 with addenda, delivered to the Commission by a representative of the Attorney General's Office during the Commission's visit to the country (8–9 July 2019).

²⁰⁰ Videoconference with Government representatives, including the Director General for Legal Affairs at the Attorney General's Office, on 29 April 2019.

²⁰¹ The Government has not provided proof of such notification or any other document relating to the case, despite the Commission having requested these repeatedly since April 2019, both orally, during the videoconferences held in May 2019, and in writing through communications of 30 April and 6 June 2019. In the document supplied by the Attorney General's Office during the Commission's visit to the country, the Government indicated that, owing to a shortage of supplies including paper, toner and serviceable office equipment caused by terrorist action against the electricity industry, together with the economic and financial embargo imposed on Venezuela by the United States and other countries to block the supply and purchase of parts and equipment, there were problems in delivering what the Commission had requested.

²⁰² Communication of 30 August 2017 and videoconference of 18 March 2019 with the Commission.

armed men with covered faces, identified by the complainants as *colectivos* ²⁰³, with alleged links to the Government, who blew up the locks of the headquarters and burned all the offices, leading to the complete destruction of the building; ²⁰⁴ (ii) the previous day, a group of farmers belonging to ASOGATA had held a protest in the village of El Milagro in connection with an alleged stoppage by milk and cheese processing plants, giving 15,000 litres of milk and cheese, the equivalent of one day's production, directly to villagers without passing through the governmental distribution agencies; (iii) the attack was allegedly motivated by this event and by statements made by the managing board of ASOGATA in a communication of 17 May 2017 published in the regional communications media, in which the stockbreeders association urged Government representatives to correct their allegedly misguided economic policies; (iv) although they had made their complaint through the CICPC and the Office of the Táchira State Attorney, backed by photographic and video evidence of the attack and its perpetrators, ²⁰⁵ they had received no reply and no one had been charged. ²⁰⁶

207. Concerning the **Government's** reply to these allegations, a representative of the Attorney General's Office stated ²⁰⁷ to the Commission that: (i) the Public Prosecutor's Office had opened proceedings on grounds of a serious disturbance of public order and the case was under investigation, with subsequent reservations concerning third parties; (ii) the motive recorded in the case file was aggravated theft of electronic devices (the doors were forced on entry) with no mention of a fire, so that the incident appeared to be unrelated to the civic protests but instead concerned an ordinary offence, although the motive could not be known with certainty until the case was solved. ²⁰⁸ A representative of the Ministry of Labour

²⁰³ The complainants stated that they had deduced that *colectivos* were involved because of the type of vehicle they were driving (two trucks, one white and one grey, without number plates) and the fact that their weapons were identical to those carried by government troops and agencies

²⁰⁴ The Commission received press releases and photos from the complainants showing the remains of the fire and the destruction caused to the headquarters building. A witness who appeared before the Commission during its visit to the country from 8 to 12 July 2019 affirmed that, at 1.20 a.m., a dozen armed men in two Chinese-made trucks without plates "the ones that the Government moves around in" entered the San Cristóbal facilities, tied up the guards, broke down the doors and destroyed and burned everything. The witness also said that three or four days later, on the same day as the complaint was lodged, the leaders of ASOGATA were summoned by the Táchira State governor, Mr José Gregorio Vielma Mora, and a representative of INTI to a meeting which lasted from 5 p.m. to midnight, at which they were threatened, on account of the milk-sharing and protests, with the expropriation of their farms (see section 5.3.5 below); also, they were threatened on Twitter with being tried as terrorists.

²⁰⁵ The complainants stated that images taken by the security cameras had been provided, but the Commission had no access to these because they form part of the case file at the Attorney General's Office.

²⁰⁶ The complainants indicated that the authorities had neglected to deliver a copy of the complaints to ASOGATA; communication of 5 June 2019. A witness who appeared before the Commission during its visit to the country stated that the Association's leaders had never been summoned.

²⁰⁷ Videoconference of 29 April 2019 with the Government.

²⁰⁸ A document delivered to the Commission by the Attorney General's Office during the former's visit to the country from 8 to 12 July 2019 stated that on-site technical inspection and prudential regulation had been requested in order to determine the damage at the headquarters, as well as interviews with members of ASOGATA.

indicated that, as background information, it should be borne in mind that between January and May 2017 there was countrywide violence and tension.

5.1.2. Allegations concerning trade union members

Killings

- 208.** Several **workers organizations**,²⁰⁹ as well as the NGOs PROVEA²¹⁰, and Foro Penal²¹¹ informed the Commission of killings of trade unionists that had not been the subject of judicial proceedings. According to these allegations, between 2015 and 2017 the press had commented on 17 killings of trade unionists, some motivated by their union activities and others originating from inter-union conflict. Among the examples mentioned by these organizations was the case of Mr Joel Alcalá, Secretary-General of the Single Trade Union of Workers in Aluminium, Bauxite and their By-products (SUTRALUMINA), who had allegedly been killed at Puerto Ordaz, in Bolívar State, on 13 March 2017 by a gunman on a motorcycle. It was claimed that Mr Alcalá was killed in the street after calling in at the National Electoral Council (CNE) to announce his decision to dispute the outcome of elections held for Secretary-General of his union, which had resulted in a very close finish between him and the official Chavist candidate.
- 209.** In this regard, the Commission noted that the CTV had reported to it a *sicariato sindical*, or contract killing of a union leader, which, according to the allegations, had gone completely unpunished. According to the CTV, many of these contract killings of union leaders stemmed from feuds relating to the allocation of jobs on construction sites.²¹² In particular, it was alleged²¹³ that violence was recurrent in construction, with acts of abduction and extortion against employers and physical assaults and killings against trade unionists, all before the impassive gaze of security forces which failed to intervene.²¹⁴
- 210.** The following table lists killings between 2015 and 2018 reported to the Commission and the Government's replies:

²⁰⁹ Communications from ASI of 29 August 2018 (received on 26 September 2018) and CTV of 18 March 2019.

²¹⁰ PROVEA, in its report published in April 2018, mentioned several killings of trade unionists, some of which appear in the table shown below, and denounced the harassment and prosecution of trade union leaders.

²¹¹ During the hearings in Geneva a representative of this NGO stated that since 2012 there had been over 9,000 executions, not only of trade unionists but also dissidents in general, with 3,000 since 2017.

²¹² According to the allegation by the CTV, the collective agreement for the construction industry required 75 per cent of the workforce to be unionized; accordingly, once a union boss was killed and his organization left leaderless, the right to determine who would be on the payroll for a specific job passed to another union body created specifically for that purpose. It was also claimed that this practice had spread to other economic activities, with cases of *sicariato* occurring in industry and the steel sector.

²¹³ Videoconference with union representatives from the CTV on 6 May 2019.

²¹⁴ The CTV denounced the killings by *sicariato* of over 200 workers and leaders in the construction industry in a complaint submitted to the CFA on 29 June 2009 and examined as Case No. 2727. At that time the CFA decided not to pursue these allegations as insufficient details of the murdered persons were available.

Number	Function and sector	Date	State	Government reply ¹
Antonio PERALTA	Trade unionist in construction	02.04.15	Zulia	No record; provide more specific information.
Luis Carlos RIVERO FLORES	Trade unionist at the <i>Envases venezolanos</i> enterprise	04.08.16	Aragua	Under investigation. ²
Francisco MIRANDA	<i>Not specified</i>	<i>Not specified</i>	<i>Not specified</i>	No record; provide more specific information.
Víctor Alexander SANGRONIS	Trade unionist at the major company <i>Vivienda Venezuela</i> (construction)	04.04.16	Lara	On 17 July 2016 an arrest warrant was requested for two persons, one of whom was apprehended ³ , and as the investigation unfolded his participation in the incident was discounted, so the case continues pending the appearance of the second person. ⁴
Eduviges Concepción VÁSQUEZ NAVARRO	Trade unionist in construction	03.09.16	Anzoátegui	Under investigation. Arrest of persons who had no involvement in the incidents and were therefore released.
Ramón Alexander RATTI	Local mayor	03.09.16	Anzoátegui	Under investigation.
Nabil NAVARRO BELISARIO	Trade unionist PDVSA	20.09.16	Anzoátegui	No reply.
Alberto HERNÁNDEZ	PDVSA	19.09.16	Anzoátegui	No record; provide more specific information.
Adrián LISARDO ACUÑA	<i>Not specified</i>	30.11.16	Anzoátegui	No record; provide more specific information.
Gerardo ESCOBAR	Trade unionist in construction	13.12.16	Vargas	Under investigation.
Eumir Francisca PUERTA GÓMEZ	Trade unionist	04.01.17	Guárico	On 20 January 2017, an arrest warrant was requested for a person ⁵ for the alleged committal of a crime of murder with malice aforethought; it is still pending.
Augusto Rafael NAVARRO BELISARIO	Brother of murdered trade unionist	22.03.17	Anzoátegui	Under investigation.
Joel ALCALÁ	Secretary-general of SUTRALUMINA	13.03.17	Bolívar	An investigation was launched, with evidence that six persons ⁶ may have been involved, and an arrest warrant was requested for the alleged committal of crimes of <i>sicariato</i> and illicit association. This was approved on 6 June 2018 and is still pending. The remainder of the file is reserved for the parties.
Jackson Eduardo MUÑOZ	Union leader at Bolivarian Socialist Workers Centre	11.03.17	Miranda	No record; provide more specific information.

Number	Function and sector	Date	State	Government reply ¹
Esmín Abraham RAMÍREZ PAREJO	Trade unionist for Movimiento 21 at Ferrominera Orinoco and electoral coordinator at the Bolivarian Workers' Centre	23.04.17	Bolívar	Under investigation. An investigation was launched into the alleged committal of a crime of homicide; on 26 April 2017, a specially expedited evidentiary hearing was held and recently the various actions and proceedings carried out by the CICPC have been compiled. The remainder of the file is reserved for the parties.
José MOLLETÓN QUINTERO	President of the Heavy Machinery Union for the State of Anzoátegui	12.06.17	Anzoátegui	Under investigation. An investigation was launched into the alleged committal of a crime of homicide. The remainder of the file is reserved for the parties.
Argenis CASTAÑEDA GIL	President of the regional construction union and member of Movimiento Ali Primera, a pro-government group	16.12.17	Portuguesa	Under investigation. An investigation was launched into the alleged committal of a crime of homicide and personal injury; throughout 2018 various information requests were made to the INTI concerning awards of land to the victim, a request was made for the constituent instrument of the union of which he was a member, and a technical examination was made of telephony and telephone communications. The remainder of the file is reserved for the parties.
Tirso Pascual GONZÁLEZ YENDY	Member of a construction union	18.01.17	Bolívar	Under investigation. An investigation was launched into the alleged committal of a crime of homicide. An arrest warrant was ordered on 23 August 2017, but there is no information on its status. The remainder of the file is reserved for the parties.
Eduardo Javier SÁNEZ	<i>Not specified</i>	<i>Not specified</i>	<i>Not specified</i>	No record; provide more specific information.
Rexol Alexander ACEVEDO NAVAS	Union leader at <i>Industrias Diana</i> and President of the Alba-Mercosur committee at the Bolivarian Socialist Workers' Centre	04.05.17	<i>Not specified</i>	Under investigation. On 18 June 2019 it was planned to take official action to identify a person nicknamed "wilmita". The remainder of the file is reserved for the parties.
Juan de Jesús PÉREZ	Trade unionist in construction	06.05.17	Lara	The courts were requested to issue an arrest warrant for two persons ⁷ suspected of committing the crime of homicide; issue of the arrest warrant is pending.
Freddy Enrique REYES	<i>Not specified</i>	06.12.17	Anzoátegui	Under investigation. The file is reserved for the parties.

Number	Function and sector	Date	State	Government reply ¹
Elvis MORALES MUÑOZ	<i>Not specified</i>	<i>Not specified</i>	<i>Not specified</i>	No reply.
Christian SUÁREZ ESTABA	<i>Not specified</i>	<i>Not specified</i>	<i>Not specified</i>	No record; provide more specific information.
Reidison Ramón URBINA CAMACHO	Leader of a construction union	18.04.18	Barinas	On 18 April 2018 the proceedings were ordered to be closed.
Luis FAJARDO	Peasant leader, Central Committee member, Communist Party of Venezuela (PCV)	02.11.18 31.10.18	Mérida	Under investigation. The CICPC has been requested to examine the telephony.
Tomás MOLINA *	SUTIS	2018	Bolívar	No reply.
José Desiderio RAMIREZ TORRES *	Workers' union, municipality of Guacaipuro	2018	Miranda	No reply.
Jancili Gabriel BACA BONALDE *	Trade union at Coca-Cola	2018	Anzoátegui	No reply.
Freddy COMENARES *	<i>Not specified</i>	2018	Aragua	No reply.
Juan Diego JIMÉNEZ ZAMORA *	Construction union	2018	Guárico	No reply.

¹ Document (with annexes) delivered by the representative of the Attorney General's Office to the Commission during its visit to the country from 8 to 12 July 2019. ² The Government adds: "According to the case-tracking system the incident occurred on 24 May 2017, in the department capital". ³ Mr Jorge Luis Mendoza Torres.

⁴ Mr Rigoberto Jesús Vargas. ⁵ Mr Jonathan Miguel Villegas Vegas, nicknamed "toto" and "the kid". ⁶ Messrs Edgar Manuel Griman Monteverde, Teobalt José Agreda Cedeño, Daniel Alejandro Bastardo López, William José Vergara González, Jiménez Urbano Alfonso Rafael and Tomás Enrique Valdez Rodríguez. ⁷ Messrs Anthoni Ricardo Torres Vázquez and Blas Antonio Torres Vázquez.

* Reported by PROVEA.

211. A representative of a construction union affiliated to the CTV also stated that, ²¹⁵ since 2002, there had been many acts of violence in the construction sector which had been reported to SEBIN and by correspondence to the President of the Republic, ²¹⁶ but that no reply had ever been received. He stated that, on a daily basis, informal groups were taking jobs, blackmailing employers and attacking unions. A representative of the Bolivarian Socialist Workers' Federation of Venezuela (CBST) ²¹⁷ stated that the problem of killings of trade unionists in Venezuela dated back more than 20 years and that a proportion of them involved feuds among union mafias made up of common criminals who pretended to be trade unionists with the aim of making financial gain, and to that end did not hesitate to commit crimes or even to kill; he believed that these mafias had lost their influence, which was why the murder rate arising from such feuds had dropped in recent years.

²¹⁵ Videoconference between trade union representatives and the Commission on 6 May 2019.

²¹⁶ The Commission received a copy of a letter dated 28 January 2014 sent by the Federation of Workers in the Construction and Timber Industries and Allied and Similar Workers of Venezuela (FETRACONSTRUCCION) to the President of the Republic denouncing "the increase in deaths as a consequence of violence in the construction industry which goes completely unpunished" and requesting an urgent meeting and the formation of a round table to address the issue.

²¹⁷ Videoconference of 7 May 2019.

-
- 212.** A representative of the **Government** emphasized ²¹⁸ that the reports received of killings of trade union leaders were concentrated in the construction sector and linked to disputes over job purchasing and profits, and that certain underworld gangs had infiltrated the sector, causing problems that did not exist in other industries; he noted, however, that such incidents had substantially declined. Overall, the Government strongly denied the allegation that government favouritism towards certain trade unions was what lay behind, or promoted, the union feuds that led to killings of union leaders. He emphasized that such killings were unrelated to Government bias towards one trade union or another, or vice versa; he stressed that there was no State policy to promote violence or death and that, on the contrary, it was the Government's intention to investigate such cases and safeguard the lives of everyone in the country.
- 213.** He said that, by contrast the Government, pursuant to the recommendations of ILO bodies including the Committee on the Application of Standards, had held intra-union round tables in 2015 at the Ministry of the Interior and Justice with the aim of halting such violent situations and that, in that context, agreement had been reached on seeking conflict resolution mechanisms and respecting the working environment of every trade union organization in urbanized areas, thus avoiding any regrettable situations; he added that the unions continued to meet without being convened by the Government, and were resolving their differences for themselves in matters relating, for example, to building sites and the distribution of jobs and responsibilities. The government representative believed that, comparing the current situation with that a decade previously, some progress had been made.
- 214.** Concerning the case of the Secretary-General of SUTRALUMINA, Mr Joel Alcalá, the government representatives indicated ²¹⁹ that an investigation was ongoing, and that an arrest warrant issued for several persons for committing crimes of *sicariato* and unlawful association had been accepted by a court of first instance in Bolívar on 6 June 2018; they added that the investigation was under way although no one had yet been captured. Regarding a link between that killing and the union elections immediately preceding it, another government representative observed that it was very unlikely that intra-union violence could be triggered by an election process.
- 215.** It is recalled that, in the past, other ILO supervisory bodies have examined allegations of killings of trade union leaders in Venezuela. Specifically, the CEACR has examined the following cases: ²²⁰ (i) the killing of Mr Tomás Rangel, the President of the National Union of Workers of Venezuela (UNETE) of Barinas in January 2010; and (ii) the killing of a UNETE union leader, Mr Ramón Jiménez, in Barinas State on 16 April 2015. Concerning the latter, a trade union representative from the construction sector affiliated to CTV stated ²²¹ that Mr Jiménez had been assassinated after a union meeting at which two other union members were also wounded; according to the testimony, this crime has not been

²¹⁸ Videoconference of 29 April 2019 and face to face meeting of Government representatives with the Commission in Geneva on 7 May 2019.

²¹⁹ Videoconference of 30 April 2019.

²²⁰ See observations (CEACR), Convention No. 87, Venezuela, published in 2015 and 2016.

²²¹ Videoconference between union representatives and the Commission, 6 May 2019.

investigated and has gone completely unpunished despite having been reported immediately to the CICPC.²²²

- 216.** With regard to the killing of Mr Rangel, the Government stated that the accused, Mr Alcides Rivas, admitted the crimes at the initial trial proceedings on 13 June 2016 and was sentenced to 15 years and seven months in prison.²²³ Concerning Mr Jiménez, the Government indicated that the case was still under investigation following an allegation of homicide.
- 217.** In the context of Case No. 2727 the CFA has examined: (i) the murder of three officials of the Bolivarian Union of Workers in the Construction Industry in El Tigre, Anzoátegui State, on 24 June 2009, namely Mr Wilfredo Rafael Hernández Avile, Secretary-General, Mr Jesús Argenis Guevara, organizing secretary and Mr Jesús Alberto Hernández, secretary for culture and sport; and (ii) the murder of two union delegates in the Los Anaucos district, Miranda State, in June 2009, namely Mr Felipe Alejandro Matar Iriarte and Mr Reinaldo José Hernández Berroteran.
- 218.** Concerning the killing of the head of the Bolivarian Union of Workers in the Construction Industry, the Government replied²²⁴ that the case had been closed when judicial proceedings were dropped on 6 October 2010²²⁵ following the death of the principal accused, Mr Pedro Guillermo Rondón. With regard to the union delegates in Los Anaucos, the Government informed the CFA that two persons accused of homicide and unlawful bearing of firearms had been set to face trial on 13 April 2011. However, the report delivered by the Attorney General's Office to the Commission stated that the names of the trade unionists in question were not to be found in any of its records.
- 219.** During its visit to Bolívar, the Commission received other allegations concerning more recent murders of trade unionists, including those of Mr Francisco Alarcón Orosco, union secretary at CORPOELEC, in San Félix, Bolívar city, killed on 22 March 2019 after leading a march of protesting workers; Mr Ángel Sequea Romero, head of cargo clearance at CORPOELEC, detained by the CICPC on 1 March 2019 for reporting corruption at CORPOELEC and murdered in prison on 9 March 2019; Mr Geovanny Zambrano, an ordinary worker detained on 13 March 2019 and again on 19 March 2019 and tried for reporting errors and mismanagement in the national power system – PROVEA reported his forced disappearance during the second detention.

Physical assaults during the course of union activities

- 220.** The Commission also received allegations from **workers' organizations**²²⁶ concerning physical assaults against trade union members and leaders who were beaten or wounded by

²²² The Commission has received the text of the report made to the CICPC (which includes a CICPC number).

²²³ The Commission has not had access to the ruling despite having requested a copy from the Government.

²²⁴ Information sent to the CFA in the framework of Case No. 2727 and the report of the Attorney-General's Office delivered to the Commission during its visit to the country.

²²⁵ The Government supplied a copy of the dismissal notification for this case on 6 October 2010. The CFA requested the Government, in relation to this case, to expedite the judicial proceedings and the investigations by the Attorney General's Office in order to punish the instigators and the accomplices where possible, which involved an investigation.

²²⁶ Communication of 18 March 2019 from the CTV.

armed *colectivos*, by workers from other unions or by the authorities while performing union activities. Particularly notable were the cases of the following trade unionists: (i) Mr Eladio Mata,²²⁷ President of the workers' union in the Office of the Mayor of Caracas; (ii) Mr José Luis Morocoima, Secretary-General of the workers' union at BAUXILIUM, in Puerto Ordaz, Bolívar State; (iii) Mr Raúl Brito, President of the Teachers' Association at the National Experimental University of Guayana (APUNEG); and (iv) Mr Denis Guédez, union delegate at Caracas University Hospital.

- 221.** Concerning Mr Mata, it was claimed that on 30 August 2016, while supporting the unions at Caracas University Hospital in a protest against violations of the collective agreement, organized by the National Health Workers' Federation (FETRASALUD), he was shot and seriously injured. A witness who appeared before the Commission²²⁸ said that: (i) during the protest, as Mr Mata was approaching the podium to exercise his right of free speech, one of the guards accompanying Dr Antonieta Caporales, director of the clinical hospital, came up and shot him; (ii) Mr Mata was taken by his colleagues to the emergency unit and attended by a physician who ignored the director's order not to operate on him at the hospital, despite his serious condition;²²⁹ (iii) after the operation, armed *colectivos* attempted to enter the operating theatre to execute the trade unionist, and his family had him transferred to another hospital; (iv) the gunman was still working at the hospital; (v) a report was submitted but the CICPC has never investigated the case, the Attorney General's Office has not charged anyone with the crime and the hospital director has since been appointed Minister of Health; and (vi) on 14 June 2019, Mr Mata was sacked on the spot without notice and removed from the payroll without being paid salary.²³⁰
- 222.** With regard to Mr Morocoima, on 18 May 2011 during a meeting of his union to protest against violations of collective agreements, he was struck by a bullet and beaten, causing him to lose hearing in one ear, at the hands of armed individuals who, according to the allegations, belonged to an armed *colectivo* called Muralla Roja "Red Wall", a pro-Chávez group which, according to the allegation, had been allowed to register as a construction union. According to one CTV representative,²³¹ company videos showed the faces of the persons who attacked Mr Morocoima and, under pressure from the company's workers, two people were detained but then released immediately, supposedly as a precautionary measure. It was alleged that the supposed perpetrators never returned and that the investigation had no outcome.
- 223.** Concerning Mr Brito, it was alleged that on 1 July 2013, during a day of protest and hunger strike in support of better wages, among other demands, a group of students identified with the University Student Revolutionary Group (MERU) close to the Government attacked him as well as other teachers joining in the protest. They were beaten, personal items were destroyed and the offices of APUNEG were burned down while teachers were inside. It was

²²⁷ This case was examined by the CEACR. See Observation (CEACR), Convention No. 87, Venezuela, adopted in 2016.

²²⁸ Videoconference with union representatives on 6 May 2019 and meeting with trade unions in Caracas on 11 July 2019.

²²⁹ The Commission had access to Mr Mata's medical file.

²³⁰ It was alleged that Mr Mata reported verbally that the person who gave the order to remove him from the payroll was the constituent representative, Mr Juan Carlos Alemán, chairman of the police liquidation committee for the Caracas metropolitan area.

²³¹ Videoconference with union representatives on 6 May 2019 and meeting with trade unions in Caracas on 11 July 2019.

also alleged that Mr Brito had to be hospitalized as a result of blows received and that his car was burned ²³² and that, on 2 July 2013, he lodged a complaint with the CICPC ²³³ and the Ombudsman's Office which was not followed up.

224. With respect to Mr Guédez, ²³⁴ it was alleged that: (i) on 18 September 2014 following a workers' meeting, ²³⁵ he was approached by a group of 25 men urged on by the hospital management, who, without a word, beat him so that he required an operation; ²³⁶ (ii) Mr Guédez lodged a complaint but the case was dismissed; ²³⁷ (iii) subsequently, Mr Guédez received anonymous phone threats of death by various means, which he reported to various State security bodies, and had been summoned twice to SEBIN in 2014 and 2015; and (iv) the office of his trade union was attacked four times and he had to abandon his residence several times.

225. On the whole, all the allegations concurred that union activities were highly risky in Venezuela and that trade unionists who disagreed with the Government had to face constant attacks from the *colectivos*; it was alleged that the State security bodies did nothing to stop such activities, on the contrary allowing them to proceed. They emphasized that union activities conducted independently of government were subject to systematic attacks.

226. With particular reference to the cases described, the **Government** replied that: (i) the file was open on Mr Mata's case and an investigation was under way; (ii) there were two trade unions at the BAUXILIUM company where Mr Morocoima worked, one for the employer and one for the workers in construction and related services, and there had been a violent altercation involving the leaders of this second union, but no one from the State armed forces or police was involved. ²³⁸ In its report submitted to the Commission on its visit to the country, the Attorney General's Office indicated that it had no record of this trade unionist and requested more specific information; ²³⁹ and (iii) since many cases had been recorded under the name Brito and for the date mentioned, greater detail was needed.

²³² The Commission had before it photos and videos of these acts, including the destruction and burning of Mr Brito's vehicle.

²³³ The Commission had before it the text of this complaint.

²³⁴ CTV communication of 18 March 2019 and witness statement at a meeting held between the Commission and unions during the visit to the country (in Caracas on 11 July 2019).

²³⁵ A witness who appeared before the Commission during its visit to the country stated that Mr Guédez had gained an overwhelming victory in his union's elections held on 16 June 2013, competing against Government-funded tickets. These elections were not officially verified until 2015.

²³⁶ The Commission was presented with many photographs showing the physical damage sustained by Mr Guédez and also the medical report detailing the serious wounds he suffered.

²³⁷ Mr Yulbaran Eliseo Castro Landaez and Mr Héctor Andrés Bermúdez Torres were accused of allegedly committing serious injury. The Commission had before it the case dismissal notice.

²³⁸ Face to face meeting between the Commission and the Government in Geneva on 7 May 2019.

²³⁹ In this regard, the Commission recalls that it provided this trade unionist's identity card and those of the three trade unionists whose cases are described above.

5.2. Judicial persecution, including consignment to military jurisdiction and extensive application of alternative precautionary measures

227. The Commission received allegations from employers' and workers' organizations²⁴⁰ denouncing the criminalization of independent trade union and employers' organization activities not aligned with the Government, as reflected in a growing number of incarcerations and prosecutions for statements made in the press against government policies or for protest activities, and accompanied by acts of intimidation and repression by State security bodies. The organizations considered that the mechanism used to apply this policy of repression comprised the following elements: (i) lawyers from the Public Prosecutor's Office, acting on orders from above, were alleging crimes based on charges unsupported by any evidence gained through proper investigation; (ii) supervisory judges, out of obedience, complicity or fear of losing their jobs, frequently bowed to government demands; (iii) court appearances could be delayed and preliminary hearings could take a long time or never start owing to harassment or to inertia in the justice system; (iv) in practice, prosecutions were conducted in confinement, contrary to the relevant constitutional principles; (v) the accused trade unionists were held in prison for long spells, frequently with others accused or detained for common offences, in harsh conditions and with poor food;²⁴¹ (vi) after a while, the accused trade unionists would be provisionally released under severe precautionary measures,²⁴² including regular weekly, fortnightly or monthly compulsory attendance at court, sometimes far from their homes, a ban on exercising their civil and trade union rights, such as those of declaration, association or demonstration and spoken communication, as well as frequent subjection to police search and identity checks; in the event of conviction these precautionary measures, according to the allegations, remained in force for the whole period of the sentence; (vii) given the slow-moving nature of the justice system, proceedings were very lengthy and these people meanwhile spent years awaiting sentence, with

²⁴⁰ Inter alia, communication from the complainants of 16 March 2018, communication from CTV on 18 March 2019, visit to the country from 8 to 12 July 2019.

²⁴¹ It was claimed that, frequently, they only ate when relatives brought them food and that, even then, the provisions did not reach them untouched.

²⁴² The legal basis for this system of alternative precautionary measures is contained in article 242 of the Code of Criminal Procedure (Decree No. 9042 of 12 June 2012), which states: "Provided that the grounds for preventive deprivation of liberty can be reasonably supported by another measure less onerous to the accused person, the competent court, at its own initiative or at the request of the Public Prosecutor's Office or of the accused, may impose in its place, by means of a written determination, any of the following measures: (i) house arrest in their home or that of another person, either unsupervised or under such supervision as the court may order; (ii) the obligation to submit to the care or supervision of a specified person or institution, which shall report regularly to the court; (iii) periodic appearances before the court or such authority as it may designate; (iv) a prohibition on unauthorized departure from the country, one's place of residence or a territorial area as determined by the court; (v) a prohibition on going to specified meetings or locations; (vi) a prohibition on communicating with specified persons provided that the right to defence is not affected; (vii) immediate abandonment of a residence where assault on women or children or sexual offences are concerned, if the victim is living with the accused; (viii) provision of adequate economic surety by the accused or by another person, in accordance with the principle of proportionality, in the form of money, securities, guarantee by two or more suitable persons, or physical guarantees; (ix) any other preventive or precautionary measure that the court, by reasoned judgment, considers appropriate or necessary. In the event that the accused is subject to a previous alternative precautionary measure, the court shall assess the seriousness of the new offence committed, the conduct of the accused prior to the offence and the scope of the injury, for the purpose of granting a new alternative precautionary measure. In no event shall the accused be granted three or more alternative precautionary measures simultaneously."

restrictions placed on their rights and their capacity to conduct union activities²⁴³ while the threat of conviction remained; (viii) some detainees were blackmailed to obtain a forced confession in exchange for their provisional liberty under precautionary measures, while their trial was still continuing (a confession which they allegedly made out of fear of imprisonment, bearing in mind in particular the poor prison conditions); (ix) in some cases, defendants were pressured not to use the services of Foro Penal, PROVEA or other NGOs offering legal assistance, and guarantees of due process were not observed, in particular the right to defence and the presumption of innocence; and (x) in some cases the trade unionists were consigned to military jurisdiction.

228. In relation to these allegations, during the meetings held in Geneva a representative of the Venezuelan Criminal Forum referred to the alleged use of the criminal system to prosecute persons who were irksome to the regime, including trade unionists and members of employers' organizations, in order to neutralize them. The representative made the following claims: (i) when its policies were seen to fail, the Government invented a narrative based on propaganda, such as an economic, electricity or bread war, and then sought scapegoats to put in prison; (ii) for the many people deprived of their liberty and the many others subjected to alternative precautionary measures, the constant factor was that investigations were never completed, and proceedings went on indefinitely with the aim, not of determining the truth, but of converting the judicial process itself into a punishment designed to neutralize opposition activities, including those of trade unions; (iii) the judiciary was not independent and judges were appointed arbitrarily; (iv) where executions of dissidents were concerned, impunity was the rule in over 90 per cent of cases; they were almost never investigated, and when they were the investigation was biased; and (v) the victims' families feared reprisals, which did little to help the investigations, and occasionally cases even went unreported.

5.2.1. Allegations concerning employers' leaders

229. The Commission received the following allegations concerning employers' leaders belonging to associations affiliated to FEDECAMARAS who were allegedly detained and prosecuted for exercising their legitimate employers' organization activities: (i) Mr Fray Antonio Roa Contreras, President of the Distillers' Federation (FEDELIF), affiliated to CONSECOMERCIO and FEDECAMARAS; (ii) Mr Luis Enrique Vázquez Corro, President of the FEDECAMARAS Electrical Commission in Lara State; and (iii) Mr Manuel Castillo, President of the Stockbreeders Association of Apure State (AGAPURE), affiliated to FEDECAMARAS, as well as other members of that association.

Detention of the President of FEDELIF

230. The **complainants** alleged that on 24 July 2015, Mr Fray Roa was arrested by SEBIN officials and imprisoned for his statements in the press concerning the crisis in the distillery industry.²⁴⁴ Specifically, it was alleged that: (i) Mr Roa was accused of violating sections 296 (Dissemination of false information) and 322 in concordance with section 319 (Use of forged official documents) of the Penal Code; (ii) during his imprisonment he had

²⁴³ The Commission had access to the contents of a decision of the Third Military Court of Control, based in Caracas, concerning the case of Mr Julio García, described above, which features such grounds for alternative precautionary measures.

²⁴⁴ According to the allegation, Mr Roa's statements referred to a shortage of supplies for brewing beer, a high level of foreign currency debt with foreign suppliers, and a drop in sales because of inflation and reduction in profit margins owing to tax reforms, a situation which, he said, would lead to the closure of many distilleries and unemployment in the sector, adding that "it is now zero hour in the distilling industry"; he also called on the Government to enter into dialogue to solve the crisis.

limited access to drinking water and food, and was denied access to the medication prescribed for his heart problems; (iii) in proceedings which violated the guarantees of due process, he was sentenced to three years and six months' imprisonment; (iv) after one year and 17 days in prison, he was released on 11 August 2016 under an alternative precautionary measure ²⁴⁵ requiring him to present himself weekly to the reporting office of the relevant criminal judicial circuit and prohibiting him from leaving the country without authorization; and (v) his family were harassed, as well as his lawyers, and his freedom of expression was restricted in terms of actions. According to the wording of the judgment ²⁴⁶ provided to the Commission by the complainants, Mr Fray Roa was subjected to accessory penalties established under section 16 of the Penal Code, namely disqualification from political activity during his sentence and supervision by the authorities for one fifth of his sentence once it was finished.

- 231.** Concerning this allegation, the **Government** stated ²⁴⁷ that this employers' organization leader had caused panic in his community by issuing false information on communications media, and had infringed section 296-A of the Penal Code. ²⁴⁸ Concerning the alleged harassment of Mr Roa's family, SEBIN and the Attorney General's Office stated that they had no information but that in such cases a complaint should be made to the relevant bodies. ²⁴⁹

Detention of the President of the FEDECAMARAS Lara State Electrical Commission

- 232.** The **complainants** reported that Mr Luis Enrique Vázquez Corro was detained by SEBIN on 18 April 2015 at night as he left church, on account of his statements to the press concerning irregularities in the electrical plant at the El Guri dam and the probability of a national power failure. According to testimony heard by the Commission: (i) Mr Vázquez remained in detention all night under interrogation about his personal, professional and family life and the source of his information about electricity; (ii) the next morning, lawyers from NGOs including Foro Penal and others appointed by FEDECAMARAS Lara arrived with the intention of taking up his defence, but were denied entrance; (iii) the same day, Mr Vázquez was taken to the CICPC where a case was opened against him, for the alleged crime of disseminating false information, under section 296-A of the Penal Code; (iv) he

²⁴⁵ The Commission had before it the release papers for Mr Roa dated 11 August 2016.

²⁴⁶ Dated 11 August 2016 and issued by the twenty-sixth court of first instance acting in judgment for the criminal judicial circuit of the Caracas metropolitan area.

²⁴⁷ Videoconference of 29 April 2019.

²⁴⁸ Title V (Offences against public order), chapter IV (Those who incite civil war, organize armed bodies or intimidate the public): Section 296-A. "Any person who, by spreading false information in a printed publication, radio or TV broadcast, telephonic medium, electronic mail or written pamphlet, causing panic in the community or holding it in a state of anxiety, shall be punished by two to five years' imprisonment. If the acts described in the previous paragraph are committed by a public servant, anonymously or under an assumed name, the punishment shall be increased by one third. This article shall apply without prejudice to the special legislation on computer crimes, telecommunications, printed matter and the transmission of data messages."

²⁴⁹ The Commission was unable to obtain from the Government any document relating to this case, despite many requests, and in a document from the Attorney General's Office there was an indication that the case came under the jurisdiction of the military advocate general (Communication of 25 June 2019 provided to the Commission during its visit to the country from 8 to 12 July 2019). In addition to case details, the Commission has provided the Government, at the request of the representative of the Attorney General's Office who was interviewed, with Mr Roa's personal identity card number.

later appeared before the Control Court, this time in the presence of his lawyers, after which he was freed on 20 April, under precautionary measures ²⁵⁰ requiring him to attend court whenever it so decreed, a measure still in place when the current report was written, although to date the court has never requested his attendance; and (v) Mr Vázquez was banned, inter alia, from accessing the electrical power corporation, making statements and attending meetings.

- 233.** The **Government** in its reply stated ²⁵¹ that an investigation into Mr Vázquez was under way at the Office of the Public Prosecutor, and that he was accused, under section 286-A of the Penal Code, of the crime of having sown panic and anxiety among the public.

Detention of the President and other leaders of AGAPURE

- 234.** Concerning the detention of Mr Manuel Castillo together with two Vice-Presidents of AGAPURE and nine other cheese producers from the area by the Bolivarian National Guard (GNB) and the municipal police in Apure State, on 5 March 2018 at the orders of the mayor's office in San Fernando de Apure, testimony ²⁵² presented to the Commission indicated that: (i) the incident occurred during a protest by the above-mentioned leaders and employers against a demand by the mayor's office that they hand over 10 per cent of a total 100 tonnes of cheese which was in trucks on the bridge at San Fernando ready for distribution and sale in other states across the country, a demand for which they considered there was no legal basis; (ii) the leaders and employers were beaten and detained at GNB Regional Command No. 6 for a night, then transferred to a detention centre for three days accused of disturbing public order; and (iii) since the courts could not find sufficient evidence to prescribe a custodial sentence, they simply applied alternative precautionary measures while further investigations continued.

- 235.** In this regard, the **Government** stated that it had opened a case with the Apure state attorney's office, that these members of employers' organizations had appeared in court on 7 March 2018 and that the judge had declared their arrest invalid on the ground that no criminal act was involved and had freed the accused persons unconditionally.

5.2.2. Allegations concerning trade unionists

- 236.** The Commission received the following allegations from **workers' organizations** concerning cases that typified the alleged policy of criminalization of trade union activity and which occurred after the submission of the complaint; they included, inter alia, the imprisonment of union leaders, the imposition of severe alternative precautionary measures combined with restrictions on the exercise of union activities, and subjection to military jurisdiction (detention and trial in military prisons and courts): (i) the arrest, detention and prosecution in a military court of Mr Rubén González, ²⁵³ leader and Secretary-General of

²⁵⁰ The Commission had access to the release papers for Mr Vázquez.

²⁵¹ Communication of 25 June 2019 provided to the Commission during its visit to the country from 8 to 12 July 2019.

²⁵² Communication of the complainants dated 16 March 2018 and videoconference of 22 March 2019.

²⁵³ Regarding the case of Mr Rubén González, the Commission recalls the requests for action submitted to the Office by the CTV and UNETE: (i) dated 30 November 2018, which led to intervention by the Office with the Government in a communication dated 11 December 2018 and to which the Government replied in a communication dated 17 December 2018; and (ii) dated 13 and 19 August 2019, which led to intervention by the Office in a communication of 21 August 2019,

SINTRAFERROMINERA; (ii) the arrest and detention of Mr Rodney Álvarez, member of SINTRAFERROMINERA; (iii) the arrest, detention, prosecution under ordinary criminal jurisdiction and conviction of a group of *trade unionists and workers at the Ferrominera enterprise*; (iv) the arrest, detention, prosecution and conviction of Mr José Hidalgo, President of SUTRAPUVAL, the union of the Venezuelan aluminium enterprise (CVG VENALUM) and others of its workers; (v) the arrest, detention and trial, by the Third Military Court of Control in Caracas, of Mr Julio García, President of the College of Nursing in Carabobo State, Ms Rosmary Di Pietro, President of the Chartered Accountants' College of Carabobo State and Mr Omar Escalante, President of FETRACARABOBO and member of the Federation of Workers in Education; and (vi) the detention and subjection to alternative precautionary measures of Mr Leonel Grisett, union leader at Coalición Siderúrgica 40 (an alliance of steel workers and executive committee member of the Single Union of the Steel Industry and Associated Workers (SUTISS) and Mr Elio Palacios, Secretary-General of the United Trade Union for the Working Class in the Electricity Sector at CORPOELEC/FETRAELEC Caracas, Varga and Miranda.

Detention and prosecution and sentencing of the Secretary-General of SINTRAFERROMINERA Orinoco

237. The Commission received copious information from several **trade unions**²⁵⁴ concerning the arrest and detention of the union leader and Secretary-General of SINTRAFERROMINERA Orinoco, Mr Rubén González.²⁵⁵ Specifically, the trade unions stated that: (i) on 13 August 2018, Mr González came to a meeting at the gates of Ferrominera in Ciudad Piar to inform workers of changes to their pay scales, and officers of the GNB formed a cordon in front of the enterprise, preventing him from entering before boarding the truck in which he and other workers from the enterprise were travelling; (ii) on arriving at the home of Mr González, the GNB officers went inside, searching it without a warrant and committing acts of violence including destroying the house, striking a pregnant woman²⁵⁶ and filming without permission; (iii) on 28 November 2018, Mr González was arrested by officers of the DGCIM and the GNB while travelling in a vehicle towards the city of Bolívar after journeying to Caracas to deliver a document signed by the Venezuelan trade unions;²⁵⁷ (iv) this arrest was allegedly due to the existence of an arrest warrant made

concerning which the Government replied to the Commission in a communication dated 5 September 2019.

²⁵⁴ UNETE: communication of 30 November 2018; UNETE, CGT, CODESA: communications of 24 September 2018 and 18 October 2018; CTV: communications of 24 September 2018, 14 January 2019 and 18 March 2019; and the Guild of Trade Unions and Employers' Organizations (UASG) (UNETE, CTV, CGT, CODESA): communication received on 26 September 2018. The Commission also received information from PROVEA and from various eyewitnesses who were interviewed during the Commission's visit to Puerto Ordaz on 10 July 2019.

²⁵⁵ According to the allegation, his case was submitted to the OHCHR Working Group on Arbitrary Detention.

²⁵⁶ According to a witness from the CTV who appeared before the Commission during the videoconference on 6 May 2019, as a result of the beating this member of his family gave birth to stillborn twins.

²⁵⁷ During the interviews conducted in Puerto Ordaz on 10 July 2019, witnesses indicated that Rubén González had also been in Caracas to testify in the case of Rodney Álvarez (see same section).

out in his name ²⁵⁸ and dated 17 August 2018, concerning the events of 13 August 2018; ²⁵⁹ (v) Mr González was detained and spent the night in the military headquarters of the GNB at Anaco, Anzoátegui State, manacled to the floor, then transferred to La Pica military prison (Maturín, Monagas State), some 400 km from his residence, to await the judgment of a military court, ²⁶⁰ all of which placed the trade unionist in extreme isolation away from his family and work and deprived his union and the workers at the enterprise of his leadership; (vi) the preliminary hearing was postponed many times and then held on 20 February 2019 after acceptance of the formal charge; ²⁶¹ (vii) on 16 and 23 July the oral and public proceedings were held and on 13 August, at a hearing which no one apart from his lawyers was permitted to attend, ²⁶² Mr González was sentenced to five years and nine months in prison; (viii) Mr González was subjected to abuse and was in poor health, ²⁶³ but despite showing major symptoms in prison he was allowed only the attentions of paramedical staff ²⁶⁴; and (ix) the family of Mr González was persecuted by members of the Guayana regional branch of SEBIN and by the DGCIM. ²⁶⁵

238. The above-mentioned organizations also alleged that Mr González had been persecuted for more than ten years. He spent 17 months in detention between 2009 and 2011 ²⁶⁶ at a police command unit in connection with a strike at his enterprise, for which he was sentenced to seven years in prison. They added that, after public protests, the sentence was quashed and the trial reopened, during which he was made subject to alternative precautionary measures,

²⁵⁸ Requested by Military Attorney General's Office No. 43 at the direction of Capt. Karelis Nuñez, based in Ciudad Bolívar.

²⁵⁹ Mr González is accused of the crimes of assault against the watchman, outrage against the watchman and outrage against the Armed Forces.

²⁶⁰ According to witnesses interviewed by the Commission during its visit to the country (Puerto Ordaz, 10 July 2019), Mr González was tried by a military court (Fifth Military Court of Control in Maturín, Monagas State) comprising three judges with the rank of colonel.

²⁶¹ Testimony from witnesses who appeared before the Commission in Puerto Ordaz (10 July 2019).

²⁶² It was claimed that DGCIM officials ejected all members of Mr González' family from the trial room and surrounded the perimeter of the military building where the hearing took place. Communications from CTV dated 13 August 2019 and from UNETE dated 19 August 2019.

²⁶³ It was stated that in May 2019 he was kept in a cell without light or water for two weeks and without visiting rights, which exacerbated his kidney condition and caused a high fever. CTV communication of 13 August 2019.

²⁶⁴ Statement by a witness who appeared before the Commission. Videoconference with CTV representatives on 6 May 2019.

²⁶⁵ Statement by a witness who appeared before the Commission who, inter alia, indicated that one of his sons-in-law was the subject of an arrest warrant, that his granddaughter had escaped an abduction attempt, that friends of the family had been sacked by the company, that several of his grandchildren had been expelled from school and his health insurance had been withdrawn. He also alleged that he had been prevented from lodging a complaint. Persecution of the González family was also alleged in a CTV communication of 13 August 2019.

²⁶⁶ Communication of 14 January 2019 in which the CTV also recalled that the case of Mr González had been under examination by the CFA between 2009 and 2014, during which he had been persecuted and prosecuted before being acquitted of all charges in 2014, and that the CFA had urged the Government to free and compensate him. According to the CTV, he was again being persecuted for continuing to defend a free and voluntary collective agreement.

and that finally, after five years, he was acquitted and until November 2018 was enjoying full freedom.

239. In this regard, the **Government** stated ²⁶⁷ that: (i) Mr González was detained in the State of Anzoátegui, not for taking part in an anti-government demonstration or other union activities, but because, during a routine random identity and status check, it was found that he was the subject of an arrest warrant issued on 13 August 2018 indicting him for crimes under the Code of Military Justice, namely assault (section 501(1)) and outrage against a sentry (section 502) and outrage against the armed forces (section 505), ²⁶⁸ the reason for his being placed under military jurisdiction; (ii) the request by the judicial body followed events that occurred in August 2018 in Ciudad Pilar, Bolívar State; ²⁶⁹ (iii) the arrest warrant resulted in preventive detention because the Tribunal which handled the case had decreed custody until a proper hearing could be held; ²⁷⁰ (iv) at all times he enjoyed legal support from the NGO Foro Penal and at the preliminary trial he pleaded not guilty, for which reason he continued in detention while judicial proceedings continued; (v) he underwent medical examinations, was found to be in good health and received family visits; (vi) there were no orders to imprison his direct relatives, particularly his children, but three arrest warrants had been issued for persons who were present during the violence which occurred at Mr González' house where he assaulted the watchman; and (vii) on 13 August 2019 the military court sentenced Mr González to five years and nine months in prison for the crimes of outrage against a sentry and outrage against the armed forces, but acquitted him of assault against a sentry; the trial respected due process and all guarantees, in particular the right to defence of Mr González, who was represented by three lawyers.

240. With regard to the detention and prior prosecution of Mr González, the Government stated that in 2009, when he was accused of a civil crime, he had enjoyed legal support at all times; he was held at the police headquarters in Caroní under good conditions which ensured there were no complications; he was convicted by a court of first instance on 2 March 2011 but the Supreme Court of Justice at the Criminal Court of Appeals decided to take over the case on its own initiative, then annulled ²⁷¹ the previous conviction on the grounds that it was flawed and referred the case to new public oral proceedings at which Mr González was acquitted.

²⁶⁷ Communication of 17 December 2018 and meetings of Government representatives with the Commission on 15 January and 7 May 2019. Communication of 5 September 2019 forwarding a copy of the operative part of the judgment.

²⁶⁸ According to the Government, to this was added military criminal liability as perpetrator, provided for in articles 389(1) and 390(1), with aggravating circumstances provided for and penalized in article 402(1) and (16) of the Code of Military Justice.

²⁶⁹ According to the Government, on that date Mr González was driving a truck belonging to Ferrominera and was stopped for a check of his papers; as he was unable to provide these, the officials requested him to accompany them to their command unit and climbed into the truck, but Mr González went to his home instead, where, together with others, he verbally and physically abused two GNB officials who were working as sentries at the Ferrominera de Orinoco enterprise; one of these was struck on the head with a wooden pole, causing a scalp injury.

²⁷⁰ The government representative could not explain why Mr González was apprehended three months after the issuance of the arrest warrant, at the same time as the demonstrations and not immediately, since, according to the Government itself, he was living a normal life with no need to hide.

²⁷¹ The Commission had access to the text of the annulment judgment.

241. Likewise, a representative of the CBST who appeared before the Commission ²⁷² stated that the case of Mr Rubén González was examined in the context of the union mafias in Venezuela and that Mr González had a significant criminal background, had been convicted of common offences and had masterminded the killing of a worker from Ferrominera, Mr Kenny Rojas. ²⁷³

242. Last, during its visit to the country, the Commission received from the Government a written communication ²⁷⁴ in which workers from Ferrominera complained of assaults against them by other workers from that enterprise, allegedly on the orders of Mr Rubén González, between 2013 and 2018. In this regard, the Commission noted the following: (i) two of the seven written testimonies contained no evidence to sustain the complaints; ²⁷⁵ (ii) the other five testimonies supported their statements with the texts of complaints made to the CICPC ²⁷⁶ or to the labour relations department of Ferrominera ²⁷⁷ and/or with photos, of which only one ²⁷⁸ showed the face of the injured person, ²⁷⁹ and, in two cases, with a press article; and (iii) one of the testimonies was supported only by a press article. ²⁸⁰

Detention and prosecution of a trade unionist from SINTRAFERROMINERA in June 2011

243. Various **trade union organizations** ²⁸¹ reported the allegedly arbitrary arrest, detention and prosecution of Mr Rodney Álvarez. In particular they allege that: (i) on 9 June 2011, during a general meeting held at the headquarters of Ferrominera de Orinoco in Puerto Ordaz to select representatives of the committee responsible for planning, implementing and supervising elections to the managing board of the trade union at this enterprise, a Government-supporting union manager, Mr Héctor José Maicán, fired several shots with the aim of sabotaging the election process, wounding Mr Luis Manuel Quilarte Quesada and

²⁷² Bilateral videoconference with the Commission and trade unionists on 7 May 2019 and meeting of the Commission with the CBST during its visit to the country (Caracas, 11 July 2019).

²⁷³ See below, treatment of the Rodney Álvarez case.

²⁷⁴ Communication of 12 July 2019 addressed to the Chair of the Commission, delivered by hand during the Commission's visit to the country and containing a CD in which were found: (i) a letter signed by workers of Ferrominera; (ii) the testimonies of the seven workers allegedly assaulted by Mr Rubén González between 2013 and 2018, namely Roberto Rosas, Álvaro Barrios, Randi Idrogo, Jesús Esparragoza, Luis Vera, Douglas Moyay and Pedro Páez; and (iii) the text of complaints made to the CICPC concerning some of the cases submitted, photos and press articles.

²⁷⁵ The testimonies of Mr Randi Idrogo and Mr Luis Vera.

²⁷⁶ Mr Douglas Moya and Mr Álvaro Barrios.

²⁷⁷ Mr Roberto Rosas.

²⁷⁸ Mr Álvaro Barrios.

²⁷⁹ In the other two cases, Messrs Douglas Moya and Pedro Paéz showed only injuries to bodily areas.

²⁸⁰ Mr Jesús Esparragoza.

²⁸¹ Communications from UNETE, CGT and CODESA of 5 November 2018 and from the CTV of 18 March 2018.

Mr Agustín Lezama and killing Mr Renny Rojas López,²⁸² all three workers at the enterprise; (ii) although Mr Maicán was at first detained by GNB officials, on 17 June 2011 forces of the CICPC detained Mr Álvarez by order of the Public Prosecutor's Office on the charge of the homicide of Mr Rojas; (iii) this arbitrary and baseless allegation stemmed from the fact that Mr Álvarez was a supporter of Mr Rubén González; (iv) Mr Álvarez was taken into custody and after passing through various establishments across the country found himself in the Rodeo II prison in Miranda State; (v) from the outset the case suffered delays, hearings were constantly postponed, witnesses never received notification, and constitutional guarantees, such as due process, presumption of innocence and legal protection, were not upheld; (vi) Mr Álvarez was tortured to make him admit the acts but refused, with the result that he is still in confinement despite many requests for alternative precautionary measures and, in the face of the judicial delay and denial of justice, an application for *amparo* submitted by his private defence counsel on 25 October 2018 to the constitutional chamber of the Supreme Court of Justice;²⁸³ (vii) despite his not having been convicted, his salary and all family benefits were suspended; and (viii) Mr Álvarez has not received medical assistance despite being in very poor health owing to the terrible conditions in the prisons where he has been held for eight years and the treatment he has suffered,²⁸⁴ a situation which the Public Prosecutor's Office has not investigated.

Incarceration, prosecution and sentencing of trade unionists from Ferrominera in November 2018

244. The above-mentioned **trade union organizations** also reported²⁸⁵ the abduction, abuse, detention and prosecution of other trade unionists from CVG FMO²⁸⁶ for their participation in a protest at the revision of salary scales in violation of collective bargaining agreements and because of poor working conditions.²⁸⁷ Specifically, they alleged the following: (i) in September 2018, workers began protests in front of gates 1 and 4 at the enterprise; (ii) in mid-October, the army launched a violent operation against the striking workers;²⁸⁸ (iii) on 27 November 2018, hooded DGCIM agents detained the above-mentioned workers who were held, without their families knowing their whereabouts, at DGCIM headquarters for

²⁸² According to the allegations and testimonies heard by the Commission on its visit to Puerto Ordaz, these events were recorded on video by the security cameras at the enterprise; the witnesses also state that many workers who were present at the meeting where Mr Rojas died testified to the innocence of Mr Álvarez.

²⁸³ This allegedly violated article 26 of the Law Protecting Constitutional Rights and Guarantees, which stipulates that the parties must express their intentions within 96 hours of the submission of a report, and that, from that moment, the judge has 24 hours to reach a decision.

²⁸⁴ Wounded by firearm on 27 December 2017, six wounded by knives on 6 August 2018 and a beating on 5 July 2019.

²⁸⁵ Communications from UNETE on 30 November 2018 and from CTV on 14 January 2019 and 18 March 2019 and testimony gathered by the Commission during the videoconference of 6 May 2019 with representatives of unions affiliated to CTV and its visit to Puerto Ordaz on 10 July 2019.

²⁸⁶ Namely Douglas Álvarez, Yonney Monsalve, Alexis Perdomo, Exddy Perdomo, Francisco Perdomo, Pedro Calzadilla, Argenis Da Silva, José Gregorio Jaime Briceño.

²⁸⁷ They alleged neglect of heavy mining equipment, much of it ruined, lack of industrial safety equipment so that many workers went to work in broken boots and without gloves, shortage of buses to transport staff, and the staff's social and labour situation.

²⁸⁸ The Commission had before it a video showing army personnel adopting a repressive stance outside the gates of the enterprise.

over two days without food or water; (iv) on 29 November they were taken to courts in Puerto Ordaz, in Bolívar State, and initially sent to El Dorado prison in the same state before finally being taken to Guaiparo prison in San Félix, Bolívar, where they were kept in cell B with 50 other prisoners for four months; (v) the Fifth Court of Control of Bolívar Second Circuit, Puerto Ordaz territorial area, ordered the deprivation of their liberty at the request of the Attorney General, who based the decision solely on the police file prepared by the DGCIM without any proof to substantiate charges; (vi) the workers were coerced into admitting crimes that they had not committed²⁸⁹ and were freed under precautionary measures a few days before the visit to the country by the UN High Commissioner;²⁹⁰ and (vii) as well as the requirement to present themselves regularly to a court and a prohibition on leaving the country, they were told not to give statements to the press or take part in protests, under penalty of a return to prison.

- 245.** On its visit to Puerto Ordaz, the Commission heard testimony from persons who participated in or witnessed the events described above,²⁹¹ in which they alleged the following: (i) on 27 November a group of DGCIM officials arrived at the gates to the enterprise with masks, hoods and large weapons and pursued, threatened and beat the workers, taking away a group of them to their headquarters where they remained for three days without food and water in a cramped space in unhealthy conditions; (ii) on the fourth day they were taken to appear before a judge who did not listen to their statements and merely informed them that they were to be deprived of their liberty; (iii) during their four-month stay in Guaiparo prison their lawyers advised them to acknowledge the crimes despite the fact that they had not committed them, which they did in order to escape their confinement and rejoin their families, who were suffering hardships; (iv) they were banned from visiting the enterprise where their union (SINTRAFERROMINERA) had its headquarters, which were handed over to a parallel union not elected by the workers but imposed by the Government;²⁹² (v) a group of trade unionists from SINTRAFERROMINERA were made the subject of arrest warrants and pursued by SEBIN and the DGCIM, which prevented them from accessing the enterprise even though many enjoyed trade union privileges,²⁹³ and forced them to live in hiding; and (vi) the arrests of 27 November resulted not only from the sit-in strike at the

²⁸⁹ On its visit to Bolívar State on 10 July 2019, the Commission had the opportunity to interview some colleagues of the above-mentioned workers who had witnessed the events. Several of these witnesses confirmed that the workers had had to admit to acts they did not commit so as to obtain their release, given the extremely precarious living conditions in the prison where they were held, the lack of food and water except for those supplied by their families, and the distance from their home.

²⁹⁰ It was also stated that a handful of other workers who had taken part in the protests were the subjects of arrest warrants.

²⁹¹ Some of these people stated that various of their colleagues who had wanted to testify to the Commission had withdrawn, fearing Government reprisals.

²⁹² Several witnesses who appeared before the Commission during its visit to Puerto Ordaz on 10 July 2019 stated that this was the Bolivarian Workers' Union of Ferrominera Orinoco (SINBOLTRAFE), headed by Mr Eleuterio León, a retired employee of the enterprise.

²⁹³ The witnesses interviewed by the Commission in Puerto Ordaz alleged that the SINTRAFERROMINERA union had been closed down, since its members were prevented from functioning, either because they were under precautionary measures or arrest warrants, or had been retired early or sacked indirectly, without notice, by being removed from the payroll, or were prevented from entering the enterprise where their union headquarters were located. It was also alleged that the management of the enterprise met only with SINBOLTRAFE, the parallel union, and negotiated only with them when it came to collective bargaining.

enterprise but also from the Government's intention to prevent Rubén González from denouncing the repression in Caracas.

- 246.** In its reply, the **Government** stated that the detained workers from CVG FMO were not members of the board of SINTRAFERROMINERA and had no special union entitlements as elected union officials, since, in its opinion, they were not union leaders and their detention did not entail obstruction of the exercise of union freedom.²⁹⁴ The Government also stated that: (i) there was no formal request to strike at the Ferrominera enterprise, and thus the actions to prevent workers from working were not covered by law; (ii) the arrests were made in Guayana (Bolívar) and not linked to Rubén González; (iii) the crimes with which the citizens in questions were charged, namely resisting authority, industrial stoppage, damaging public property, illegal association²⁹⁵ and, in one case, illegal possession of weapons,²⁹⁶ came under civil jurisdiction; (iv) in all cases the right to defence and due process were respected; and (v) the workers in question were placed in preventive custody at the Guaipara police detention centre in San Félix, Guayana.²⁹⁷
- 247.** In a subsequent communication,²⁹⁸ the Government stated that, at a preliminary hearing held on 19 March 2019 before the Fifth Criminal Court of Control, the Ferrominera workers in question pleaded guilty to the offences²⁹⁹ with which they had been charged and were sentenced to two years, six months and 25 days in prison, except for one³⁰⁰ who was sentenced to four years, ten months and 25 days. It added that they had been placed under alternative precautionary measures requiring them to report every 30 days to the court bailiffs and to remain alert for a summons from the Public Prosecutor's Office and/or the court, in accordance with the provisions of section 242, paragraphs 30 and 90, of the Code of Criminal Procedure. The Government also stated that the workers' right to defence had been guaranteed at all times.³⁰¹
- 248.** During its visit to the country, particularly in Puerto Ordaz, the Commission asked the Government for an interview with the judge and prosecutor handling this case, but this was refused. Also, the lawyer who took the case refused to speak, despite having been summoned to do so by the Commission. The Commission did not have access to the charge sheet

²⁹⁴ The Government annexed to its reply a list of the union's governing board members.

²⁹⁵ According to the records of the preliminary hearing for admission of the facts that the Commission had before it, these offences are punishable under the Venezuelan Penal Code.

²⁹⁶ According to the same document, punishable under the Act on Disarmament and the Control of Weapons and Ammunition.

²⁹⁷ During a face to face meeting in February 2019, in response to a question from the commissioners as to whether the punishment was commensurate with the crime, a representative of the Government said that there had been injured parties, since some workers had wanted to work, and the strikers had attempted to prevent them by violent means; he added that some workers at the enterprise felt that they should not have left prison.

²⁹⁸ Communication of 21 March 2019.

²⁹⁹ In the records of the preliminary hearing held to determine the facts, the defence counsel spoke in the following terms: "following talks with all the defendants and their co-defendants we are agreed that the citizens today accused by the Public Prosecutor's Office wish to admit to these actions ...".

³⁰⁰ Mr Pedro Calzadilla, who was accused of illegally bearing arms.

³⁰¹ The Government gave the Commission copies of the release papers for the workers and of the records of the preliminary hearing, both documents dated 19 March 2019.

detailing the evidence adduced by the Public Prosecutor's Office to support the above-mentioned charges.

Detention, prosecution and conviction of the Secretary-General of SUTRAPUVAL and other trade unionists from CVG VENALUM

249. Concerning the detention of trade unionists from the CVG VENALUM workers' organizations³⁰² and witnesses that appeared before the Commission³⁰³ alleged that, at dawn on 14 December 2018, a delegation from the DGCIM and the GNB burst violently into the casting shop at CVGVENALUM while workers were conducting a sit-down protest and go-slow, without halting the company's operations as this was a continuous process, against loss of income imposed by pro-Government union leaders in violation the existing collective bargaining agreement. According to the allegations: (i) in parallel with their grievance about the review of salary scales imposed in August 2018, the CVG VENALUM workers were protesting because the socialist CestaTicket (food voucher) and other benefits had been withdrawn and because workers did not receive any of the profit from the sale of aluminium, the reason why they were withholding the material; (ii) since 12 December the strikers had suffered intimidation from officials of State security bodies who had appeared at the enterprise; (iii) on that day the administrative director of the enterprise informed the strikers' representatives that CVGVENALUM had brought a labour protection order against 16 trade unionists and workers from the enterprise, banning any act of protest, strike or meeting in or outside the factory; this action was allowed by the court, and the strikers were advised to halt their activities so as to avoid a warrant being issued under the protective action order;³⁰⁴ (iv) after the strikers refused, on 14 December at dawn, some 80 GNB and DGCIM officials wearing masks burst into the enterprise, beating the plant's safety inspectors, and entered the casting shop, where they beat workers who crossed their path, stole mobile phones, watches and money and arrested Mr José Hidalgo, Secretary-General of the Single Union of Professional University Employees of VENALUM (SUTRAPUVAL) and another three workers from the enterprise, Mr Noel Gerdez, Mr Ernesto Morillo and Mr Andrés Rojas; (v) Mr Hidalgo was savagely beaten and dragged about with the intention of humiliating him in front of his colleagues; (vi) the four workers were taken to the Fifth Court of Control in Puerto Ordaz and the Attorney General requested that they be deprived of their liberty; (vii) after two months in detention at the DGCIM, and immediately before the arrival in the country of OHCHR officials in February 2019, the detained workers were placed under severe pressure and threatened in order to make them confess to the crimes, which they did. They were then sentenced and freed under alternative precautionary measures, which included regular appearances before the judge in the case and being banned from making statements to the media or on social networks and from attending meetings or joining in street activities, under threat of a return to prison; and (viii) concerning the four trade unionists and other workers who were also present at the protests, the State requested that they be sacked by the relevant labour tribunal as well as banned from entering the enterprise.

³⁰² Communications from UNETE dated 17 December 2018 and from CTV dated 18 March 2019.

³⁰³ Videoconference with CTV on 6 May 2019 and interviews held by the Commission during its visit to the country on 10 July 2019.

³⁰⁴ The Commission had before it the protective action document, dated 14 November 2018.

250. In this regard, the **Government** stated ³⁰⁵ that in October and November 2018, CVG VENALUM, a state aluminium enterprise located in Bolívar State, had been subjected by a group of persons to illegal stoppages, highway obstructions and assaults on workers who were going about their daily routine. In the Government's opinion: (i) despite the unlawfulness of those violent actions, dialogue was always kept open and the security organizations had acted to ensure free passage without resorting to repressive actions; (ii) once those unlawful acts had been brought fully under control, a group of CVG VENALUM workers used violence in withholding products inside the facilities of the enterprise and misappropriating them; (iii) the financial implications for the industry were serious, as the metal was prevented from leaving; (iv) once dialogue had failed, the security forces were obliged to intervene, ³⁰⁶ but they acted with respect for legal procedure and human rights in detaining four persons ³⁰⁷ and issuing arrest warrants against two more; ³⁰⁸ (v) at the preliminary hearing before the State and Municipal Court of First Instance on 22 February 2019, the four detained workers abandoned the appeal they had filed earlier and confessed, without coercion, to committing the crimes with which they were charged by the Attorney General's Office, as a result of which they were convicted ³⁰⁹ of resisting authority, shutting down and halting State industry, illegally suspending work, illegal association, disrespect for authority, damage to public property and blocking a public highway, ³¹⁰ all offences punishable under the Criminal Code; (vi) they were made subject to an alternative precautionary measure requiring that they present themselves every 45 days at the court bailiff's office and remain alert for summons by the court or the Public Prosecutor's Office, in accordance with section 214(3) and (9) of the Code of Criminal Procedure, and their right of defence was guaranteed at all times; ³¹¹ and (vii) at no time had there been any indication of acts of torture against the trade unionists.

Detention and prosecution in military courts of presidents
of professional associations and trade unionists
from Carabobo State

251. With respect to Mr Julio Alexander Gacia Castillo (President of the Nursing College), Ms Rosmary Di Pietro (President of the Chartered Accountants' College) and Mr Omar Escalante (President of FETRACARABOBO and member of the Federation of Workers in

³⁰⁵ Communications received on 17 January 2019 and 13 and 21 March 2019, communication from the Attorney General's Office of 25 June 2019 delivered to the Commission during its visit to the country (8 to 12 July 2019), videoconference between the Government and the Commission on 29 April 2019 and meeting of government representatives with the Commission in Geneva on 7 May 2019.

³⁰⁶ At a face to face meeting with the Commission a government representative stated that the reason for the intervention by the DGCIM was that it was an enterprise of strategic importance to Venezuela.

³⁰⁷ José Hidalgo, Noel Gerdez, Ernesto Morillo and Andrés Rojas.

³⁰⁸ Franklin Gascon and Douglas González.

³⁰⁹ According to the record of the preliminary hearing held on 22 February 2019 for admission of the facts, delivered by the Government to the Commission during its visit to the country, Messrs Gerdez, Morillo and Rojas were sentenced to three years and four months in prison, and Mr Hidalgo to four years and seven months.

³¹⁰ Mr Hidalgo was found to be guilty of these offences in the second degree.

³¹¹ In a communication of 21 March 2019, the Commission received a copy of the release document for these workers.

Education), it was claimed that they were detained on 12 August 2017³¹² by SEBIN agents for the alleged offences of treason, military rebellion, theft of property belonging to the armed forces and assault on a sentry, and tried by the Third Military Court of Control in Caracas in connection with their alleged participation in a terrorist assault on Fort Paramacay on 6 August 2017.³¹³ The three were allegedly held more than 170 km away from their homes and freed, after a month in prison, under alternative precautionary measures. It was also claimed that while Mr García and Ms Di Pietro were acquitted on 18 December 2018,³¹⁴ with no explanation as to the evidence leading to their detention and without compensation, Mr Escalante continued under precautionary measures with military proceedings in place.

252. According to the testimonies, Mr García was abducted on 12 August 2017 by SEBIN agents with covered faces while he ate breakfast with his pregnant wife and his daughter,³¹⁵ and detained for 48 hours at the headquarters of SEBIN in Valencia and at the Ramo Verde Los Teques military prison in Miranda State;³¹⁶ on 28 September 2017 Mr García was placed under alternative precautionary measures, which involved throughout the proceedings: (i) regular weekly reporting to the court; (ii) a prohibition on leaving the country; (iii) a prohibition on attending meetings or taking part in street activities; and (iv) a prohibition on giving statements.³¹⁷ A witness told the Commission that the arrest could have been linked to the protest activities carried out by Mr García from early 2017 in relation to working and employment conditions in the health sector, and was thus intended to prevent such activities.

253. It was alleged that Ms Rosmary Di Pietro del Riego, arrested at Caracas airport³¹⁸ on 12 August 2017 while returning from vacation with her young daughters,³¹⁹ was held for 48 hours³²⁰ at the headquarters of SEBIN in Vargas State and Caracas for allegedly

³¹² The arrest warrant was granted on 10 August 2017 and terminated on 23 October 2017, documents which the Commission had before it.

³¹³ The Commission had access to a video in which an official describes the capture of these individuals and refers to terrorist organizations. The Commission also had before it a video in which a representative of a state organ, Mr Diosdado Cabello, President of the National Constituent Assembly (ANC), in his programme “Con el mazo dando” on 23 August 2017, announced publicly that the three members of employers’ organizations had been involved in the attack on Fort Paramacay.

³¹⁴ The Commission had access to the acquittal document for both leaders.

³¹⁵ A witness who appeared before the Commission during its visit to the city of Valencia (Carabobo State) on 10 July 2019 stated that the arrest was made with violence, by force and without explanation as to procedure or respect for due process.

³¹⁶ This witness stated that Mr García was held in overcrowded conditions under constant intimidation

³¹⁷ The Commission had before it the conditional release document for Mr García dated 28 September 2017 which lists the charges against him and the restrictions placed on his liberty. The requirement to present himself weekly was changed to every 30 days by a notification of 23 November 2017.

³¹⁸ The arrest warrant was issued on August 2017 and terminated on 23 October 2017, documents which the Commission had before it.

³¹⁹ A witness who appeared before the Commission during its visit to Valencia on 10 July 2019 said that the detention had been implemented without due process guarantee, since no lawyer or legal advice was permitted. The witness also stated that when she was arrested Ms Di Pietro had been obliged to leave her two young daughters at the airport.

³²⁰ It was alleged that for the first 15 days Ms Di Pietro was held *incommunicado*.

organizing a meeting with the presidents of professional associations in Carabobo in order to plan an assault on the Paramacay base.³²¹ According to the testimonies, Ms Di Pietro had no access to private defence throughout the proceedings, and after 48 hours was released under precautionary measures with similar restrictions³²² to those imposed on Mr García, and then acquitted together with Mr García in December 2018.

254. Concerning Mr Escalante, it was claimed that he was arrested in his home on 8 August 2017 by SEBIN officials, without any judicial order issued by a control court following investigation by a lawyer from the Public Prosecutor's Office, on the unsubstantiated premise of his having been caught in the act, and without a search order or the presence of a defence counsel; according to the allegations he was held in the canteen of Ramo Verde prison for 60 days and then transferred to an isolation cell under poor conditions; a witness who appeared before the Commission stated that during his incarceration Mr Escalante had little access to food (only a proportion of the food brought by his family) and, after refusing under pressure to denounce other union leaders, was placed in solitary confinement in which he saw daylight for only half an hour per week; the witness alleged that prison staff harassed the wife of Mr Escalante with the aim of discouraging her from further visits; Mr Escalante was then allegedly prosecuted,³²³ granted provisional release, banned from union activity and harassed when away from his home. It was stated that the detention and prosecution of Mr Escalante were linked to his participation in a press conference organized on 30 July 2017 by National Assembly deputies at which social dialogue was called for.

255. The **Government** in its reply³²⁴ to the three cases discussed above stated that no complaint had been made about the events described.³²⁵

Detention and placement under long-term precautionary measures of trade unionists from SUTISS and FETRAELEC

256. Various **workers' organizations** claimed³²⁶ that Mr Lionel Grisett (Single Trade Union of Workers in the Steel and Allied Industries in the State of Bolívar (SUTISS – Bolívar) was arrested on 22 January 2017 by the GNB at the El Amparo checkpoint in Independencia municipality, Anzoátegui State, in connection with criminal proceedings begun in 2006

³²¹ This witness stated that a meeting had taken place, but that its purpose had been to elect the governors of trade colleges.

³²² The Commission had before it the conditional release document for Ms Di Pietro dated 29 September 2017 which contains the charges made against her and the restrictions placed on her liberty. The requirement to present herself weekly was changed to every 30 days by a notification of 22 November 2017.

³²³ The Commission had before it documents notifying a delay in holding a preliminary hearing for the commission of crimes of a military and penal nature.

³²⁴ Communication from the Attorney General's Office dated 25 June 2019, handed to the Commission on its visit to the country from 8 to 12 July 2019.

³²⁵ The Commission recalls that, along with details relating to these cases, it provided the Government with the identity cards of these three managers.

³²⁶ Communication from ASI dated 29 August 2018, received on 26 September 2018; communication from the CTV of 24 September 2018; communication from UNETE, CGT and Codesa dated 18 October 2018; and communication from the CTV dated 18 March 2019.

against him and other workers after they took part in a protest.³²⁷ In particular, it was claimed that: (i) since 2006 Mr Grisett had been made to present himself to a court at regular intervals and regularly arrested by police, while awaiting a public oral hearing; (ii) on leaving prison, Mr Grisett and the others accused in this case were warned verbally not to describe what had taken place on social media, not to take part in demonstrations, to keep away from their union and not to take part in union disputes at the enterprise, all of which could see them deprived of their liberty;³²⁸ (iii) Mr Grisett and his colleagues were constantly checked and detained, as the arrest warrant was still in force according to police records, and when they presented themselves to the court no record was kept of their having done so; and (iv) since then no court hearing has taken place and it has not been possible to acknowledge their innocence.

257. With regard to the case of Mr Grisett and other workers from the Sidor enterprise, the **Government** stated³²⁹ that it was awaiting the holding of oral proceedings against them for the above-mentioned crimes.

258. The Commission also received testimony from **workers' organizations**³³⁰ concerning the dawn arrest by SEBIN, at his home on 15 February 2018, of Mr Elio Palacios (FETRAELEC); his union is affiliated to the CBST. Specifically, it was claimed that: (i) he was arrested because of an audiotape he had circulated among workers affiliated to his union in which he warned of the condition of the electrical system and the risk of breakdown, denounced an attempt by the enterprise to impose a collective agreement harmful to workers and called them to a meeting; (ii) the arrest led to a statement by the President of FETRAELEC demanding his release and denouncing the working conditions and infrastructure in the industry; (iii) it also led the World Federation of Trade Unions to request his release by the authorities; and (iv) Mr Palacios was released after a month in prison and since then has taken no further part in union activities.

259. Concerning Mr Palacios (FETRAELEC), the **Government** denied³³¹ that the audiotape had been circulated, stating that SEBIN had detained him following a significant power failure, he was on provisional release while a file had been opened on his case by the human rights directorate, and he was exercising his union duties. A document from the Office of the

³²⁷ In the context of CFA Case No.2763, it was alleged that in Guayana on 5 September 2006, Mr Juan Antonio Valor, a leader of the Single Union of THE Steel Industry and Associated Workers of the State of Bolívar (SUTISS-Bolívar); Mr Leonel Grisett, member of the Joint Committee on Industrial Health and Safety; and Mr Joel José Ruíz Hernández, also a leader of SUTISS-Bolívar, all employed by Siderúrgica del Orinoco Alfredo Maneiro (Orinoco Steel Corporation) an enterprise under CVG control, together with employees of the contracting enterprise Camila, were charged with the offences of misappropriation, restricting freedom to work, taking the law into their own hands and breaching special security zone arrangements, under the Criminal Code and the Basic National Security Act. According to the allegations these trade unionists and employees were merely protesting against allegedly poor working conditions that the contracting enterprise Camila imposed on its workers, and had not gone on strike.

³²⁸ The ASI indicated in its communications that Mr Grisett, who had already been detained in May 2015 in the same case, was again granted provisional release on 26 January 2017; it also alleged that on 19 May 2017, Sidor sacked Mr Grisett because he had spoken out to reject the National Constituent Assembly after 20 years of service and a trade union career.

³²⁹ Communication of 25 June 2019 handed to the Commission during its visit to the country from 8 to 12 July 2019.

³³⁰ Communication from CTV on 19 March 2019.

³³¹ Videoconference with the Commission on 29 April 2019.

Attorney General of the Republic ³³² stated that: (i) on 28 March 2019 Mr Palacios was formally charged with revealing confidential information and divulging or supplying data or information, offences punishable under section 108 and 96 of the Basic Electricity System and Services Act, ³³³ and section 55 of the Basic National Security Act; ³³⁴ and (ii) the accused was under house arrest at the time and the date of the preliminary hearing was still awaited.

5.3. Acts of harassment

260. Both the complainants and several trade union bodies complained to the Commission about government actions intended to discourage employers' organization activity by creating a hostile environment, in particular through a media campaign against FEDECAMARAS and its affiliated organizations and calls for demonstrations to be held against it, insults and acts of vandalism against its headquarters.

5.3.1. Media campaign against FEDECAMARAS and affiliated organizations

261. In many written communications ³³⁵ to the Commission, including the text of the complaint, and in many oral communications ³³⁶ it received, complainants denounced the intensification of a campaign to stigmatize FEDECAMARAS, its leaders and affiliated organizations and enterprises, ³³⁷ consisting of stigmatization, unfounded accusations, intimidatory messages

³³² Communication of 25 June 2019 delivered to the Commission during its visit to the country from 8 to 12 July 2019.

³³³ Article 108: Revealing confidential information. Anyone who, improperly and with prejudice against the Republic, reveals secrets affecting the security of the national electricity system, either by communicating or publishing documents or other information about the system, shall be punished by a term of imprisonment from eight to sixteen years.

Article 96: Responsibility of workers. If the categories of crime provided for in this Title are committed by employees of the service operator and provider, the applicable punishment shall be the maximum allowed for each case.

³³⁴ Article 55: Divulging or supplying data or information. Any official serving in one of the organs of government or any State institution who divulges or supplies data or information to another individual or State, thus compromising national security and defence, shall be punished by a term of imprisonment from five (5) to ten (10) years.

³³⁵ Virtually all.

³³⁶ Meeting with the Commission in Geneva on 25 January 2019.

³³⁷ The complainants emphasized that for several years the CFA had examined numerous allegations of stigmatization and intimidation by the authorities or Bolivarian groups and organizations against FEDECAMARAS, its affiliated bodies, leaders and affiliated enterprises. See CFA Case No. 2254, Interim Report No. 383, October 2017. Likewise, the 2014 mission noted information received from FEDECAMARAS concerning the Government's use of the communications media to level serious personal accusations against leaders of FEDECAMARAS and its affiliated organizations and to call for their headquarters to be seized, the aim being to blame them for the crisis by claiming they were waging economic war against the Government and seeking to trigger inflation through speculation and product hoarding. Report of the High-level Tripartite Mission to the Bolivarian Republic of Venezuela (Caracas, 27 to 31 January, 2014), Governing Body, 320th Session, Geneva, 13–27 March 2014, paras 15 and 44.

and calls for the public to mobilize against it, all broadcast in weekly TV programmes hosted by members of the ruling party who occupied public office.³³⁸ The complainants added that this campaign of verbal abuse had led to a number of protests against FEDECAMARAS at its offices in towns and cities across the country.

- 262.** In this regard, the complainants allege that³³⁹ from early 2016 to the end of 2018, state actors including the President of the Republic appeared in many TV programmes, referring to FEDECAMARAS, its affiliated organizations (including CONSECOMERCIO, CONINDUSTRIA, FEDENAGA, FEDEAGRO and the Polar Group of Enterprises) and their leaders in disparaging terms, using expressions such as “enemies of the workers”, “violators of labour rights”, “coup leaders”, “speculators”, “exploiters”, “bandits”, “looters”, “criminals”, “leading players in the economic war”, “enemies of the people”, “traitors to their country”, “promoters of national economic war and instability”, and blaming them, among other things, for the country’s serious economic crisis, the shortage of consumer products, siphoning off official dollars assigned by the Government, associating with criminal gangs and even organizing the killing of peasants and social leaders. With regard to the Polar Group, it was alleged that in October 2015³⁴⁰ a media campaign was launched against it, entitled “The dark side of the white bear”, consisting of defamatory reports and programmes on State TV channels and on the websites of Government parties. To support their allegations, the complainants presented videos containing excerpts from numerous TV programmes in which government officials verbally abused these organizations and their leaders over the period in question, examples of which are given below:

Date	Programme	Channel	Person	Position
25.04.16–23.01.17	Zurda Conducta	Venezolana de televisión	Pedro Carvajalinho and others	–
30.04.16–03.05.16 17.05.16–27.10.16 28.10.16–18.09.18	Cadena nacional	Venezolana de televisión	Nicolás Maduro	President of the Republic
16.11.16–09.12.16 15.12.16–08.01.17 11.01.17–01.02.17 07.02.18–24.10.18 14.11.18–05.12.18	Con el mazo dando	Venezolana de televisión	Diosdado Cabello	President of the ANC
08.09.18–11.09.18 16.10.18–31.10.18 13.11.18–27.11.18 04.12.18	La hojilla	Venezolana de televisión	Mario Silva	ANC member for Carabobo in 2017
02.12.18–23.09.18	José Vicente Hoy	Televen	José Vicente Rangel Vale	PSUV member Ex Vice-President of the Republic and ex

³³⁸ Among other government officials who allegedly took part in this campaign, they mention: Mr Nicolás Maduro Moros, President of the Republic; Mr Diosdado Cabello, President of the National Constituent Assembly (ANC) and Vice-President of the United Socialist Party of Venezuela (PSUV), in his programme “Con el Mazo Dando”; Mr Mario Silva, member of the PSUV and the ANC for the Sector of Workers in the Alternative Economy, in his programme: “La Hojilla”; Mr José Vicente Rangel Vale, journalist, politician, PSUV member, former Vice-President of the Republic and former minister in the government of President Hugo Chávez, in his programme “José Vicente Hoy”; and Mr Francisco Torrealba, former Minister of Popular Power for the Social Process of Labour, President of the ANC Workers’ Committee and member of the PSUV National Directorate as Vice-President for the Working Class.

³³⁹ Communications of 24 May 2016, 30 August 2016 and 19 February 2017.

³⁴⁰ Communication of 30 August 2016.

Date	Programme	Channel	Person	Position
08.03.18–14.03.18	Programa de TV estatal	–	Wills Rangel	minister in the government of Hugo Chávez Secretary-General of the CBST
15.11.18–26.11.18	Noticiero Meridiano	Venevisión	Francisco Torrealba	President of the ANC workers' committee, ex Minister of Labour and member of the PSUJ national directorate

263. As far as the Commission could ascertain, this abuse was accompanied on many occasions by threats to the leaders of these institutions that they would be brought before the courts and imprisoned, and in some cases by clear exhortations to the public to take action against FEDECAMARAS and its affiliated organizations. According to the complainants, these verbal attacks came about, inter alia, because of differing opinions and open argument expressed by members of these organizations with regard to the Government's economic policy, including the minimum salary, price fixing and the actions of the National Constituent Assembly.

264. In oral communications,³⁴¹ the complainants referred to a poster which was circulated on social media in December 2017 and also placed in the offices of the Ministry of Labour and the Ministry of Agriculture, as well as the INTI. It showed photos of senior managers of FEDECAMARAS and its affiliated institutions and enterprises next to captions such as “starvers of the people” and “economic warmongers”. A witness who appeared before the Commission stated that this incident had made all those who appeared in the poster fearful of attack by members of the public, given the atmosphere of acute polarization in the country.³⁴² The complainants stated that they had looked into the origins of the poster campaign and discovered that it came from government sources, since the person giving out the message appeared with the Venezuelan flag and other official symbols. The complainants also stated that the President of FEDECAMARAS had met with the Deputy Minister of Labour to complain that the poster was stoking up hatred and could trigger attacks on the leaders by members of the public.³⁴³ The Deputy Minister allegedly replied that the posters would be taken out of circulation, thus tacitly admitting that they came from sources linked to the Government. The complainants added that following this episode the posters stopped circulating for a while but had recently begun to appear again.

265. In its reply, the **Government**³⁴⁴ stated that political polarization had caused the tone of debate in the country to become harsh, but that the polemic and discussion always took the form of words, never violent actions.³⁴⁵ The Government added that the bombastic

³⁴¹ Meeting in Geneva on 15 January 2019 and videoconference on 18 March 2019.

³⁴² Bilateral meeting between the Commission and representatives of the complainants (in person and by videoconference) on 8 May 2019.

³⁴³ It was also noted that at the time the Anti-Hatred Act was being debated.

³⁴⁴ Communication of 21 September 2018.

³⁴⁵ In this respect and in connection with these allegations, the CBST stated that on several occasions it had questioned the actions of FEDECAMARAS in abandoning its role as representative of the national manufacturing sector and had criticized its leaders, accusing them publicly of plotting a coup.

expressions used by stakeholders in society and in government circles never degenerated into anti-union practices, and that legal mechanisms were available to those who felt aggrieved.

5.3.2. Public protests and acts of vandalism at headquarters

266. In similar vein, the **complainants** alleged that the hate campaign directed at FEDECAMARAS triggered public protests and acts of vandalism against the headquarters of that organization and its affiliated organizations. Among other examples, they stated that in October 2016, groups close to the Government organized a protest by some 300 people in front of the FEDECAMARAS headquarters in Caracas, intended to lay blame on the institution for the public transport crisis and to accuse it of waging economic war against the Government by hiding and stockpiling spare parts. They added ³⁴⁶ that on 26 and 27 October 2017 protests were held at the headquarters of FEDECAMARAS in Caracas and Bolívar, ³⁴⁷ allegedly because of baseless accusations against FEDECAMARAS which groups and individuals close to the Government, including ANC members, had made in the communications media a few hours after a meeting between FEDECAMARAS and the new Minister of Labour; they further alleged that these statements to the media were accompanied by calls on the public to demonstrate against FEDECAMARAS and a demand that its leaders be imprisoned. ³⁴⁸

267. The Commission was also informed ³⁴⁹ of a series of demonstrations against FEDECAMARAS and its affiliated organizations which took place on 6, 8 and 22 November and 12 December, respectively, at the headquarters of FEDECAMARAS Lara (Barquisimeto), Caracas and Bolívar and the Office of the Public Prosecutor in Caracas. According to the complainants, these demonstrations were part of a strategy developed by the leadership of the PSUV who occupied top posts in the Government, ³⁵⁰ aimed at tackling objections to the country's economic and social crisis which made products, especially food and medicines, hard to find and reduced the purchasing power of wages. According to the complainants, this strategy was set out in a PSUV newsletter ³⁵¹ published on its website,

³⁴⁶ Communication of 31 October 2017.

³⁴⁷ According to testimony submitted to the Commission (Videoconference of 22 March 2019), unions close to the Government demonstrated at the headquarters, blaming the corporate segment of FEDECAMARAS for the reduced purchasing power of the minimum wage and making threats against the institution.

³⁴⁸ The complainants provided the Commission with a copy of a letter dated 30 October 2017 sent by FEDECAMARAS to the Ministry for Labour expressing its concern at these incidents.

³⁴⁹ Communications of 21 November 2018 and 11 January 2019.

³⁵⁰ The complainants recalled, inter alia, that the national leadership of the PSUV was headed by the President of the Republic, its first Vice-President is the current President of the ANC (Mr Diosdado Cabello) and the general secretary for the vice-presidency is the current Minister for Labour, Mr Pedro Perales.

³⁵¹ Newsletter No. 134 of 15 November 2018 which, inter alia, includes the statement: "The people, the working class and the revolutionary government must assume their political and productive responsibilities, just as the CBST is taking action to speak out and mobilize against the enemies of the people, particularly those instigators of economic warfare against the people who are assembled within FEDECAMARAS; these actions will continue in the coming days. Progress is also being made on a number of the smaller tasks approved by the Constituent Congress of the Working Class", p. 5.

and also evident in notices issued by the party's Vice-President for mobilization and events ³⁵² and in videos in which the Vice-President of the PSUV and President of the ANC, Mr Diosdado Cabello, alluded to the Party's role in organizing the demonstrations. ³⁵³

- 268.** According to the complainants, at the demonstration of 6 November 2018, which had the support of the CBST, ³⁵⁴ the façade of the building and its immediate surroundings were damaged by graffiti. ³⁵⁵ Concerning the demonstration on 8 November, the complainants stated that it was announced on the website of the *Estado Venezolana de Televisión* ³⁵⁶ channel and led by Mr F. Torrealba (former Minister for Labour, PSUV Vice-President for the working class and President of the ANC standing committee for workers) and Mr W Rangel (President of the Single Federation of Workers in the Oil, Gas and related Derivatives Industries of Venezuela (FUTPV) and of the CBST-FUSBECCCP and member of the ANC). ³⁵⁷ The complainants also alleged ³⁵⁸ that the demonstration of 22 November at the headquarters of FEDECAMARAS Bolívar (Puerto Ordaz) was organized and led by the head of the state campaign unit, Mr Justo Noguera Pietri, governor of Bolívar State and member of the governing party (the PSUV) and by Mr Tito Oviedo, head of the municipal unit, and was carried out at the time when the state campaign unit was being installed for municipal elections called for December 2018. ³⁵⁹ Last, concerning the demonstration on 12 December, the complainants state that this was organized by various socialist workers' unions from organizations linked or subordinate to the Government, including the CBST, Working Class Unity, the Socialist Front of Working Women and the Socialist Council of

³⁵² The Commission had access to the text of one such notice (Operational Order No. 0081 of 16 Oct. 2018) in which there is a call for "state-wide demonstrations and marches against the headquarters of FEDECAMARAS to publicly denounce the leadership of these opposition business associations which are responsible for the conspiracy".

³⁵³ The Commission had access to both videos, dated 12 November 2018 (Press briefing) and 14 November 2018 ("Con el Mazo Dando").

³⁵⁴ The Commission had access to a PSUV tweet encouraging participation in the demonstration and using slogans that included mudslinging and expletives.

³⁵⁵ The Commission had access to press releases and photos describing this damage. The complainants added that, while it was taking place, workers' unions were called upon to protest against the bourgeoisie and enemies of the people, in reference to FEDECAMARAS, and demands were made for an iron fist to be used against speculation, "bachaqueo" (the acquisition of subsidized products for resale at higher prices on the black market), usury and boycott.

³⁵⁶ Through a video to which the Commission had access in which the head of the PSUV campaign unit for the municipal elections of 9 December called on the working class to protest and march on the headquarters of FEDECAMARAS.

³⁵⁷ The complainants stated that during the demonstration a manifesto was handed to the head of FEDECAMARAS, whose contents the Commission has seen, written in aggressive terms, making demands, threatening imprisonment and prohibiting FEDECAMARAS leaders from leaving the country.

³⁵⁸ Communication of 11 January 2019 and videoconference of 22 March 2019.

³⁵⁹ The Commission had access to the communication summoning people to the demonstration, which invited them to march from the PSUV headquarters to the FEDECAMARAS headquarters. The complainants added that during the demonstration the above-mentioned governor uttered slogans condemning FEDECAMARAS, accusing it of raising prices and blaming it for the shortage of consumer goods and the failure of the Government's economic policy. The Commission also had access to a video containing the governor's statements. They also stated that, since no material or personal damage had occurred, they had not denounced the incident.

Ministry of Education Workers, accompanied by representatives of the ANC including Mr Hernán Iriarte.³⁶⁰

- 269.** According to the complainants, these acts of intimidation, including the verbal abuse of FEDECAMARAS, were linked to that institution's employers' organization activities in defence of its members. The complainants also stated that, in a letter of 29 November 2018, the Government denied any involvement in the organization of these public marches and demonstrations and argued that FEDECAMARAS had not submitted any complaints to the Public Prosecutor's Office concerning criminal offences that might have occurred during these protests. In this regard, the complainants stated that they had denounced the acts in letters sent to the relevant ministries³⁶¹ in which they also requested police preventive action and protection; they added that the police had been present during the demonstration, but only as observers concerned with preventing disturbances and acts of serious violence. They also added that in its letter the Government had offered to act as mediator with the CBST as promotor of the demonstration of 12 December.
- 270.** In its reply,³⁶² the **Government** stated that no government officials had organized marches or protests against the headquarters of employers' organizations and that in the country there was complete respect for the right of peaceful protest. With regard to the participation of Mr Torrealba in actions organized by the CBST, the Government stated that he was one of that organization's national leaders and an elected member of the ANC but that, at the time, he was not an official and thus his actions did not compromise the Government. It added that it had no knowledge of any formal complaint by FEDECAMARAS concerning these actions and that according to reports from the State security bodies the protests had been peaceful. Last, the Government underscored the contrast between this complaint and the fact that FEDECAMARAS had not denounced the violent actions carried out in 2017 against its unionized employees by groups which the Government defined as being of the political right.
- 271.** In connection with these matters, a government representative stated³⁶³ that in November 2018 a meeting was held at the offices of the Deputy Minister with representatives of FEDECAMARAS. They discussed the issue of violence during the demonstrations against the organization and the role allegedly played by active government members in organizing and taking part in them. The representative stressed that during the meeting the Government informed FEDECAMARAS that only PSUV activists and union leaders had been present at the demonstration and that if any violence had taken place, they should have made an immediate complaint so that it could be investigated. The government representative emphasized that in the specific case of Mr Torrealba, his opinions did not represent in any way those of the Government, or its positions. He claimed that the FEDECAMARAS

³⁶⁰ According to the complainants, the demonstrators were protesting in support of the revolutionary process and against FEDECAMARAS and its allies, because of price rises and to defend their salaries. They announced in the communications media that they had brought a complaint to the Office of the Attorney General of the Republic against FEDECAMARAS and the Empresas Polar Group, alleging speculation in the prices of certain foods, burial costs and health services. In this regard, they also stated at the videoconference of 18 March 2019 that to date they had received no notification from the Attorney General's Office.

³⁶¹ The complainants handed the Commission copies of these letters dated 6 November 2018, addressed to the Ministry of the Interior, and 7 November addressed to the Ministry of Labour.

³⁶² Communication of 17 December 2018.

³⁶³ Face to face meeting in person with the Commission in Geneva from 14 to 16 January 2019 and videoconference of 29 April 2019.

representatives at the meeting had admitted that they had been unable to identify any government personnel among those who were present at the demonstrations that year.

272. However, the Commission noted that one witness for the complainants who appeared before it and who had been present at the meeting in November denied that any representative of FEDECAMARAS had admitted that no government member was present at the demonstrations, saying instead that the institution had made clear its view that public officials had been there and that, since those persons occupied various posts in the Government, the Party and/or the Bolivarian Trade Union Confederation it had been very difficult to discern what their roles were; he said that Messrs Piñate, Cabello and Torrealba were, respectively, Minister of Labour, President of the ANC and ANC constituent member, as well as important leaders in the PSUV, and that Mr Wills Rangel, President of the CBST, was also a member of the ANC.

5.3.3. Harassment of employers' and workers' leaders in the course of their union activities and in their private lives

273. In their written communications to the Commission, the complainants and certain workers' organizations alleged that trade union and employers' organization leaders had been followed, persecuted and intimidated by the State intelligence services³⁶⁴ with the aim of frightening them and making them cease their trade union and employers' organization activities. During a meeting in person in Geneva, a representative of the complainants alleged that SEBIN officials constantly used intimidation against trade unionists in the course of their activities; they lingered to take photos and recordings without asking consent and their actions were regarded by the trade union sector as intimidatory measures designed to restrict union activities. According to the complainants, such actions were accompanied by acts of censorship such as closing down radio stations affiliated to FEDECAMARAS or delaying the broadcast of interviews until they had been reviewed and censored. The Commission received many oral testimonies, photos and videos in this regard.

Allegations concerning employers

274. In their written communications, the **complainants** alleged the following acts by state agents intended to intimidate: (i) the persecution of Mr Roig as he performed his duties as President of FEDECAMARAS at meetings away from headquarters, including in the interior of the country, the publication of his agenda on communications media and the filming and publication of acts in his private life; (ii) the persecution of Mr Larrazábal as he performed his duties as President of FEDECAMARAS; (iii) the recording and publication of the private conversations of an important figure in the Empresas Polar Group, the largest group of food and drink businesses in the country and an important affiliate of FEDECAMARAS; (iv) the invasion by State military and intelligence forces of the headquarters of the National Stockbreeders Federation (FEDENAGA), an employers' organization affiliated to FEDECAMARAS, on 23 January 2019; and (v) the obstruction of a former President of CAPEMIAC on his way to a employers' organization activity.

³⁶⁴ In particular, SEBIN.

Persecution of FEDECAMARAS Presidents

275. With regard to the shadowing of Mr Jorge Roig during his presidency of FEDECAMARAS, the complainants alleged ³⁶⁵ that between September and November 2014, during a tour of various towns and states to present the document “Commitment to Venezuela” and to take part in activities where the country’s economic future was debated, Mr Roig was followed and photographed by individuals assumed to be officials of SEBIN; at one such presentation in Araure, in Portuguesa State, a violent group of people in red shirts, identified by the complainants as *colectivos*, attacked FEDECAMARAS staff as they left the premises; the Commission was also informed that Mr Roig was summoned by President Maduro on national television to report to the Ministry of Interior and that, when he did so, he was requested to provide the schedule of FEDECAMARAS activities for the year, which was then broadcast on State social media together with interpretations giving them a political slant, whereas in fact, according to the complainants, these were regular meetings concerned only with business matters; it was also alleged that during this whole period, Mr Roig’s mobile phone and e-mail were monitored by the police. In this regard, the Commission had access to a video in which government representatives showed how they kept abreast of events in the professional and private lives of FEDECAMARAS leaders, including conversations with family members. The Commission also received testimony from individuals directly involved in these acts of persecution and violation of privacy carried out by SEBIN. ³⁶⁶ Finally, the complainants emphasized that the attacks against Mr Roig had been directed at him as leader of FEDECAMARAS and not against him personally, as demonstrated by the fact that they largely ceased when he left the presidency. A witness for the complainants who appeared before the Commission ³⁶⁷ and had taken part in tours of the country with Mr Roig confirmed that they had been followed by vehicles containing SEBIN personnel, one of whom had taken photos of them without permission.

276. With regard to Mr Larrazábal, a witness who appeared before the Commission ³⁶⁸ stated that the President of FEDECAMARAS was unable to make his institution’s position clear to the public because all his written statements to the press were censored and none of his media appearances were live, as they too were censored after being recorded. He also claimed that the political police were present at most public employers’ organization events involving the FEDECAMARAS President, watching the activities and taking photos without permission. The Commission had access to photos showing the presence of armed individuals unconnected with these events.

Persecution of the President of the Empresas Polar group

277. The complainants also claimed that in October 2015 a private phone conversation concerning the economic situation in the country between the President of the Empresas Polar Group, Mr Lorenzo Mendoza, and a Venezuelan economist residing abroad was illegally recorded; ³⁶⁹ subsequently, the conversation was reproduced in a programme on

³⁶⁵ Communication of 27 November 2014 originally sent to the CFA in the context of Case No. 2254 and re-sent to the Commission in a communication of 24 September 2018.

³⁶⁶ Videoconference of 18 March 2019.

³⁶⁷ Videoconference of 18 March 2019.

³⁶⁸ Videoconference of 18 March 2019, meeting in person with the Commission on 8 May 2019 and hearings in Geneva on 10 May 2019.

³⁶⁹ According to the complainants, Venezuelan law requires that in order to record a private conversation, an investigation must first be launched by the Public Prosecutor’s Office and legal

state television and analysed by its moderator, the then President of the National Assembly, with phone interventions by the President of the Republic; ³⁷⁰ the latter then openly requested the Public Prosecutor's Office to launch an investigation and judicial proceedings against Mr Mendoza, which was done a few days later, Mr Mendoza and his contact being charged with usurping authority, treason and criminal association.

Break-in at FEDENAGA headquarters by FAES and the DGCIM

278. The complainants alleged ³⁷¹ that on 23 January 2019, during a meeting of the board of FEDENAGA in San Cristóbal, Táchira State, heavily armed members of the government special forces (FAES) and the Directorate of Military Counterintelligence (DGCIM) burst into the chamber with the aim of checking on supposedly subversive activities on the part of the employers' organization. According to the complainants, this incident followed public statements made by employers' organization representatives from the industry, in particular by the President of FEDENAGA, Mr Armando Chacín, concerning the illegal – according to the complainants – retention by Government-linked bodies of a percentage of the production from the states where livestock production was highest. ³⁷²

279. In connection with these events, the Government stated ³⁷³ that: (i) no member of FEDECAMARAS was detained or persecuted and that the organization was completely free, like every citizen and organization in Venezuela, to move about on national territory and meet with affiliates and other civil society organizations; and that (ii) no complaint existed of a break-in by government security forces at the headquarters of FEDENAGA, but that unconfirmed information had been received about a break-in by an entity at the organization's headquarters on that date. The Government suggested that the break-in had more to do with the illegal entry of Colombians to the frontier State of Táchira than with public statements made by employers' organization leaders. ³⁷⁴

Persecution of the ex-President of CAPEMIAC

280. The complainants claimed ³⁷⁵ that: (i) on 1 July 2019 when Mr Oscar García Peñaloza, President of the Chamber of Small and Medium Manufacturing and Craft Concerns in Carabobo State (CAPEMIAC) FEDECAMARAS, was preparing to leave the country to take part in the Third Ibero-American Forum of MIPYME being held in Argentina, he was interrogated by the immigration police about his intended activities at his destination; (ii) on

authority obtained relating to the purpose of the ongoing criminal investigation; for this reason, the recording was alleged to be illegal.

³⁷⁰ The Commission had access to a video recording of this TV programme.

³⁷¹ Communication of 22 April 2019.

³⁷² In a communication of 21 November 2018, the complainants informed the Commission that, in October 2018, separate regional and local bodies linked to state and municipal authorities in stockbreeding states had issued communications to livestock producers imposing the delivery and enforced sale of *30 per cent of animals for slaughter*, to be distributed through State networks in exchange for compensation which was considered to be low by the complainants and was subject to certain conditions, such that the deal amounted to confiscation.

³⁷³ Communications of 9 March 2016 and 21 September 2018.

³⁷⁴ Statement by a representative of the Attorney General's Office in the videoconference of 29 April 2019.

³⁷⁵ Meeting of complainants with the Commission during its visit to the country.

stating that he had been invited to represent FEDECAMARAS at the forum, he was arrested and harassed and told that if he wished to leave the country he would have to pay, since if he was from “FEDECAMARAS” he would certainly have dollars, and also that he must give a job in Argentina to a relative of one of the immigration guards who lived there; (iii) when Mr García refused these demands, they took his documents and made him wait, so that he missed his flight to Buenos Aires; (iv) after waiting for several hours, an official of Copa airlines (Panama) told Mr García to collect his luggage and that the matter was beyond his control, since it was the Government that had prevented him from boarding.

Allegations concerning workers

281. The Commission received allegations from **workers’ organizations** claiming harassment and persecution of union leaders, namely: (i) Mr Carlos Omar Navarro Carrasco, President of the Independent Union Alliance (ASI); (ii) Ms Carmen Mata, President of the Workers’ Federation of Amazonas State (FETRA AMAZONAS); (iii) Mr Pablo Zambrano, Executive Secretary of FETRASALUD; (iv) Ms Deillily Rodríguez, of SINTRAMETRO Caracas; and (v) Ms Damaris Cervantes Polanco, National Branches Secretary of SINTRADELCA and Mr José Cedeño Zorrilla, union leader at CORPOELEC. These organizations alleged that every union leader who opposed government policy or protested ³⁷⁶ had been persecuted and that there had also been mass dismissals of union-protected workers for involvement in protests. ³⁷⁷

Persecution of the ASI President

282. Concerning the alleged persecution of Mr Navarro, according to these organizations, during a meeting from 17 to 19 July 2018 at the Hotel Villa D’Este in Caracas, members of the ASI executive committee were approached by a group of the Government-backed armed civilians known as *colectivos* (six men and a woman, one of whom was addressed as “Commander Camejo”), who maintained a threatening posture for the three days of the meeting and ordered the hotel owners to cut the water and electricity supplies and close down the halls where the event was taking place. It was also alleged that, once the executive committee meeting was finished, Mr Navarro was followed to his home by units of armed Government forces, who moved about in a white taxi and a white pick-up truck, which the complainants say are well known for their past connections with persecution and harassment. They added

³⁷⁶ The persecution of the following union leaders was also alleged: Ms Marcela Máspero, President of UNETE (noting that she had had to leave the country because of her union activities); Ms José Gregorio Matute Quiñonez, member of the Independent Front for the Protection of Employment, Wages and the Trade Unions (FADESS) (the commission had before it the text of the complaint submitted to the Public Prosecutor’s Office on 26 November 2014 citing death threats against him and his family); and Mr Javier Torres, leader of Movimiento 7 La Voz Alcasiana of CVG ALCASA.

³⁷⁷ During the Commission’s visit to Bolívar on 10 July 2018, it was alleged that workers from Ferrominera and executive committee members and representatives from SINTRAFERROMINERA had been arbitrarily dismissed without legal justification for involvement in protests in November and December 2018. These were: Orangel Herrera, Adul Hurtado, Degrain Marichales, Rudy González, Deweel Hernández, Alberto Pérez, Yhezzi González, José Gamboa, Junior Mejía, Divis Pernia, Juan Arteaga, Luis Moyano, Pedro Calzadilla, Richard Jiménez, Jesús Terán, José Henriquez and Tania Rodríguez. It was also alleged that Mr Noel Hernandez Ibarra, records secretary at SUNEP-CVG, had been arbitrarily removed from post, even though he had union privileges.

that these events were reported to the Ministry of Labour and to the Office of the Attorney-General of the Republic.³⁷⁸

283. They also alleged that, since that date, Mr Navarro has been persecuted and harassed daily by the official Government security forces and by unmarked civilian vehicles in many of his personal and professional activities; according to the allegations this persecution stemmed from the 1 May marches that the ASI has organized by itself since 2017. They cited, *inter alia*, the following incidents:³⁷⁹ (i) during the Conference in Geneva in 2018, after presenting a multiple complaint against the Government, Mr Navarro was threatened by bodyguards from the governmental delegation;³⁸⁰ (ii) on 15 September 2018, while lecturing at the Andrés Bello Catholic University, he was followed by a motorized unit of the DGCIM and the university rector, who was informed of the fact by the university guards, was a witness to the events; it was alleged that Mr Navarro was persecuted in other aspects of his daily life, such as when with the doctor or at the market; (iii) on 12 September 2018, Ms Ana Soto, member of the ITUC World Women’s Conference, was followed by a DGCIM motorized unit after leaving the home of Mr Navarro; (iv) during September 2018, his daughter was followed by an unmarked vehicle as she moved about in her private life; and (v) on 24 August 2018, DGCIM officers attacked his maid and stole his wife’s mobile phone at the entrance to the Navarro home; a person identified by the maid as the perpetrator of the robbery followed the family the next day in their private activities. It was also alleged that, for those reasons, Mr Navarro refrained from attending regular meetings as head of the Confederation so as not to affect the organizations and their leaders. According to the ASI, these events stemmed from Mr Navarro’s statements concerning violations of fundamental labour rights in the country.

284. The Commission was informed that Mr Navarro reported the harassment and persecution suffered by him and his family to the communications media, the public prosecutor (Attorney General’s Office) and the CICPC. According to the allegations, this persecution led the TUCA and the ITUC to send letters dated 29 August 2018 and 26 October 2018 to the Ministry of Labour and the President of the Republic, respectively,³⁸¹ demanding that personal protection be provided for the leader and his family and that the responsible authorities investigate the events and punish the perpetrators. According to these allegations, the criminalization of union actions and judicialization of labour-management relations with the intention of holding back the struggle of the working class had led to an increase in persecutions, detentions, disappearances and kidnappings of union leaders, reasons for which Mr Navarro decided, for the sake of his and his family’s safety, to leave the country in October 2018.

285. Concerning these allegations, the Government replied³⁸² that: (i) no security organization broke into the ASI meeting, but that instead a neighbours’ association from Sabana Grande, whose head called himself “the commander”, was using the hotel for weekly meetings and knew the hotel owner and had interrupted the meeting illegally and without providing identification, which was why the Government had nothing to do with the situation; (ii) regarding the forced entry to the premises of his nephew by SEBIN, this could not be

³⁷⁸ The Commission had access to the text of the letter containing the complaint received by the Attorney General’s Office on 21 August 2018.

³⁷⁹ Communication from ASI of 21 March 2019.

³⁸⁰ A witness who appeared before the Commission alleged that these bodyguards threatened that Mr Navarro would be “disappeared” once organized crime reached the country.

³⁸¹ The Commission received copies of both letters.

³⁸² Meeting in person with the Commission in Geneva on 7 May 2019.

verified with SEBIN but also Mr Navarro had not included sufficient detail in his complaint; (iii) because of his age, delicate health and relatively low political and union standing, Mr Navarro did not represent a threat to Venezuela, and thus there would be no political justification for allocating resources to his prosecution; (iv) there was no current complaint or procedure against him; (v) Mr Navarro had submitted a complaint to the Ministry of Labour and had met with and spoken by phone to Ms León Molina, but further meetings were suspended because the complaint had also been sent to the Attorney General's Office; and (vi) his request for asylum was part of a nationwide trend whereby union leaders did so to increase their standing, under the pretext that they were being persecuted.

Persecution of the President of FETRA AMAZONAS and the executive secretary of FETRASALUD

286. Last, the Commission received allegations³⁸³ concerning persecution and harassment meted out to Ms Carmen Mata and Mr Pablo Zambrano. Ms Mata left the country for Colombia on 24 January 2019 on learning that she was the subject of an arrest warrant for having taken part in a meeting to oppose a rally on 23 January in Puerto Ayacucho, Bolívar State, called by General Miguel Eliécer Martínez Morales, commander of National Defence Operations Zone (ZODI) 63 Amazonas. It was alleged that this persecution was due to Ms Mata's involvement in protests at the violation of collective bargaining agreements which took place in Amazonas on 23 January.

287. Concerning Mr Pablo Zambrano it was alleged that: (i) he received summonses to the Attorney General's Office and numerous warnings and threats of detention concerning his statements about the health system; (ii) on 11 June 2018, the then Minister of Health, Mr Luis López, threatened him with prison in a programme broadcast on Venezuelan National Radio (RNV); (iii) on 10 May 2018, Mr Zambrano was beaten and had paralysing gas sprayed in his face by *colectivos* which, during a protest by national health unions, had broken into the premises of the Vargas Hospital intending to abduct him;³⁸⁴ (iv) these *colectivos* allegedly took orders from the security chief at the Ministry of Health, Mr Marlon Colmenares, who had also made a public death threat against Mr Zambrano; and (v) this incident was reported to the Public Prosecutor's Office but the only responses were threats of imprisonment if he did not cease his protest activities and the constant persecution to which he and his son, Mauro Zambrano, also a union leader, were subjected.

288. In an oral submission³⁸⁵ to the Commission, the **Government** stated that it had no indications of any persecution of union leaders, except in the case of Mr Navarro, who had complained that he was being persecuted by a security organization. In this regard, the Government stated that there was no persecution of any trade unionist and that, if there really had been any such persecution, they would not have been able to leave the country.

³⁸³ Communication from the CTV of 18 March 2019.

³⁸⁴ Statements by a representative of a union affiliated to CTV during a videoconference with union representatives on 6 May 2019 and from a witness who appeared before the Commission in Caracas on 11 July 2019. The witness added that on 21 August 2017 Mr Zambrano was attacked by 15 men on entering a hospital to meet the director, Ms Antonieta Caporales; according to the witness, although the events were captured on the hospital's security cameras they were never made available and thus the CICPC refused to take up the complaint.

³⁸⁵ Meeting of a Government representative with the Commission in Geneva on 15 January 2019.

Persecution of a trade unionist from SINTRAMETRO Caracas

289. It was alleged that ³⁸⁶ Ms Deillily Coromoto Rodríguez Salas, union leader at the Union of Caracas Metro Workers (SINTRAMECA), had been arbitrarily dismissed on 31 October 2018 after making statements to the press in October 2018 in Caracas and delivering a document to the Ministry of Labour containing contractual demands in opposition to a review of salary scales, and was also being persecuted by State security forces. It was also alleged that: (i) Ms Rodríguez had been harassed and received death threats in 2017 ³⁸⁷ on being elected to the board of SINTRAMECA for 2017–20 on a non-Government ticket supported by the PSUV; (ii) since then she had been persecuted, her movements monitored by trucks containing security personnel from the enterprise, and had received threatening phone calls, which forced her to live away from her young daughter and change her residence frequently; and (iii) on 13 March 2019, a CICPC crime commission summoned her husband, who is not a trade unionist, allegedly in reprisal for the protest activities of Ms Rodríguez.

Persecution of trade unionists from CORPOELEC

290. During its visit to Puerto Ordaz the Commission received allegations concerning union leaders at the CORPOELEC enterprise who were persecuted for having made statements to the press on 18 February 2019 concerning the alleged instability of the national power grid. In particular it was alleged that: (i) Ms Damaris Cervantes Polanco, National Branches Secretary of SINTRADELCA, was notified by her supervisor on 7 March that she had been dismissed for statements made in February, and on 9 March SEBIN pursued her to the home of a relative and then to her home; and (ii) Mr José Cedeño Zorrilla, union leader in the electricity sector, was pursued to his home on 9 March by SEBIN. Both union leaders had arrest warrants issued against them accusing them of criminal association, theft of strategic information from CORPOELEC, sabotage of the national grid and treason. They decided to flee from Bolívar to Táchira, and from there to Colombia on 29 March 2019.

5.3.4. Short-term detentions without a court order at the SEBIN headquarters

Allegations concerning employers

291. The complainants submitted several allegations concerning arbitrary detentions of employers' organization leaders carried out without legal justification or a court order, in which the right of defence and guarantees of due process were not respected, namely those of: (i) Mr Garmendia, in the course of his duties as President of CONINDUSTRIA, an association of industrialists and member of the strategy committee of FEDECAMARAS, on account of his public statements; (ii) the President of the National Association of Supermarkets and Self-service Stores (ANSA), Mr Luis Rodríguez; (iii) the President of the Venezuelan Association of Clinics and Hospitals, Mr Carlos Rosales Briceño; (iv) the President of FEDEAGRO, Mr Antonio Pestana; and (v) Mr Rusvel Gutiérrez, ex-President of the Chamber of Industrial Merchants and Customs Officials in Vargas State (CADUAINCO).

³⁸⁶ Meeting of a Government representative with the Commission in Geneva on 15 January 2019.

³⁸⁷ The Commission had before it the text of the complaint submitted to the Public Prosecutor's Office on 31 October 2017.

Detention of the CONINDUSTRIA President

- 292.** Concerning the detention of the President of CONINDUSTRIA, Mr Eduardo Garmendia, the complainants alleged ³⁸⁸ that on the night of 20 September 2014, heavily armed SEBIN officials appeared at his residence with a summons for him to report to SEBIN headquarters the next day, which he duly did; according to testimony submitted to the Commission, he remained there from 2 p.m. to 2 a.m. the next day, incommunicado and without food or sleep, before being interrogated about his statements to the press made on 9 September concerning the impact of the chikungunya virus on Venezuelan productivity, and about the activities of CONINDUSTRIA. In this regard, the Commission had access to a video of a programme broadcast on the government channel in which the President of the Republic declared that Mr Garmendia had been detained and interrogated by SEBIN because of his statements regarding the chikungunya virus and that only the Government was permitted to issue statements on such matters, adding that Mr Garmendia had withdrawn his statements, which was denied by the complainants. The complainants also indicated that simultaneously with these events, the Attorney General's Office had asked to be kept informed of all Mr Garmendia's activities by the Independent Registry and Notarial Service (SAREN).
- 293.** In its reply the **Government** stated that the President of CONINDUSTRIA had not been detained, but had gone to the SEBIN headquarters by his own means in compliance with a summons requiring him to respond to questions about statements made to a national daily newspaper on how an outbreak of the chikungunya virus would affect productivity; those statements were made without proof, as Mr Garmendia had admitted, and he had received courteous treatment from the SEBIN officials.

Detention of the ANSA chairperson

- 294.** The Commission heard oral testimony claiming that on 1 February 2015 Mr Luis Rodríguez, President of ANSA, associated to FEDECAMARAS, was detained together with managers from the Día a Día Practimercados chain by SEBIN officials, while leaving a meeting with the Vice-President for Food Safety and Sovereignty, Mr Osorio, without a court order and without any explanation; he remained in custody for 48 hours during which he was made to speak about the national product shortage; they stated that he was freed without charge.
- 295.** The **Government** stated that it had no record of any investigation into the President of ANSA, who was interviewed at SEBIN headquarters only because he had volunteered to provide information on the case involving Día a Día Practimercados.

Detention of the President of the Venezuelan Association of Clinics and Hospitals

- 296.** The **complainants** stated that on 5 February 2015, SEBIN officials forced Dr Rosales Briceño to accompany them to their regional headquarters while he was in his surgery in the town of Valencia, in Carabobo State; he was held there for three hours. According to the allegations, the detention was due to statements that Dr Rosales had made about the lack of medicines and supplies in clinics and hospitals and his appeal to the authorities to deal with the crisis. They added that SEBIN informed Dr Rosales that his statements to the media could have triggered panic among the population and were not objective. It was alleged that this situation made Dr Rosales end his membership of various associations and renounce his activities as an employer leader.

³⁸⁸ In a communication sent in the context of CFA Case No. 2254

297. In this regard, the Government stated that the President of the Venezuelan Association of Clinics and Hospitals had been interviewed at the headquarters of SEBIN in connection with statements he made to the press, while remaining at liberty.

Detention of the FEDEAGRO President

298. Concerning Mr Pestana, a representative of the **complainants** who appeared before the Commission ³⁸⁹ alleged that between 2013 and 2017, during his term as President of FEDEAGRO, Mr Pestana was persecuted by Government officials every time he made a statement that contradicted its policies. He added that, while in Caracas, ³⁹⁰ Mr Pestana had received a call on his cellular phone in which the former minister for food and Vice-President of the agri-food industry, Mr Osorio, and individuals from SEBIN and the FAES demanded that he present himself to explain statements he had given at a press conference the previous day; the witness stated that this was a three-hour meeting held in a highly aggressive atmosphere in which Mr Pestana was insulted and threatened with imprisonment; he added that Mr Pestana was then persecuted by members of SEBIN and by *colectivos*.

Detention of the President of the Chamber of Industrial Merchants and Customs Officials in Vargas State, affiliated to FEDECAMARAS

299. A witness for the **complainants** who appeared before the Commission ³⁹¹ alleged that, because of statements made to the press by Mr Rusvel Gutiérrez on 20 September 2014 concerning the shortage of medicines caused by bans on imports, the next day heavily armed SEBIN officials surrounded his residence and attempted to search his apartment; they had no warrant and produced only a summons for him to appear that same afternoon; when Mr Gutiérrez refused to allow them to search his home, the SEBIN officials forced a guard, the concierge and members of the condominium board to assist in detaining him; after more than six hours they brought a summons for him to appear the same day, threatening to break down the door if he refused; he was then taken to SEBIN headquarters without a warrant, where he remained for 24 hours without food and water and under threat from a pistol. The witness added that Mr Gutiérrez was released without charge the next day, but that the Office of the 20th Prosecuting Attorney requested the Independent Registry and Notarial Service (SAREN) ³⁹² for a list of all his movable and immovable property, a document to which the Commission had access. This was alleged to have delayed his commercial dealings with a number of government departments.

Allegations concerning workers

300. From the perspective of the **workers' organizations**, the Commission received allegations from several trade unions ³⁹³ concerning supposed acts of persecution and detention by the State political police against the following union leaders: (i) Mr Erick Zuleta, President of the Single Trade Union of Workers in the Automotive and Allied Industries in Lara State

³⁸⁹ Videoconference on 8 May 2019.

³⁹⁰ Mr Pestana lives in Portuguesa State.

³⁹¹ Videoconference of 18 March 2019.

³⁹² The Commission had access to this document.

³⁹³ Communications from ASI dated 15 August 2018 and 29 August 2018 (received on 26 September 2018) and 21 March 2019 and from the CTV dated 24 September 2018. Videoconference between the Commission and trade union representatives on 30 April 2019.

(SUTTASEL), President of the Venezuelan Transport Federation (FEDETRANSPORTE) and first Vice-President of ASI-Venezuela; and (ii) Mr Hugo Cuicas, secretary of the Lara Public Transport Union.

Detentions and harassment of the President of SUTTASEL and FEDETRANSPORTE

301. The Commission received information from various **workers' organizations**³⁹⁴ alleging that Mr Zuleta suffered repeated persecution from State security bodies, in particular after he assumed the presidency of the federation, owing to his activism as a leader in connection with the transport situation in Venezuela.³⁹⁵ According to these organizations, Mr Zuleta was subjected to intimidation by the regime in the form of phone calls and constant visits to his office and home, accompanied by threats to imprison him and the leaders of his organizations if they persisted in their calls on the Government. On several occasions Mr Zuleta claimed publicly that he was being followed by motor cycles, that vans bearing the logo "official use" were parked outside his home containing officials taking photos and that his phone was being tapped. In particular, they alleged³⁹⁶ that: (i) in 2013, Mr Zuleta was taken to the offices of SEBIN where he was threatened with detention if he did not cease his "sabotage" against the Government and end the strikes; (ii) after a complaint to the National Assembly, on 7 March 2017, of irregularities in the procurement of land vehicle spare parts, SEBIN personnel began shadowing the leadership of FEDETRANSPORTE; (iii) on 19 June of that year, the Government told Mr Zuleta to end his call for *Paro Civico* (civic strike), under threat of reprisals; it was alleged that nine vehicles were impounded in Caracas for this reason; (iv) in May and June 2017, Mr Zuleta was summoned on several occasions to the SEBIN offices to account for FEDETRANSPORTE actions, and subjected to constant persecution at his residence and at the offices of the unions to which he belonged, by civilian units of SEBIN; (v) on 26 July 2017, Mr Zuleta claimed in the press that a SEBIN delegation visited his home in Lara and the headquarters of his union to arrest him, without a warrant, following a transport strike held across the country; and (vi) on 1 August 2017, the chair of the Bolivarian municipal council of Ibarren threatened to imprison him if the unions continued their calls for transport strikes. It was alleged that these incidents led Mr Zuleta to go into hiding and flee on foot via Colombia to Spain, where he has requested asylum.

302. Concerning the persecution of Mr Zuleta, the **Government** stated³⁹⁷ that he was a leader in an association of mass transport drivers, which in Venezuela was almost entirely in the hands of small business owners with a few vehicles; it added that the discussions cited in the allegation did not concern collective bargaining but an increase in the cost of transport, and that collective bargaining did not exist in that sector; that Mr Zuleta, like many other union leaders, had requested asylum in order to increase his standing, under the pretext of being persecuted; and that the Attorney General's Office had no record of any claim that he was being persecuted, nor of any charge made against him. As to the allegation concerning the

³⁹⁴ Communications from UNETE, CGT and CODESA on 24 September 2018 and from the Guild of Trade Unions and Employers' Organizations (UASG) (UNETE, CTV, CGT, CODESA) received on 26 September 2018 and videoconference between union representatives and the Commission on 30 April 2019.

³⁹⁵ According to one witness who appeared before the Commission, the persecution was directed not only at Mr Zuleta but also his wife and daughter, and this was documented in the press.

³⁹⁶ Communication from the ASI of 21 March 2019.

³⁹⁷ Face to face meeting with the Commission on 7 May 2019.

impounding of the vehicle that Mr Zuleta used for work, a government representative said that he was not aware of the issue.

Detention and persecution of the secretary of the Lara Public Transport Union

303. The Commission also received the following allegations ³⁹⁸ concerning persecution and harassment of Mr Hugo Cuicas, secretary of the Lara Public Transport Union: (i) on 26 July 2017, Mr Cuicas was taken from his residence by SEBIN agents to their headquarters, where he was interrogated as to the whereabouts of his brother-in-law Mr Erick Zuleta, President of FEDETRANSPORTE; (ii) on 17 February 2019, Mr Cuicas received a call from an unknown number requesting him to travel to Caracas to retract comments he had made in the press about his meeting on 12 February with the President of the National Assembly, Mr Juan Guaidó, concerning the transport situation in Venezuela; (iii) on 18 February 2019, after he refused to retract, the persecution recommenced; neighbours informed him that two persons, who did not identify themselves but whose clothing and mannerisms led them to believe that they were State security officials, had been prowling around his apartment looking for him and had questioned the neighbours for some 30 minutes as to his whereabouts; (iv) on 19 February, while he was at his sister's house, a white, unmarked Toyota vehicle was spotted outside which matched the description of that seen by his neighbours the day before. According to the allegations, given that the situation was worsening daily, Mr Cuicas, fearing for his safety, decided to leave the country on 3 March 2019 and was now seeking refugee status in Paraguay; (v) SEBIN seized his bus, the means by which he made his living. It was also claimed that this persecution related to the leadership status of Mr Cuicas, in particular his participation in protests against very low transport fares and a shortage of the spare parts and other supplies needed for vehicles to function; ³⁹⁹ these incidents had been reported to the communications media but not to the authorities, for fear of reprisals, in particular imprisonment, since the governor of Lara had made threats to that effect. ⁴⁰⁰

5.3.5. Measures infringing upon the private property of enterprise leaders in reprisal for their activities or membership of FEDECAMARAS

304. The Commission received various allegations from the complainants relating to government measures involving attacks on the private property of leaders of FEDECAMARAS and its affiliated associations, as well as the leaders of enterprises within that institution. The complainants consider that such measures not only impair the ability of FEDECAMARAS to carry out its legitimate activities in defending its associative interests, but also undermine the institution by discouraging affiliation by enterprises which fear reprisals.

³⁹⁸ Communication from the ASI of 21 March 2019 and statement by a witness during the videoconference between the Commission and union representatives on 30 April 2019.

³⁹⁹ The witness stated that anyone who opposed the Government in protests was barred from receiving spare parts and other supplies, and also had vehicles confiscated, as had happened to him and a colleague; he added that the governor and the mayor both reacted to protests by threatening them with imprisonment.

⁴⁰⁰ The witness implied that the provincial prosecutor's office took orders from the political establishment and a complaint of persecution could lead to prison.

Confiscation of the lands and properties of employers' leaders

- 305.** The **complainants** denounced ⁴⁰¹ the lack of progress made in separate land recovery procedures, to the detriment of employers' leaders, despite the recommendations made to the Government by the CFA, and in particular by the 2014 mission to the country, with the intention of taking corrective action to avoid any degree of discretion or discrimination in the legal mechanisms relating to those procedures. ⁴⁰² They complained that the Government used broad and vague criteria, supposedly based on law and on various agrarian plans issued by the National Executive, to determine whether land was idle or not being used in accordance with the National Executive's farming strategy. They also alleged that the requirements imposed by the National Land Institute (INTI) to demonstrate chain of title for land were vexatious and contradicted other laws. ⁴⁰³
- 306.** In their statements to the Commission, ⁴⁰⁴ witnesses for the complainants claimed that land recovery measures had affected many employers and not simply leaders, referring in particular to the case of seven large farms not owned by employers' leaders and amounting to some one million hectares and 5,000 head of cattle, which, as a result of the recoveries, were no longer productive. However, they also pointed out that seizures had become more prevalent where employers' leaders were concerned, and that in all cases these involved measures against employers and enterprises with links to FEDECAMARAS or its supporting organizations and affiliates. To illustrate the intention to intimidate employers' leaders, the complainants sent evidence of threats made by the then first Vice-President of the PSUV, previously Vice-President of the Government and currently President of the ANC, in his programme on the State TV channel, ⁴⁰⁵ against employers' leaders in the agricultural sector, accusing them of economic warfare and adding that hopefully they were keeping their farms in good order. ⁴⁰⁶

⁴⁰¹ Text of the complaint.

⁴⁰² For several years, in the context of Case No. 2254, the CFA has been dealing with allegations relating to property seizure, recovery, occupation and expropriation affecting employers' leaders or ex-leaders, allegedly as a consequence of their work to defend members. See CFA Case No. 2254, Interim Reports Nos 356 of March 2010, 359 of March 2011 and 363 of March 2012.

⁴⁰³ The complainants specified that, under the Land and Agrarian Development Act (LTDA), INTI considered that it could recover land whose ownership was attributed to individuals and that, in its opinion, they had been unable to demonstrate "a perfect sequence and chain of land ownership and other alleged entitlements, from their release granted lawfully by the Venezuelan nation to duly notarized title of acquisition by the person alleging ownership". The complainants claim that this contradicts and violates the Uncultivated and Common Lands Act, and is contrary to the regulations on real estate acquisition and protection laid down in the Civil Code. In addition to its unlawful demand for individuals to demonstrate ownership through title chains (this requirement is legally met through duly registered title of ownership), the INTI allegedly disregarded all individual land ownership for which the title chain began after the Act of April 1848, by interpreting a prohibition, contained in the 1936 Uncultivated and Common Lands Act, on taking action against the owners and tenants of land whose possession is deemed "immemorial" (dating back before 1848), as if it was a general requirement for proving private land ownership.

⁴⁰⁴ Interviews with complainant representatives and witnesses on 18 March 2019.

⁴⁰⁵ "Con el Mazo Dando".

⁴⁰⁶ Statements by Mr Diosdado Cabello on "Con el Mazo Dando" on 15 December 2016, threatening FEDEAGRO and its leader Mr Anonio Pestana: "It's part of the economic war against the people ... Here are the facts: Antonio Pestana, President of FEDEAGRO and of Primero Justicia, since the

307. The **Government** in its reply ⁴⁰⁷ stated that: (i) mechanisms had been implemented to remove the whole *latifundia* system of land ownership and that the LTDA of 13 November 2001, as partially amended in 2005 and 2010, was one of their main pillars and the guarantee and protection of safety and sovereignty in the farming sector; (ii) in that context, through the INTI, a process was under way to recover land and plots, focusing on the idleness, unproductivity or illegal use of land or on failure to produce documents that proved title to them; if, after inspection of an estate, it was concluded that the land did not fall into one of those categories, such as idleness, a certificate was awarded which served as a guarantee for two years; (iii) a land “census” was being conducted across the whole country, without any discrimination as to plot selection (2,482 recovery procedures had been initiated); (iv) idleness could be declared on the basis of simple non-use of land as determined by its main crop and in accordance with its soil quality and type, the classification ranging from I to IV (high-quality soils being favoured for cereals). In such cases, after “recovery” the INTI ensured that the land was put to this more suitable use (through a bailment contract signed with individuals); (v) the cases reported by FEDECAMARAS represented only 0.74 per cent of the total of recovered land, a great many owners had undergone these processes, and very few of them had been employers’ leaders; (vi) in the cases reported by FEDECAMARAS, procedures had been carried out to verify the legality of agricultural land tenure or occupation and, in that context, the individuals concerned had been requested to demonstrate uninterrupted chain of title (dating back at least before 10 April 1848), which they had been unable to do; (vii) since neither expropriation nor confiscation was involved, the subsequent precautionary measures and administrative actions did not involve compensation proceedings, although reimbursements were paid following a technical survey and quantitative assessment (including the value of any crops present at the time); and (viii) there was no persecution of any member of FEDECAMARAS.

308. Concerning specific cases, the complainants’ representatives stated that, since some of the people involved in the cases submitted to the Committee on Freedom of Association and the Committee of Experts had died and their heirs had not wished to continue the case, they would focus on three cases ⁴⁰⁸ which they felt illustrated the manner in which the Government used land recovery to intimidate employers’ leaders: (i) La Bureche farm, belonging to Mr Gómez Sigala, former director of FEDECAMARAS and former President

beginning of the round table, has been going round the country meeting with farmers. Listen to INTI! FEDEAGRO, I imagine that it must have something, even a little farm over there, because ..., to be able to promote paralysis in the farming industry. This must be exposed. On Friday 9 December, Tomás Guanipa, nicknamed “Pamperito”, and Carlos Paparoni met producers from El Pao, in Cojedes. Then, on Tuesday 13 December, Mr Antonio Pestana, President of FEDEAGRO, and the parliamentary deputies Carlos Paparoni and María Beatriz Martínez met maize and sugar cane producers at a gathering in La Flecha, in the Araure municipality in Portuguesa. They called it “trancazo”, something like a *guarimba* (an organized street protest involving barricades). They blocked the street to prevent vehicle movement and cargo transport. In a nutshell, the people behind this economic war are Primero Justicia, which is secretly supported by the *pelucones* (longhairs). Mr Antonio Pestana of FEDEAGRO was there. Four, no, 20 or 30 people decided to obstruct the movements of every Venezuelan in that place. On whose account? Let us hope that these people from FEDEAGRO, this man, have their land in order. Right? That would be nice. Let us hope ...”.

⁴⁰⁷ Communication of 9 March 2016, document provided to the Commission by the Government during their face to face meeting on 7 May 2019 and information given orally by a government representative during that meeting. Meeting with the INTI in Caracas on 9 July 2019.

⁴⁰⁸ In the context of this CFA case, allegations were submitted concerning five other cases, two of which were set aside by the Committee for lack of merit or at the request of the complainants. The remaining three are: Mr Rafael Marcial Garmendia, former President of FEDECAMARAS (Bucarito Bucarito farm, confiscated in January 2007); Mr Manuel Cipriano Heredia, President of FEDENAGA (Vieja Helena farm, confiscated in April 2008) and Mr Egildo Luján, director of FEDECAMARAS Fisheries Division, Vice-President of FEDE (La Escondida farm, confiscated in June 2010).

of the Caracas Chamber of Commerce, the Venezuelan Chamber of Food Products and CONINDUSTRIA; (ii) Las Misiones farm, belonging to Mr Vicente Brito, former President of FEDECAMARAS, and (3) Gólgota estate, belonging to Mr Carlos Odoardo Albornoz, President of the Stockbreeders' Federation of Venezuela (FEDENAGA) affiliated to FEDECAMARAS.

- 309.** With regard to the properties of *Mr Gómez Sigala*, the **complainants** stated that: (i) on 21 September 2009 La Bureche farm was occupied violently by officials of INTI and the Venezuelan Agrarian Corporation and by army troops carrying heavy weapons (Mr Gómez Sigala made an appearance to take photos, which he passed on to journalists); (ii) only vehicles from those organizations were then permitted to enter, apart from the tractors and heavy machinery used to destroy sugar cane that was about to be harvested;⁴⁰⁹ (iii) Mr Gómez Sigala was detained at military headquarters before being taken to courts which released him under an attendance regime⁴¹⁰ as he had been charged with opposing legal government action; his case was dismissed; (iv) La Bureche farm belonged to the Agrícola Bureche 2007 enterprise, whose statutory founding document shows that Mr Eduardo Gómez Sigala owns 99 per cent of its shares and is its sole administrator; (v) the legal basis for the recovery was a decree according to which the farm was classified as idle, whereas in fact, according to the witnesses for the complainants, more than 80 per cent of the land had been sown and was about to be harvested (mainly sugar cane, also pasturage for cattle); those crops were destroyed by the tractors brought in by the Government; (vi) the authorities never paid any damages or compensation; (vii) concerning the suitability of the crops, it was not the case, as the authorities claimed, that mandatory measures had been enforced beforehand to ensure consideration of more suitable crops, such as a plan to reorganize the Turbio Valley; also, sugar cane was undoubtedly the crop best suited to the area and the authorities had never stated that other crops should be given preference; (viii) after the land was seized it was used as a military training camp (a journalist from the Spanish newspaper ABC published a book in which he stated that the land was being used for training by Hezbollah;⁴¹¹ the complainants also submitted photos showing that the facilities were being used for socialist events and that troops were present on the estate, including as guards at the entrance; (ix) the farm is now abandoned and unproductive (the complainants supplied photos taken in January 2019 showing abandoned fields and facilities); (x) it was possible to prove ownership by Mr Gómez Sigala using documents dating back to 1808 (detailed registration documents were provided to the Commission); (xi) he filed an appeal with the courts to try to have his property returned, but all kinds of obstacles had been raised, such as queries about his legal representatives, whose notarial experience was well established, as well as other delays, so that currently, after ten years, the proceedings continued unresolved; (xii) the farm had been seized in reprisal for

⁴⁰⁹ The estate, of approximately 28 hectares, was planted almost entirely with sugar cane and with pasturage for animals that was also saleable at the time of the recovery. The complainants produced several photos of tractors destroying the sugar cane, which was ready for the harvest.

⁴¹⁰ The complainants had previously stated that on 24 September 2009, as Mr Gómez Sigala was intending to return to his family home situated on the estate, army personnel detained him and deprived him of his liberty until the next day; while he was in detention the Office of the Public Prosecutor accused him of the offence of “resisting authority and causing minor injuries”, for having torn the shirt of a sergeant during the struggle to remove him from the farm. The allegations further state that the next day he was granted conditional release under obligation to appear in court or at the public prosecutor’s office as required or whenever the investigation so merited.

⁴¹¹ E. J. Blasco: Chávez boomerang: *Los fraudes que llevaron al colapso de Venezuela (The scams that brought about the collapse of Venezuela)*; Create Space Publishing Platform, 2015, p. 224 (describing how corrupt practices were used to expropriate the farm belonging to Mr Eduardo Gómez Sigala).

Mr Gómez Sigala's activities as an employers' leader (the seizure took place just after his most active period as employers' representative).⁴¹²

310. In the report of the 2014 mission, the **Government** stated that the INTI authorities had declared the following: (i) through administrative channels, the land on the La Bureche farm was declared idle and a recovery was initiated on 12 March 2008; and (ii) through legal channels, Mr Gómez Sigala's lawyers filed appeals for annulment, one of which was declared admissible and sent to the Appeals Court.⁴¹³ In a written communication to the Commission,⁴¹⁴ the Government asserted that this had not been an expropriation procedure, rather a case of recovering land that was idle and whose occupants were unable to demonstrate title of ownership, and that due process and the relevant legislation had been strictly observed. The INTI had issued an administrative act on 17 June 2010 announcing its decision to recover the lands on the property because Mr Gómez Sigala was unable to demonstrate private ownership of the property and the INTI had proved to the contrary that there was a break in continuity of title and thus that it should be deemed publicly owned;⁴¹⁵ the annulment appeal against the INTI decision was still awaiting judgment. During the visit to the country the INTI clarified that: (i) the legal basis for its decision was Presidential Decree No. 2743 of 10 December 2003, regulating the use of lands in the River Turbio valley for agricultural or livestock purposes; (ii) the chain of title had been interrupted, there being no clear connection between the owners mentioned in the two oldest documents, dating from 1714 and 1868; (iii) the sugar cane at the farm before the recovery had been harvested (the crops were not destroyed but harvested, and should be regarded as yield); and (iv) following the seizure the land was made available under a bailment contract, concluded in 2010 and renewed in 2016, and given over to a seed-growing project regarded as highly important to an existing State policy concerned with finding the seeds best adapted to national soil.⁴¹⁶

311. Concerning the property of Mr Brito, the **complainants** informed the CFA⁴¹⁷ that on 11 September 2009 the 800-hectare Las Misiones farm, at Caripe in Monagas State, was declared idle and occupied by the INTI; it belonged to the AGROBUCARE enterprise, of which Mr Brito was President; cooperatives were located there. According to the complainants an appeal for stay of execution was filed with the Fifth Higher Agrarian and Civil (Assets) Court of Monagas Judicial District, and was refused. In statements to the Commission a witness for the complainants stated that: (i) the farm was not idle when seized, but part of a reserve of thousands of trees which constituted genuine production, and there were also several *conucos* (plots) given over to fruit and vegetables;⁴¹⁸ the trees were destroyed along with the internal tracks at the time of the recovery; (ii) legal title to the farm was long established, but the Government disregarded this and the judiciary offered no protection, refusing to admit the legal claims submitted (notwithstanding appeals lodged on

⁴¹² Representatives of FEDECAMARAS informed the 2014 mission that there had been no follow-up to the recommendations of the CFA concerning the return of the land and the payment of compensation. See p. 17 of the mission report.

⁴¹³ Report of the 2014 mission to the country.

⁴¹⁴ Communication of 9 March 2016.

⁴¹⁵ Document provided by the Government to the Commission during the face to face meeting held on 7 May 2019.

⁴¹⁶ Meeting in Caracas on 9 July 2019.

⁴¹⁷ See CFA Case Interim Report No. 363, Case No. 2254, March 2012, paras 1246 and 1344.

⁴¹⁸ Communication of 5 June 2019.

the basis of a fully documented history and an uninterrupted chain of title dating back to its release by the Venezuelan nation); ⁴¹⁹ (iii) this was a measure to punish the activities and stances taken by its owner as Vice-President and President of FEDECAMARAS; ⁴²⁰ and (iv) no compensation was offered.

312. The **Government** stated that: (i) the Las Misiones de Caripe farm underwent a recovery procedure under sections 82 to 96 of the LTDA, implemented in 2009 by the INTI; (ii) there was no productive activity on the land, which was completely idle, despite its having Type IV soils suitable for planting, notably fruit trees, root crops and tubers, and it was scheduled for the establishment of a primary production unit intended to supply Caripe's fruit-processing plant with raw materials; ⁴²¹ (iii) the INTI issued an administrative act on 28 February 2013 stating that it had decided on a separate recovery procedure and a precautionary measure (seizure) for the land, since Mr Brito had not proved ownership of the property and, on the contrary, the INTI had proved that there was a break in its chain of title; ⁴²² (iv) an appeal this measure was dismissed on 2 March 2018. At its meeting with the Commission in Caracas, in reply to a request to substantiate the break in the title chain to this property, the INTI offered a different explanation, saying that the alleged owner had not filed any request or submitted any documentation to prove that they were private lands. ⁴²³

313. Concerning *Mr Carlos Odoardo Albornoz*, the **complainants** alleged ⁴²⁴ that: (i) on 20 June 2017, while the INTI authorities were on the El Gólgota estate, located in Chaguaramas autonomous municipality, Guárico State (831 productive hectares), the Institute's directors initiated a separate recovery procedure for the land and a took a precautionary measure to secure the farm (a measure which meant that people could be brought in to occupy the property and use the land in accordance with the Government's plans); (ii) on 15 August 2017, the President of FEDENAGA was notified of this decision, which alleged that the land was being used at less than 80 per cent of its productive potential and in an unsuitable manner, although no mention was made of "idleness"; (iii) Mr Albornoz appealed against the administrative decision and the case is currently subject to legal and administrative proceedings: the INTI has been unable to carry out the securing procedure (seizure), but the state of uncertainty has placed the planning and management of the farm under constant threat; (iv) the estate had been in private hands, with unbroken chain of title, since 1788; (v) contrary to the allegations of the INTI the land was wholly productive, as revealed by the inspections carried out by the Higher Agrarian Court of Guárico State, the last of which were conducted on 30 February 2018 and 4 July 2019 (the complainants supplied the

⁴¹⁹ One annulment action was lodged in November 2009 and admitted in November 2010 and the other appeal on 1 October 2018. On 19 October 2018 the Higher Agrarian Court of Monagas and Delta Amacuro States ruled that the second appeal had lapsed (because three days had passed since the expiry of a deadline), and it was thus declared inadmissible without examination of the substance – the complainants supplied the respective judgments.

⁴²⁰ In a communication of 5 June 2019, the complainants reported that, apart from having been President of FEDECAMARAS, Vicente Brito was the current President of a non-profit organization called Network for the Defence of Labour, Property and the Constitution, which is mainly concerned with submitting complaints about violations of the right to property and to constitutional guarantees, thus triggering adverse reaction from the Government.

⁴²¹ See Interim Report No. 363, Case No. 2254, March 2012, para. 1312.

⁴²² Report of the INTI legal adviser of 24 April 2019.

⁴²³ Meeting in Caracas on 9 July 2019.

⁴²⁴ See Interim Report No. 363, Case No. 2254, March 2012, para. 1312.

relevant legal documents—the last decision was published on 3 August 2018 and three days later, on 6 August, the judge who issued it was sacked) and (vi) due process was violated in many ways: the securing and land recovery measures were ordered simultaneously, which is illegal, as the recovery must come first followed by a technical report for the securing, and unlawful occupation was not proved. The complainants consider that the decision followed FEDENAGA’s participation in peaceful protests being held at that time in Táchira State by stockbreeders. The complainants offered evidence of statements made by Mr Cabello, current President of the ANC ⁴²⁵ who, while showing photos of Mr Albornoz taking part in the Congress of the Colombian Stockbreeders’ Federation, suggested that a check should be made to verify the ownership of his property. The complainants claim that the Government and its spokespersons made threats, gave the order, and the State institutions carried it out. The complainants also pointed out how, in an unprecedented manner, the act issued by the INTI emphasized that Mr Albornoz was at the time discharging his duties as FEDENAGA President, thus describing the person and not the farm, in line with the intended purpose of persecuting employers’ organizations. According to the complainants, the intention was, through unlawful misuse of powers, to make an example of him and thus intimidate other entrepreneurs.

314. With regard to this case, the **Government** stated that: (i) Mr Albornoz had not demonstrated private ownership of the property and that, on the contrary, the INTI had shown that it formed part of a larger plot and belonged to the National Farmers’ Institute, whose land had been transferred to the INTI under the LTDA; (ii) concerning the chain of title, the INTI stated that the documents had failed to link release by the nation with ownership by Mr Albornoz; (iii) the INTI report noted that productivity was below 80 per cent; (iv) for that reason, the INTI had issued an administrative act on 20 June 2017 in which it decided to begin the separate recovery of the land, a decision that had been appealed against, for which reason there was now a judicial protection order dated 3 August 2018 in place for Mr Albornoz; (v) although the appeal was still pending, it was highly likely to be dismissed; (vi) the Government had not accused FEDENAGA of taking part in the protests in 2017 and, although it was well known that Mr Albornoz held differing opinions from the Government, that did not constitute a reason to persecute him. ⁴²⁶

315. The **complainants** denounced other cases which, while not entailing recovery procedures, in their opinion also illustrated how land policy was used to intimidate employers’ leaders not close to the Government, outlining the following allegations: ⁴²⁷

(i) In 2008, the then Vice-President of FEDENAGA, Mr Manuel Cipriano Heredia, after making statements criticizing the situation in the stockbreeding industry, received a visit from the INTI, who came to inspect his farm, called La Vieja Elena, in Barinas State. Following a rigorous inspection, the authorities certified, with effect from 29 April 2008, that the farm was productive. ⁴²⁸ In January 2010, when Mr Heredia was

⁴²⁵ In his TV programme on the state channel, “Con el Mazo Dando” on 9 December 2016: “No one here can interfere with his farm, right? We should check if all his papers are in order for his farm, or not, right? See if all his papers are in order ...”.

⁴²⁶ Report of the INTI legal advisor of 24 April 2019. Meeting in Caracas on 9 July 2019.

⁴²⁷ This has also been pointed out to the CEACR. See Observations, Convention No. 87, Venezuela, adopted in 2017. The complainants state that these threats occurred two days after the protest held in the village of El Milagro by stockbreeders belonging to ASOGATA and FEDENAGA (see section 5.1.1 above).

⁴²⁸ The complainants supplied a copy of the INTI certificate dated 29 April 2008 concluding that the land on the Vieja Elena estate was not categorized as idle.

President of FEDENAGA, another INTI inspection took place; he showed his certificate of productivity, which had not yet expired as it was valid for two years.⁴²⁹ The outcome was that the farm was found to be within the parameters of “non-idleness”. However, the next day an INTI official from Caracas returned to say that the President of the INTI intended to take the land away Mr Heredia. In response to this new threat, Mr Heredia noted that a government minister had bought the neighbouring farm, which shared the same ownership record and was much less productive, despite having a greater area. He said that if they took his farm, he would have to denounce the situation of the minister’s farm. Following this conversation, the President of FEDENAGA received a communication certifying once more that his farm was not considered to be idle.⁴³⁰

- (ii) On 19 May 2017, the governor of Táchira State threatened to expropriate the land, and decommission the machinery and equipment, of any stockbreeders who took part in protests or blocked roads, accusing them of being “terrorists and members of criminal and paramilitary gangs”.⁴³¹ In the days following the burning of the ASOGATA headquarters on 18 May 2017, the farms of several of its directors who allegedly took part in the protests were inspected without respect for procedure. These employers’ leaders were threatened with expropriation, including by the President of the INTI; although the threats were not acted upon, the files remain open, and thus the threat remains active.⁴³²

⁴²⁹ The witness testified that the INTI officials seemed surprised, and gradually it emerged that this was an exercise in intimidation: the 2008 certificate had disappeared mysteriously from the file and the owner had to show them a copy. Even so, the officials insisted on inspecting the entire property and its livestock again.

⁴³⁰ INTI notification of 26 February 2010, which contained no indication of the fact that an inspection had already taken place in 2008 and that a certificate of non-idleness had been issued which was still in force. Meeting in Caracas on 8 July 2019.

⁴³¹ Public statements by governor Vielma Mora intended for stockbreeders: “Anyone who uses a vehicle, tractor, tanker vehicle, machinery, if they abandon their work, will have their farm expropriated, their livestock given to the armed forces and their farm to the INTI. Stockbreeders from Táchira ... I have fought so that your farms are not invaded, but you mix with criminal gangs, you support terrorists, you belong to cells that wish to ruin the country.”

⁴³² Videoconference of 18 March 2019. Meetings in Caracas on 8 and 12 July 2019. Witnesses to these events informed the Commission that: (i) after ASOGATA’s action to give away milk and cheese in May 2017 (a protest which, they say, greatly disturbed the Government at a time when the State governor belonged to the same party), its headquarters were destroyed and burnt (an allegation treated separately in this chapter), and several of its leaders subsequently received threats from the governor, the President of the INTI and the military authorities that their farms could be expropriated (a complaint was lodged with the Attorney General’s Office but no record was ever kept and no reply ever received); (ii) as noted by the press, following the governor’s threats to expropriate the land of any stockbreeder employers who protested, on Sunday 21 May unannounced inspections were carried out at the farms of several ASOGATA leaders; (iii) one such inspection was made of land belonging to Ms Carmen Oliva, a member of the disciplinary tribunal of the ASOGATA managing board. It was done without any prior warning and the owner had to travel urgently to the farm, where inspectors told her that the exercise was in response to a complaint that she had taken part in a *guarimba* (an organized street protest involving barricades), which was not true – it was the event at which employers gave away milk and cheese; (iv) the INTI authorities, seeing the excellent condition of the farm and unable to prove any hint of idleness, and faced with the owner’s assertions that they were only inspecting because she was a member of the ASOGATA managing board, informed her that the farm was productive and that they would issue a certificate to that effect, but this did not happen and no more has been heard from the INTI since then (the complainants supplied a copy of a formal

Other measures detrimental to the private business sector organized around FEDECAMARAS, including the Polar Empresas group

316. The **complainants** denounced numerous attacks and discriminatory actions against private property belonging to the Polar group, an important affiliate of FEDECAMARAS; like that organization, the Government used it as a scapegoat which it falsely accused of waging economic warfare.⁴³³ These attacks included the following: (i) in July 2015⁴³⁴ the Law Courts ordered the eviction of one of the group's beverage distributors (located on land leased by the enterprise), which, maintain the complainants, exceeded their powers and violated a special procedure established under the Basic Emergency Land and Housing Act; (ii) on 18 February 2016, five trucks belonging to the Polar Empresas group were violently seized by forces loyal to the Government, with the police conspicuously absent; (iii) at the beginning of May 2016, forced inspections were carried out at plants belonging to Polar Breweries, C.A., in the presence of three regulatory bodies and the Bolivian National Guard; according to the complainants, these were intended solely to intimidate, since the presence of the security forces was not a requirement for carrying out a regular administrative inspection;⁴³⁵ (iv) in April 2016, Polar Breweries was refused, under the exchange control system, the foreign currency needed to purchase the raw materials for beer and malt (barley) production, rendering breweries and malting plants across the country inoperative; (v) various government spokespersons, including the President of the Republic, made frequent threats, in public and through the media, against this important member of FEDECAMARAS (21 such threats between 2009 and 2016, some of which have materialized while many others remain unfulfilled), and made stigmatizing and intimidating public accusations (15 since 2016);⁴³⁶ and (vi) four facilities belonging to the Polar Empresas group were looted on 11 March 2019 in Maracaibo, which was not stopped by the police and caused losses amounting to more than VEF18,600.⁴³⁷

317. The complainants informed⁴³⁸ the Commission of an illegal and arbitrary 48-hour detention, between December 2015 and July 2016, of seven workers with managerial status from the Polar Empresas group, for allegedly disobeying orders from the Labour Inspectorate; in three such cases, alternative precautionary measures were imposed.⁴³⁹ They also denounced the detentions of other leaders of private enterprises, allegedly without right of defence or guarantee of due process, carried out between 2015 and 2016 by SEBIN officials; these detentions were motivated, according to the complainants, by those persons' statements to

request from Ms Oliva, dated 25 May 2017, asking for certification that the farm was productive following inspection and also enclosing the relevant deeds of ownership; this request bears the INTI seal acknowledging receipt the same day, but there has been no reply).

⁴³³ At the time of the visit the Polar Group accounted for 21 director posts in chambers, associations and unions affiliated to FEDECAMARAS.

⁴³⁴ Communication of 30 August 2016.

⁴³⁵ Communications of 24 May and 30 August 2016.

⁴³⁶ Meeting in Caracas on 8 July 2019, where detailed documentation was submitted confirming these expropriation threats and stigmatizing accusations.

⁴³⁷ Audiovisual material was supplied in which it was noted that the security forces present did nothing to intervene before the looting began.

⁴³⁸ Communication of 19 February 2017.

⁴³⁹ Meeting in Caracas on 8 July 2019. See also CFA Case No. 3178.

the press concerning aspects of the national economic situation, and were intended to intimidate them into ceasing their alleged criticism of the Government and to economically intimidate the employers in question. The following persons were involved: four owners and managers from the FARMATODO pharmacy chain, including Mr Pedro Luis Angarita and Mr Agustín Antonio Álvarez Costa, respectively the chain's Executive President and Vice-President of operations; directors of the Día a Día supermarket chain, Messrs Manuel Andrés Morales,⁴⁴⁰ Ordosgoitti and Tadeo Arriechi; and five managers from the Corporación Cárnica enterprise, Messrs Ernesto Luis Arenas Pulgar, Yolman Valderrama, Tania Carolina Salinas, Delia Isabel Ribas and Angelly López Graterol. The complainants also claimed⁴⁴¹ that on 3 December 2016, SEBIN detained the executive president and six managers of the Consorcio CREDICARD⁴⁴² enterprise, accusing them of carrying out a cyberattack against the State, and the President of the Banco Occidental de Descuento, a shareholder in CREDICARD, following a mass failure at sales outlets which prevented payments being made through electronic platforms administered by CREDICARD. According to the complainants, presumption of innocence was violated and due process and the entrepreneurs' right of defence were not respected, since they were declared guilty *ex ante* and tried incorrectly in military courts.⁴⁴³

318. The **Government** stated that the detentions described by the complainants were not carried out because of employers' organization activities or political persecution, but because the Attorney General's Office, an independent arm of the National Executive with the monopoly on criminal proceedings, had gathered sufficient proof to request deprivation of liberty from the relevant court for the presumption or verification of offences established in the laws of the land. The Government stated that the detentions of Polar Empresas group directors were not due to their links with FEDECAMARAS, but to infringements of legislation, often for failure to comply with reinstatement orders, and that in all cases due process and access to defence lawyers had been guaranteed.⁴⁴⁴ Concerning the employers from FARMATODO,

⁴⁴⁰ According to the complainants, the detention of an employee and lawyer lasted around ten days, after which they were placed under an attendance regime for a year; they add that none of the cases involved judicial proceedings.

⁴⁴¹ Communications of 19 February and 30 August 2017.

⁴⁴² According to the complainants, public and private finance bodies have a stake in this enterprise. Its shareholders are the Bank of Venezuela, State-owned with a 33.34 per cent holding, and the private banks Caribe and Occidental de Descuento, each with 33.33 per cent.

⁴⁴³ In the above-mentioned communication of February 2017, the complainants explained that on 2 December, at the beginning of Christmas festivities and after the payment of bonuses to public employees, the level of transactions fell significantly, which possibly triggered a massive failure at sales outlets that prevented payments being made through the electronic platforms administered by CREDICARD.

⁴⁴⁴ Case No. 3178, Interim Report No. 381, March 2017, para. 654.

Día a Día Practimercados⁴⁴⁵ and Corporación Cárnica,⁴⁴⁶ the Government stated⁴⁴⁷ that they had been caught in the act, placed in judicial preventive detention and were being prosecuted for alleged offences punishable in law (including, boycott, hoarding, fraudulent misrepresentation of goods quality, price rigging and speculation); the Government stated that the right to defence and guarantee of due process had been upheld at all times. Last, with regard to CREDICARD, the Government replied that: (i) when faults appeared in the electronic payment system leading to its breakdown, SEBIN began an operation at the headquarters of CREDICARD because it was responsible for handling the system; (ii) three persons were apprehended for not having followed the guidelines in the manual for dealing with such faults; they were charged with treason, under the Basic Military Justice Code, and with sabotage or damage to systems, under the Special Computer-related Crimes Act; and (iii) on 22 November 2018 a preliminary hearing was held at which the case was dismissed.

* * *

- 319.** The complainants also alleged that on 3 December 2016, the National Supervisory Body for the Defence of Socioeconomic Rights (SUNDDE) conducted a violent inspection of shops in Sabana Grande, La Hoyada and other places in the centre of Caracas, demanding mandatory and arbitrary reductions of between 30 and 50 per cent in the prices of clothing and footwear, refusing to allow employees to show their accounts or to listen to argument. It was also alleged that shop employees and managers were detained arbitrarily, accused of corruption. In this regard, the Government stated that,⁴⁴⁸ as a result of shop-owners actions and in line with the complaints, the SUNDDE, following the launch of proceedings and inspection and audit procedures, had ordered as a preventive measure that the prices of clothing and footwear be reduced by between 30 and 50 per cent, according to the size and capacity of the commercial establishment, and had supervised the sale; the Government had

⁴⁴⁵ In a communication of 25 June 2019 delivered by the Attorney General's Office on 3 July 2019, the Government added that: (i) on 2 February 2015, SEBIN, on the instructions of the Presidential Committee for the Defence of Socioeconomic Rights, together with the National Supervisory Body for the Defence of Socioeconomic Rights (SUNDDE), conducted an operation at the warehouses of Día a Día in la Yaguara, where they observed that the amount of goods received was far greater than those dispatched, revealing irregular turnover in products contained in the official basic basket; they apprehended Mr Manuel Morales, general manager of the establishment and brought him before the relevant court, which issued an arrest warrant for the offences of boycott and destabilization of the economy; (ii) they also apprehended Mr Tadeo Arrechi, legal representative of an enterprise with shares in Día a Día supermarkets; and (iii) on 23 January 2017 a preliminary hearing was held at which the case was dismissed and the precautionary measures halted, whereupon the Attorney General's Office appealed on 30 January 2017; the pronouncement of the court of appeals is still awaited.

⁴⁴⁶ In a communication of 25 June 2019 delivered by the Attorney General's Office on 3 July 2019, the Government added that: (i) a final indictment was served against Ms Tania Salinas and Ms Delia Rivas for committing the offences of speculation, boycott, fraudulently misrepresenting the quality of goods, price rigging and selling expired foodstuffs and goods, all under the Basic Fair Pricing Act, and criminal association, under the Penal Code; (ii) the case was still awaiting a preliminary hearing, since on 11 September 2016 an arrest warrant had been issued for Ms Salinas after she escaped from hospital; and (iii) alternative precautionary measures, and other unspecified measures (freezing of bank accounts) had been imposed on Messrs Angelly López, Yolman Valderrama and Ernesto Arenas.

⁴⁴⁷ Communication sent in the context of CSA Case No. 2254 (Interim Report No. 375, June 2015, paras 605–607).

⁴⁴⁸ Document submitted by the SUNDDE during hearings held in Geneva in a reply to the videoconference of 23 April 2019.

requested the Ministry and the SUNDDE to investigate the EPK enterprise for exorbitant price fixing. Concerning the allegedly violent inspections conducted by the SUNDDE, the Government stated ⁴⁴⁹ that the organization had been established by Presidential Decree No. 2092 of 8 November 2015 enacting the Basic Fair Pricing Act, ⁴⁵⁰ which regulated the organization's specific activities; its objectives were set out in section 3 and it also functioned within the framework of the Agreed Prices Act; the Government also stated that the SUNDDE was confined to supervising prices and did not, for any reason, practise retaliation against entrepreneurial sectors and their various employers' organizations or employ a policy of discrimination against employers' organizations in relation to the actions of their supervisory bodies, and that it applied the same treatment to all enterprises, according to their conduct; the Government added that the statistics showed very few instances of such controls being exerted against employers' leaders. ⁴⁵¹

320. The complainants stated ⁴⁵² that on 9 December 2016, 4 million toys had been seized at the Distribuidora Kreisel enterprise and the order had been given to distribute them house by house, through local supply and production committees (CLAPs). Employees and managers at the enterprise were detained. Concerning this case, the Government stated that: ⁴⁵³ (i) during an inspection and audit based on the Constitution and the Fair Pricing Act, it was found that the enterprise was hoarding merchandise and selling products at an illegal profit margin; (ii) on 10 December 2016 a court was asked to seize and secure the goods as a preventive measure, and to block and freeze the bank accounts of natural and legal persons with links to the enterprise; and (iii) on 14 February 2017 formal charges were laid against Mr Giuseppe Sasson Pinto and Mr Osiri Mendoza Abatecola for the offences of hoarding and speculation, and the preliminary hearing was awaited.

321. The complainants also alleged ⁴⁵⁴ that on 2 March 2017 the Government announced certain production measures for bakeries to comply with; if they did not, they would be occupied by the Government and their production taken over by CLAPs (in front of every bakery there was allegedly a political team put together by the SUNDDE, comprising one member of the Bolivarian militia, one from the CLAPs, one from the Bolívar Chávez combat units – made up of government activists – and one inspector from the SUNDDE, for purposes of surveillance and control). They added that, as a follow-up to these measures, on 16 March two bakeries were occupied for alleged changes to bread prices, selling out-of-date consumables and generating queues in supplying the product.

⁴⁴⁹ Videoconference between Government representatives and the Commission on 23 April 2019 and supplementary document delivered during the hearings held in Geneva from 8 to 10 May 2019.

⁴⁵⁰ Decree with the Scope, Effect and Force of the Basic Fair Pricing Act, published in the *Official Gazette*, No. 40787 of 8 November 2015.

⁴⁵¹ It emphasized that the SUNDDE acted on complaints from citizens in order to give effect to the State's aims, using supervisory, inspection and audit procedures to guarantee, defend and protect socioeconomic rights enabling citizens to access goods and services. A representative of the SUNDDE who appeared before the Commission during the videoconference on 23 April 2019 stated that, pursuant to the Fair Pricing Act which established the SUNDDE, the organization could act ex officio and in response to complaints, and that there were two types of procedure, one short and preventive and the other punitive.

⁴⁵² Communication of 30 August 2017.

⁴⁵³ Communication of 25 June 2019 delivered by the Attorney General's Office on 3 July 2019.

⁴⁵⁴ Communication of 30 August 2017.

322. The complainants also denounced ⁴⁵⁵ measures by organizations linked to state governorships, municipalities with government connections and/or abattoirs under government control aimed at retaining a large proportion (30 per cent) of livestock for slaughter for distribution to low-income groups, at below cost price and in accordance with certain requirements. They also alleged that in November 2018 the Vice-President for the Economy, Mr Tareck El Aissami, announced a government decision to “occupy” or “intervene in” 21 abattoirs with the aim of halting an increase in meat prices and keeping them regulated. They also denounced acts of vandalism against farms in which cattle were dismembered, carried out by *colectivos* in separate states; according to the complainants, this suggested a certain level of coordination against the entrepreneurial sector. Concerning the alleged retention of livestock, the Government stated ⁴⁵⁶ that it was not government policy to appropriate 30 per cent of the production or stock of certain FEDECAMARAS leaders, and that any requisition by the Government for its food programmes was made from producers who made livestock freely available; these were preferably Venezuelan, but in certain cases they also came from abroad.

323. During the visit to Bolívar, witnesses for the complainants claimed that in 2015 the mayor of Heres municipality expropriated an abattoir belonging to the then President of FEDECAMARAS Bolívar because of his employers’ organization activities. The President held a 20-year licence for the abattoir in Bolívar which he had refurbished with modern technology using almost all of his financial resources (1 million dollars). In 2015 a new mayor arrived who decided to expropriate the abattoir, the best in the State, without paying any compensation. Applications for *amparo* were submitted, but, although four and a half years had passed, the legal proceedings were at a standstill by order of the Government (the witnesses underlined how the country’s judges, most of them provisional, did not dare question the Government for fear of reprisals). The witnesses added that, one month and one week after the expropriation, in October 2015 the headquarters of the abattoir were attacked by armed robbers who took all relevant documentation (photos of the destruction caused by this attack were provided). The witnesses emphasized that the incidents were a reprisal for press conferences that the President had given as an employers’ leader criticizing the Government (they complained that *colectivos* attacked the farms of the union’s members at night, stealing equipment, harvested maize and animals – 2,600 head per month were being lost). ⁴⁵⁷

⁴⁵⁵ Communication of 22 November 2018.

⁴⁵⁶ Supplementary report to the information contributed by Deputy Minister José Ramón Rivero González to the international videoconference held on 23 April 2019 by the ILO Commission of Inquiry to study a complaint lodged by FEDECAMARAS and the International Organization of Employers (IOE).

⁴⁵⁷ Meeting in Puerto Ordaz on 10 July 2019.

Chapter 6. Alleged exclusion from social dialogue and lack of tripartite consultation, particularly on fixing the minimum wage (Convention No. 26), and the promotion of the application of international labour standards (Convention No. 144)

324. The claimants reported to the Commission that FEDECAMARAS had been excluded from social dialogue and that there was a lack of tripartite consultation with regard to fixing the minimum wage (Convention No. 26) and the promotion of the application of international labour standards (Convention No. 144). The Government denied the allegations, stating that it had strengthened dialogue with FEDECAMARAS, that it was FEDECAMARAS that often excluded itself and that the Federation had failed even to specify the extent to which Convention No. 144 had been violated. The information gathered on this category of allegations falls into the following areas: (i) the alleged approval of increases to the minimum wage without tripartite consultation, with the exclusion of FEDECAMARAS in particular; and (ii) the alleged lack of tripartite consultation, in particular on matters under Convention No. 144, and the alleged exclusion from social dialogue of organizations that are not close to the Government.

6.1. Approval of increases to the minimum wage without tripartite consultation

325. The claimants reported ⁴⁵⁸ that, in violation of the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26), the Government had approved increases to the minimum wage for workers without tripartite consultation. Specifically, they alleged that between early 2014 and mid-2019, the Government had increased the minimum wage 24 times and attempted or feigned consultation on just six occasions. The nature of that consultation meant that it could not be considered effective. The following table summarizes the allegations (and the responses received from the Government):

Year	In effect	Increase (per cent)	Claimants allegations	Government response
2014	January	10	No form of consultation or attempted consultation	Claimed that FEDECAMARAS admitted that it had been consulted in advance that year (as evidenced by press releases containing statements by its President to that effect)
	May	30	Generic letter (requesting an opinion but lacking a proposal for consideration) received on 21 April – insufficient notice	
	December	15	No form of consultation or attempted consultation	
2015	February	15	No form of consultation or attempted consultation	No specific response
	May	20	No form of consultation or attempted consultation	No specific response
	July	10	No form of consultation or attempted consultation	No specific response
	November	30	Belated generic letter (the increase had already been approved when the Ministry sent the letter)	Letter dated 23 October containing an invitation to submit proposals for the drafting of wage policies to be considered over the following year
2016	March	20	No form of consultation or attempted consultation	No specific response
	May	30	No form of consultation or attempted consultation	No specific response
	August	50	No form of consultation or attempted consultation	No specific response

⁴⁵⁸ Communications from FEDECAMARAS dated 24 May 2016, 15 and 31 October and 2 November 2017, and 5 March and 24 September 2018.

Year	In effect	Increase (per cent)	Claimants allegations	Government response
2017	November	20	No form of consultation or attempted consultation	No specific response
	January	50	No form of consultation or attempted consultation	No specific response
	May	60	Generic letter from the Government dated 14 February enquiring about the wage increase policy – FEDECAMARAS replied requesting details. On 27 April FEDECAMARAS met with the MPPPST, but the Government did not share a specific approach	The matter had been discussed during meetings with FEDECAMARAS on 11 and 31 January. Letter dated 14 February – the Government submitted copies of letters (dated 16 February) requesting general opinions on the wage policy for 2017
	July	50	No form of consultation or attempted consultation	No specific response
	September	40	No form of consultation or attempted consultation	No specific response
	November	30	Belated generic letter (received on the same day, 1 November, that the increase was announced by the President and entered into force). FEDECAMARAS replied on 2 November, again regretting the lack of real or effective consultation	The Government submitted a copy of this belated letter (dated 1 November 2017) that requested “your opinions on this matter” (the national minimum wage)
2018	January	40	No form of consultation or attempted consultation	No specific response
	March	58	No form of consultation or attempted consultation	No specific response
	May	155	No form of consultation or attempted consultation	Claimed to have consulted FEDECAMARAS (without providing evidence)
	July	200	No form of consultation or attempted consultation	No specific response
	September	5,900	No form of consultation or attempted consultation	FEDECAMARAS had chosen not to respond to the call
	December	150	Generic letter received on 30 October consulting on the wage policy for the following six months. Challenged by FEDECAMARAS on 5 November via a letter demanding in-depth tripartite discussion. Not published in the <i>Official Gazette</i>	Submitted copies of letters dated 29, 30 and 31 October 2019 that also requested recommendations ... with regard to the minimum wage over the next six months”
2019	January	300	No form of consultation or attempted consultation. The increase was not published in the <i>Official Gazette</i>	No specific response
	April	122.2	Lack of effective consultation (belated generic letter). Increase published in the <i>Official Gazette</i> on 25 April (but entered into force on 16 April)	The Government submitted copies of letters dated 22 April 2019 (after the increase had entered into force) that requested “recommendations ... with regard to the minimum wage over the next six months”. A similar letter had been sent on 16 July 2019, again requesting “any proposals, suggestions and recommendations with regard to the minimum wage over the next six months”

326. The claimants alleged that in the very few cases (six of 24)⁴⁵⁹ in which the Government had supposedly engaged in consultation on minimum wage increases, its attempts had been belated and/or did not allow FEDECAMARAS to make specific contributions. The communications had been sent in order to feign consultation, in that they had requested opinions in only a general manner without providing any details of the planned increase, and

⁴⁵⁹ Statement made by the claimants during the teleconference of 22 March 2019. Hearings from 8 to 10 May 2019.

they had recently begun to include general invitations to submit points of view covering six-month periods:

- (i) On 14 April 2014, the Government had sent a generic letter requesting FEDECAMARAS' opinion on the minimum wage. That letter had been received on 21 April. On 28 April, the organization, which had so far been unaware of the details of the increase proposed by the Government, had submitted a general proposal that had been received by the Government on 29 April, the day on which the increase had been announced.
- (ii) On 23 October 2015, the Government had sent a generic letter to FEDECAMARAS requesting its opinion on the wage policy. Given that the wage increase due to enter into force on 1 November 2015 had already been approved, it had not submitted an opinion.
- (iii) On 14 February 2017, the Government had sent a generic letter requesting opinions on the minimum wage increase policy for 2017, without detailing the proposal under consideration. On 23 February 2017 FEDECAMARAS had replied to that letter with a general opinion and requested details of the proposal and a meeting to facilitate true tripartite discussion.⁴⁶⁰ Later, on 27 April 2017, a meeting had been held between the Government and FEDECAMARAS during which the latter had been informed of a planned increase to the minimum wage. However, the Government had not shared a specific approach to the wage framework, and this employers' organization had expressed the view that without policies to stimulate national production, wage increases would lead only to the closure of increasing numbers of businesses.
- (iv) Despite the meeting held at the MPPPST on 25 October 2017, during which the Government had voiced its willingness to enter into a dialogue with FEDECAMARAS, the subsequent consultation had been both generic and belated. On 1 November 2017, the Government had sent a communication that aimed to initiate general consultation on the wage increase policy to protect wages from the economic war. While that letter had supposedly constituted consultation, the President had announced a new increase on the very day that it had been sent, demonstrating the Government's lack of good faith with regard to its expressed commitment to dialogue. FEDECAMARAS had responded the following day via a communication dated 2 November 2017, denouncing the Government's belated communication, which had not constituted real or effective consultation in any way.
- (v) Following the establishment of the Commission of Inquiry through Memorandum No. 3044, received on 30 October 2018, the Ministry of Labour had asked the Federation to submit its proposals, suggestions and recommendations with regards to the minimum wage over the following six months. FEDECAMARAS had replied to the Ministry via a communication dated 5 November 2018, highlighting that it was impossible to comment on an unknown proposed wage increase since the Government had not provided details of the planned terms, and that expressing a specific opinion or entering into discussion of the matter was also impossible.⁴⁶¹ The claimants believed that the letter received had not fulfilled the necessary conditions to be deemed effective

⁴⁶⁰ The President announced the increase to the Socialist CestaTicket on 1 March.

⁴⁶¹ In that connection, the claimants explained during the teleconference of 22 March 2018 that to be able to design, or form opinions on, a wage policy knowledge of the basic points of the economic policy that the Government planned to pursue was needed given their influence on the criteria selected to determine the minimum wage.

social dialogue under the guidelines drawn up by ILO, which call for structured permanent bodies, a specific agenda, common objectives, mutual respect, good faith and a constructive spirit.⁴⁶² FEDECAMARAS had already expressed to the MPPPST, in a communication in October 2017, its concern at the Ministry's approach of granting the President exclusive and unilateral power over wage adjustments.⁴⁶³ Using those powers, on 29 November 2018 the President had announced a new increase to the minimum wage that would enter into force on 1 December, without having conducted specific consultation, addressed any of the proposals submitted by FEDECAMARAS in its communication or convened the Tripartite Round Table.⁴⁶⁴

- (vi) A new increase had been approved in April without effective consultation. A generic, belated letter had been sent to FEDECAMARAS on 22 April, inviting suggestions and recommendations on the minimum wage for the following six months, but without providing any details of the proposed increase. That increase had already been announced on social media by the ex-Minister and President of the Workers' Standing Committee of the National Constituent Assembly, Francisco Torrealba, on 9 April, and had entered into force on 16 April. The employers' organization had sent a letter dated 26 April 2019 to the Government, again denouncing the belated reception of its sporadic, generic communications that had been sent as a formality and had not sought to facilitate effective dialogue.⁴⁶⁵

327. Moreover, the claimants stated⁴⁶⁶ that the Government was implementing a policy of "desalarization" of remuneration, with the majority of minimum wage increases applying to non-wage food allowances, known as the Socialist CestaTicket.⁴⁶⁷ The claimants indicated that the Socialist CestaTicket had no effect on end-of-year bonuses, holiday or public holiday pay or social benefits. However, in October 2016 it had made up 70 per cent of workers' remuneration.⁴⁶⁸ They pointed out that no consultation had taken place with regard to the increases to the CestaTicket. The Commission was also informed that: (i) since its creation, the minimum rate for this benefit had been set out in decrees published in the official gazettes at the same time as the decrees relating to the minimum wage increases;⁴⁶⁹ (ii) in its report submitted under article 22 of the ILO Constitution, the Government had stated that the Socialist CestaTicket had been paid in cash since May 2017; and (iii) between March 2016 and June 2018, the amount earned via the Socialist CestaTicket had been greater than the

⁴⁶² Communication from the claimants dated 22 November 2018.

⁴⁶³ Communication from FEDECAMARAS dated 15 October 2017.

⁴⁶⁴ Communication dated 11 January 2019 and teleconference of 22 March 2019.

⁴⁶⁵ Hearings of 8 to 10 May 2019.

⁴⁶⁶ Communication dated 31 October 2016.

⁴⁶⁷ Benefit established in Decree No. 2066 of 23 October 2015 with the rank, value and force of the Act on the Workers' Socialist CestaTicket.

⁴⁶⁸ In a communication dated 30 August 2017, the claimants highlighted that workers' monthly income had been desalarized; just 39 per cent of their gross monthly income took the form of wages (on which their entitlement to social protection benefits was based), while 61 per cent comprised the Socialist CestaTicket, which was not a wage and related mostly to food purchases.

⁴⁶⁹ Among others: Decree No. 3233 (December 2017) and Decrees Nos 3300 (March 2018), 3393 (April 2018), and 3481 (June 2018), which increased the tax unit, used as a reference to calculate the Socialist CestaTicket.

amount earned via the minimum wage and in some periods (between January and June 2018) had constituted between 60 and 70 per cent of the minimum wage for workers.⁴⁷⁰

- 328.** The claimants also highlighted that the President had deliberately neglected to undertake consultation and had boasted publicly that he did not, and was not required to, consult with FEDECAMARAS on these increases. By way of example, the claimants provided information relating to the approval of a wage increase via the media on 28 October 2016. On that occasion, the President had announced on national television: “I don’t have to call the International Monetary Fund or FEDECAMARAS to approve a wage increase. I don’t rely on the bigwig,⁴⁷¹ that saboteur, to order a wage increase ... So, making full use of my powers as President ... I’m going to sign the Official Decree authorizing this comprehensive increase to wages and the CestaTicket.” Moreover, during the hearings the claimants highlighted that it was telling that, in response to such clear evidence and so many reports of increases approved without consultation, the Government should again base its main argument on a 2014 press release that reported statements of the then-President of FEDECAMARAS in which he had admitted that, on that occasion, consultation had in fact taken place.
- 329.** Furthermore, the claimants argued that under the Convention, the minimum wage must be fixed formally, with guarantees of legal certainty. Those requirements had not been met because on several occasions the increases had been announced by the Government via the traditional media or social media, without being published in the *Official Gazette*. The minimum wage increases of December 2018 and January 2019 had thus been announced via social media by the President, without being formalized by the publication of the relevant Decree in the *Official Gazette*; formalization had been limited to the circulation of guidelines drawn up by the executive through the MPPPST (the claimants demonstrated to the Commission how a copy of the *Official Gazette* containing the extraordinary decree on the wage increase of 25 April 2019 could not be found on the website of the National Archives).
- 330.** Furthermore, during the hearings the claimants questioned the Government’s interpretation of Convention No. 26. They disagreed that its obligations could be interpreted as limited to formal consultation, excluding the possibility of discussion of any form. In their opinion, and given that the LOTTT of 2012 removed the obligation to undertake consultation, some form of debate was required to fulfil the Convention’s objectives, that is, ensuring that the social purpose of the minimum wage (with purchasing power) was fulfilled, which was not currently the case. In that regard, the claimants submitted to the Commission documents, including communications to the Government and press releases, in which FEDECAMARAS had expressed its disagreement with the mechanism of successive, isolated wage increases as the only solution to the huge loss of purchasing power suffered by Venezuelans. In the opinion of FEDECAMARAS, tripartite dialogue and the adoption of a range of measures and structural reforms to combat hyperinflation and stimulate output were necessary because the effects of wage increases were rapidly diluted by rising inflation. Moreover, if the problems of productivity and inflation were not resolved, those isolated increases could lead to increased business closures, particularly of small and medium-sized enterprises, which would find it difficult to cover the cost of the increase. That, of course, would have a significant impact on employment levels in the country and worsen

⁴⁷⁰ This proportion reverted in July 2018, when the Socialist CestaTicket fell to 42.26 per cent of the minimum wage, and following the 5,900 per cent increase to the minimum wage on 1 September 2018, when the Socialist CestaTicket fell to 1.21 per cent of income.

⁴⁷¹ The claimants clarified that this is the derogatory adjective regularly employed by the President to refer to the President of the most representative business group in the country’s food and drink sector, the Polar group, a secondary member of FEDECAMARAS.

Venezuelans' living conditions.⁴⁷² The claimants demonstrated to the Commission that the wage situation was of grave concern, despite the multiple increases approved on a bimonthly basis by the executive, the effects of which were diluted increasingly rapidly. According to FEDECAMARAS, the wage increase that had come into effect on 1 September 2018, and that had represented an increase of 5,900 per cent (60 times the previous minimum wage) before the end of that month, had already lost almost 80 per cent of its real value.⁴⁷³ Through a series of written and oral communications, the claimants and several national unions alerted the Commission to the dramatic fall in the purchasing power afforded by wages.⁴⁷⁴ In this context, the Government's attempts to feign consultation in writing were even less credible; against a backdrop of hyperinflation, it was impossible to provide comments six months in advance (a fact exacerbated by the complete absence of information on the factors taken into account by the Government when determining increases).

- 331.** With regard to other **employers' organizations**, FEDEINDUSTRIA⁴⁷⁵ stated to the Commission that in the second six months of 2018 and the first six months of 2019, it had received a letter from the Government inviting it to express its position (that is, that wages should be index-linked to inflation in the same way that material prices were determined and that there had been problems in applying legislation on fair costs and prices), and that it had previously taken part in informal consultations. With regard to whether it believed that the timeframes for responding to the consultation were reasonable, the representatives of FEDEINDUSTRIA stated that, because it had prepared its position in advance, it had been able to provide a timely response.⁴⁷⁶

⁴⁷² Letter from FEDECAMARAS to the Government dated 22 April 2016.

⁴⁷³ Communication from the claimants dated 22 November 2018.

⁴⁷⁴ In a communication dated 31 October 2016, the claimants reported that the price of the basic basket of foodstuffs for families had risen by 555 per cent between September 2015 and September 2016 according to the Centre for Labour Documentation and Analysis (CENDA), reaching VEF502,881.34, equivalent to US\$763 using the official rate. After the approval of the increase to the minimum wage, 19 minimum wages, and five times the gross income (including the Socialist CestaTicket), would be required to pay for it. Despite the accumulated wage increase of 180 per cent in 2016, taking all four increases over the year together, cumulated inflation that year was expected to reach approximately 720 per cent. In the face of those inflation rates, the highest in the world, Venezuelan workers' purchasing power had plummeted. In a later communication dated 24 September 2018, the claimants reported that, as of June 2018, 256 minimum wages were required to cover the basic basket of foodstuffs and that the adjustment that had come into force on 1 September 2018 did was insufficient to pay for it. Similarly, in a communication dated 29 August 2018, ASI underlined that the minimum wage of VEF392,646.46 that had been in force until 30 April 2018 was sufficient to purchase just 1 per cent of the basic basket of foodstuffs for families. A worker required a minimum of VEF1,321,310 per day to feed their family, and the minimum monthly wage was less than the amount required for a family to feed itself for one day. Drawing on figures from CENDA, it stated that a family required 100 minimum wages just to cover its basic food costs (based on the minimum wage of VEF392,646.46 that had been in force until 30 April 2018). By way of example, ASI reported that "even taking into account the food voucher benefit and the wages of two people, a household with two minimum wages and two food vouchers (VEF1,307,646.46 x 2) has an estimated monthly income of VEF2,615,292.92; barely enough to purchase food for two days a month."

⁴⁷⁵ Videoconference of 7 May 2019. Hearings of 8 May 2019. Meeting in Caracas, 11 July 2019.

⁴⁷⁶ Meeting with the Commission, Caracas, 11 July 2019.

-
- 332.** A representative of EMPREVEN⁴⁷⁷ stated to the Commission that consultation no longer took place as it had in the past, being replaced by letters inviting her organization to give its opinion. She believed that could be due to the situation in the country, but stated that consultation with trade unions on fixing the minimum wage should resume.
- 333.** The representatives of the COBOIEM who met with the Commission stated that they had been consulted on the different wage increases approved since 2014 (they stated that MPPPST would send them a letter three or four weeks in advance, although they did not submit any evidence, despite a direct request from the Commission). However, they clarified that they had not been consulted on the September 2018 increase or the decision made at that time to level wages.
- 334.** With regard to consultation with **workers' organizations**, the CTV⁴⁷⁸ stated to the Commission that the reforms to the Basic Labour Act of 1997 had established a National Tripartite Commission that had fixed the minimum wage and had operated effectively until 1999. However: (i) between 2000 and 2012, this mechanism had not been in effect, and the minimum wage had been fixed unilaterally by the Government; and (ii) in 2012, the LOTTT had abolished this forum for dialogue. The CTV confirmed that neither its organization nor any other independent organization had been consulted, occasionally receiving generic letters that arrived too late. In relation to the Commission's work, the Government had sent a letter requesting the CTV's general opinion that had arrived on 24 April 2019, while the increase had been published and taken effect on 16 April.⁴⁷⁹ The representatives of the CTV added that the violation of Convention No. 26 had been exacerbated by a disastrous economic policy, and its impact on workers had been severe, leading to the collapse of the minimum wage⁴⁸⁰ (by September 2018, 23 adjustments had been made during the President's time in office) and huge numbers of job losses. The new minimum wage imposed in 2018 did not recognize the wage scales and benefits set out in collective agreements. The CTV highlighted that at a time of hyperinflation, tripartite dialogue was required to address wage matters linked to economic, fiscal and monetary policies.
- 335.** The UNETE, the CGT and CODESA reported that the Government's claim in its report to the CEACR that the wage adjustment policy had been discussed by the National Productive Economy Board (CNEP) was false. They stated that the Government had adjusted the minimum wage and the food allowance unilaterally, without proper consultation.⁴⁸¹ They brought to the Commission's attention the hyperinflation and failure to comply with the constitutional obligation to provide a minimum living wage. Between May 2005 and June 2018, the minimum wage had risen by 122,099.12 per cent and food allowances by 186,576.04 per cent. Furthermore, the LOTTT did not distinguish between different areas of activity or types of workers with regard to the minimum wage. The result had been a single, standard wage (VEF18,000). At the time of the Commission's visit to the country, that was equivalent to less than US\$6 per month. The current situation merited comprehensive review

⁴⁷⁷ Meeting with the Commission, Caracas, 11 July 2019.

⁴⁷⁸ Communications dated 24 September 2018 and 18 March 2019.

⁴⁷⁹ Witnesses from the CTV. Meeting with the Commission, Caracas, 11 July 2019.

⁴⁸⁰ The CTV stated that while in 2011 the minimum wage had been equivalent to US\$250, by 21 February 2019 it had been equivalent to just over US\$5.

⁴⁸¹ Meeting with witnesses from the UNETE, Caracas, 11 July 2019, who stated that even in the past, under the former President, they were sometimes consulted in writing, but that their opinions were never taken into account.

and global solutions via broad discussion.⁴⁸² Additionally, the ASI stated that the Government set the minimum wage unilaterally and without tripartite consultation.⁴⁸³

- 336.** Lastly, the CBST⁴⁸⁴ stated to the Commission that it had been consulted on all minimum wage increases. It indicated that such consultation was normally undertaken in writing and, if necessary, meetings were held; the organization tended to record everything in writing (it committed to submitting evidence of the consultation to the Commission). In its subsequent communication,⁴⁸⁵ the CBST clarified that although it had not responded to all the Government's consultations on the minimum wage (thereby justifying its failure to submit written evidence), it had replied to the most important, for example at a meeting held on 22 August 2018 between President Nicolás Maduro and union leaders (the CBST submitted a video of that meeting, which consisted entirely of a speech by the President to CBST leaders setting out his economic recovery programme).
- 337.** In its communication to the Commission, the **Government** indicated that, in accordance with article 91 of the Constitution and section 129 of the LOTTT, the minimum wage in the Bolivarian Republic of Venezuela was implemented at the national level and applied broadly, without discrimination. In the Government's view, FEDECAMARAS did not agree with that system and so attacked it constantly with the aim of bringing the economic and social model into question so that the Socialist Plan for Economic and Social Development, or National Plan, presented as an election manifesto at the last three presidential elections, would be scrapped. The Government added that it undertook consultation on fixing the minimum wage on an equal basis and recalled that it took the final decision.⁴⁸⁶
- 338.** The Government referred to details provided during the discussion of this case by the Conference Committee on the Application of Standards at the 103rd Session of the International Labour Conference in 2014, at which it had refuted the claimants' allegations by indicating that every 1 May it undertook direct consultation with the most representative workers' organization, CBST, other trade unions in the main economic sectors, FEDEINDUSTRIA and CONFAGAN. The same communication had been sent to FEDECAMARAS so that it could express its opinion. To prove that it had refuted the alleged lack of consultation before the 2014 Conference Committee on the Application of Standards, a refutation that it reiterated before the Commission and during the hearings, the Government

⁴⁸² In a communication dated 26 September 2018 these confederations, together with the CTV, reported that President Maduro had used a speech on national television to announce, among other economic measures, the unilateral and arbitrary annulment of workers' collective agreements through the introduction of a new minimum wage for all wage tables from 1 September. The confederations stated that while the Government had assumed the costs of the difference in wages in small and medium-sized business, and in the private sector, that applied only to the minimum wage. Consequently, collective agreements that involved wages of three or four times the minimum wage were violated. The confederations claimed that from that moment there was just one wage in the country: the wage paid by the executive, a minimum wage of VEF1,800. In their opinion, this eradicated the victories of the labour movement and implied direct interference in trade union matters. They also stated that wage differentials did not exist in the public administration.

⁴⁸³ Comments on the reports sent to the CEACR, 26 May 2018. Meeting with the Commission, Caracas, 11 July 2019.

⁴⁸⁴ Videoconference of 7 May 2019. Meeting in Caracas, 11 July 2019.

⁴⁸⁵ Communication dated 28 May 2019.

⁴⁸⁶ Communications from the Government dated 12 September 2016, 21 September 2018 and 29 April 2019.

submitted a press release on the minimum wage increase of 1 May 2014 entitled “FEDECAMARAS deems wage increase to be responsible”, pointing to the admission of the organization’s President that it had been consulted “sufficiently in advance” that year and that it had sent a communication to the MPPPST. It also submitted to the Commission a video depicting the then First Vice-President of FEDECAMARAS confirming that the wage increase was necessary. The Government claimed that this proved the allegations to be false.

339. In the view of the Government, it was FEDECAMARAS that had absented itself from the dialogue, demonstrating little interest in the minimum wage and seemingly refusing to share its opinions. In that connection, the Government highlighted that FEDECAMARAS had, on several occasions, replied that it preferred to discuss the economic model (demanding a change to the political, economic and social model rather than discussing the minimum wage). The Government recalled that while the Convention addressed the minimum wage, discussion of the economic model fell entirely beyond its scope (although the Government confirmed its willingness to discuss the matter).⁴⁸⁷ In the opinion of the Government, Convention No. 26 mandated consultation but did not establish particular mechanisms. The Government stated that its aim was to identify mechanisms to reach an agreement on the scope of the Convention and highlighted repeatedly that it was open to discussion of how its compliance could be improved through new consultation mechanisms.

340. The Government submitted the following documents as evidence of its compliance with its obligation to undertake consultation on fixing the minimum wage (in addition to the aforementioned 2014 press release):

- (i) letters dated 14 and 16 February 2017 (received on 20 and 21 February 2017) to FEDECAMARAS, as well as to FEDEINDUSTRIA, CBST, CTV, CUTV, CODESA, UNETE, CONFAGAN and CGT, in which the Minister of Labour (Mr. Francisco Torrealba) indicated that “as part of constructive dialogue and based on the State’s obligation to provide a minimum living wage, we wish to hear your proposals on this matter for 2017” (FEDECAMARAS replied to this communication). The Government also stated that the minimum wage had been discussed during meetings with FEDECAMARAS on 11 and 31 January 2017;⁴⁸⁸
- (ii) letters dated 1 November 2017 to FEDECAMARAS from the Minister of Labour (Mr Nestor Valentín Ovalles) requesting “your opinions on this matter (the minimum wage)”;
- (iii) emails and letters dated between 29 October and 1 November 2018 to FEDECAMARAS and to FEDEINDUSTRIA, CBST, CTV, CUTV, CODESA, UNETE, CONFAGAN and CGT, in which the Minister of the Social Process of Labour (Mr. German Eduardo Piñate) requested “any proposals, suggestions and

⁴⁸⁷ Meeting with Government representatives, Geneva, 7 May 2019.

⁴⁸⁸ Additionally, as part of its monitoring of the implementation of Convention No. 26, the CEACR noted that the Government had indicated in its 2017 report that: (i) from 2015 to 2017, owing to the problems facing the Venezuelan economy, such as high inflation rates, it had been obliged to adopt urgent measures to protect workers, adjusting the minimum wage in line with their loss of purchasing power; (ii) the rise in the cost of the basic basket of foodstuffs was taken into account when fixing the minimum wage. This was a technical criterion that could not be negotiated; and (iii) consultation and social dialogue occurred in the CNEP, which enjoyed the participation of chambers of commerce affiliated to FEDECAMARAS and other important business organizations in the country, as well as workers’ confederations. See Bolivarian Republic of Venezuela, CEACR, Convention No. 26, observation, adopted in 2017.

recommendations with regard to the minimum wage over the next six months”. The Government added that on 20 August 2018 the minimum wage had risen as part of the monetary reconversion and that, to avoid affecting cost structures, the Government had committed to bearing the costs of the wage increase over a three-month period, which may be extended;⁴⁸⁹

- (iv) letters dated 22 April 2019 to FEDECAMARAS and to FEDEINDUSTRIA, CBST, CGT, CTV, CUTV, CODESA, CONFAGAN and UNETE, in which the Deputy Minister for the Integrated Labour Inspection and Social Security System had also requested “any proposals, suggestions and recommendations with regard to the minimum wage over the next six months”.⁴⁹⁰

341. In response to the Commission’s question on whether it believed that the text of the letters sent had complied with its obligations under Convention No. 26 (none of the letters included a proposal or any explanation of the planned increases), the Government confirmed that it had, but that it was evaluating mechanisms to improve its compliance. Furthermore, the Government stated that the broad nature of the consultation, which had covered viewpoints over a period of six months or one year, had allowed the executive to identify appropriate increases depending on the situation. By way of example of the responses, the Government submitted communications from FEDEINDUSTRIA (providing its views for the second six months of 2018 and the first six months of 2019) and FEDECAMARAS (in response to the communication of 22 April 2019, criticizing the late receipt of isolated and generic communications that, in its view, had not constituted effective dialogue). In the absence of any details on the other increases, the Commission repeatedly requested additional evidence of consultation from the Government. Lastly, in response to the alleged publication of some increases only on social media, the Government clarified that all increases had been announced and published in the Official Gazette (problems with access to the Official Gazette’s website notwithstanding. It also reiterated that in the case of doubt, it was willing to provide any additional official certification deemed necessary).

6.2. Lack of tripartite consultation, in particular on matters under Convention No. 144, and alleged exclusion from social dialogue of organizations that are not close to the Government

342. The **claimants** reported to the Commission⁴⁹¹ the exclusion of FEDECAMARAS from the social dialogue process and the lack of consultation on laws affecting the labour and economic situation of employers. They stated that the only relationships that existed with the Government were with technical contacts in some chambers of commerce (who, for example, provided information on price control). They reported in particular:

- (a) the lack of consultation on more than 50 laws passed directly by the President, via enabling legislation, a matter that the Committee on Freedom of Association has

⁴⁸⁹ Communication dated 21 September 2018.

⁴⁹⁰ Communication dated 7 May 2019. The UNETE informed the Commission that a similar letter had been sent on 16 July 2019, again requesting “any proposals, suggestions and recommendations with regard to the minimum wage over the next six months”.

⁴⁹¹ Communications from the claimants dated 24 May, 26 September and 31 October 2016; 17 February, 30 August and 15 and 31 October 2017; and 16 February and 24 September 2019. Meeting of 8 May 2019. Hearings of 8 to 10 May 2019.

already considered under Case No. 2254, when it condemned that persistent situation. The claimants highlighted that even the adoption of the LOTTT in 2012 had not been the result of true tripartite consultation, that the alleged 19,000 proposals referred to by the Government were never disseminated publicly and that the 15 members of the Presidential Commission appointed to draw up the draft decree had been representatives of the public authorities or individuals with close ties to the Government. The only representative of employers had been a manager of FEDEINDUSTRIA, which has links to the Government;

- (b) the failure to consult employers and workers on the decrees declaring a state of emergency and an economic emergency and their respective extensions;⁴⁹²
- (c) the exclusion of FEDECAMARAS from the CNEP, which had been established on 19 January 2016 by the Government. FEDECAMARAS had been invited only to participate in the opening and swearing-in ceremony for the 45 CNEP members, not to become part of its technical groups. The claimants challenged the Government's claims with regard to its participation, clarifying that the attendance of business owners from some chambers of commerce linked to FEDECAMARAS at the debates of some technical groups (in particular the former President of FEDEAGRO was no substitute for the participation of FEDECAMARAS as an institution and as the most representative organization (furthermore, participation in the CNEP had been nominal, in that individuals had been invited in their personal capacities, not as representatives of organizations). They also informed the Commission that the President had confirmed to the media that he would never invite FEDECAMARAS to the CNEP because it was part of the economic war. Lastly, the claimants stated that the CNEP had ceased to function in early 2017. In the opinion of one witness who had participated in its work, this collapse had come about when it had become obvious that the CNEP was a sham, serving only to allow the Government to claim to its citizens that it had brought business leaders together;⁴⁹³
- (d) the lack of consultation on several regulations and measures that had had a significant effect on employers' interests, particularly with regard to Resolution No. 9855 (of 22 July 2016) establishing an obligatory strategic transitional employment regime for all labour bodies to stimulate production in the food and agriculture sector; Presidential Decree No. 2535 (of November 2016) establishing Workers' Production Boards with the aim of promoting the participation of the working class, which had been the key target of the management of the productivity of public and private companies; the measure adopted on 9 January 2017 by the CNEP relating to the Government's purchase, and therefore the compulsory sale by producers, of 50 per cent of agro-industrial produce to be earmarked for the Local Supply and Production Committees (CLAPs); the economic measures announced by the President on 7 September 2017 that had been approved without tripartite consultation and that had imposed greater control over the business sector (those measures had been announced by the Government just one week after the approval of the National Constituent Assembly Decree establishing a National Constituent Dialogue, demonstrating the weakened separation of powers in the country and the need for social dialogue); and the decrees relating to the Economic Adjustment Plan;
- (e) the National Constituent Assembly's adoption without consultation of a range of laws that, in the opinion of the claimants, established mechanisms that facilitated significant

⁴⁹² See, inter alia, Decree No. 2184 of 14 January 2016, Decree No. 2323 of 13 May 2016 and Decree No. 2452 of 13 September 2016.

⁴⁹³ Meeting of 8 May 2019.

interference by the Government and its agencies in business performance, including: the Constitutional Act on the streamlining, uniformity and acquisition of goods to combat the economic war; the Act on Local Supply and Production Committees; and the Constitutional Act on Workers' Production Boards. A letter dated 25 January 2018 had invited FEDECAMARAS to present proposals on the latter. However, FEDECAMARAS had declined the invitation because it considered the legislative actions of the National Constituent Assembly to be unconstitutional. Moreover, with regard to the Assembly's alleged role as a forum for dialogue, the claimants underlined that it represented only those sections of society with links to the Government. To overcome the challenges facing the country, dialogue with all sectors was needed.

- 343.** The claimants questioned the Government's restrictive interpretation of Convention No. 144, which was limited to communications (as a mere formality) on matters relating to the ILO, such as reports on Conventions. They highlighted during the hearings that, to be effective, the Convention required consultation (undertaken in advance, with suitable timeframes and the communication of the necessary information, among other requirements). In any event the Government's consultations did not fulfil those requirements in that they related strictly to matters under the Convention (no consultation took place in relation to reports, the submission of instruments or ratification, for example). The Tripartite Consultation (Activities of the International Labour Organisation) Recommendation, 1976 (No. 152), which accompanies the Convention, also provides that "national practice" should be taken into account in consultations "on the preparation and implementation of legislative or other measures to give effect to international labour Conventions and Recommendations, in particular to ratified Conventions (including measures for the implementation of provisions concerning the consultation or collaboration of employers' and workers' representatives)". The claimants therefore emphasized the need to discuss national legislation to ensure its harmonization with ratified Conventions.⁴⁹⁴
- 344.** The claimants also complained of the lack of effective social dialogue in the country, specifying that the examples given by the Government consisted mainly of feigned consultation, generic or belated invitations and interaction that merely gave the impression of dialogue and that, in fact, lacked content and did not involve other independent social partners. They highlighted the following examples: (i) on 13 June 2017 FEDECAMARAS had been forced to cancel its planned participation in a meeting at the ILO, attended by the ILO Director-General, during the Conference Committee on the Application of Standards' discussion of Convention No. 122 because it had not been truly tripartite, since independent workers' organizations had not been invited (this was confirmed by a witness among the claimants who, as a representative of one of the central workers' confederations not close to the Government, had not been invited to the meeting); (ii) in response to a letter from FEDECAMARAS to the Government dated 2 August 2017 requesting a meeting to address, together with workers' unions, matters of interest to the parties, the Government had replied by reiterating its commitment to "transforming and reorganizing the State to bring about the necessary change, through the bodies permitted by law to do so. To that end we repeat our invitation to form part of those bodies, in a spirit of mutual recognition, respect, objectivity and seriousness." In the opinion of the claimants, this wording exemplified the generic invitations that failed to specify the bodies in which FEDECAMARAS was invited to participate or the form that participation would take; (iii) although managers from FEDECAMARAS had participated in a meeting at the Ministry of Labour on 25 October 2017, it had been merely a courtesy visit to the new Minister during which he had expressed his intention to initiate a dialogue, without a specific agenda of items to be addressed; (iv) although FEDECAMARAS had received a written invitation to provide its opinion on the National Plan and on a law on disability, no draft or other material had been shared with it for consultation; and (v) the meeting between FEDECAMARAS and the Government on

⁴⁹⁴ Hearings of 8 to 10 May 2019.

4 December 2018 had not entailed a real discussion of the employment policy under Convention No. 122, as claimed by the Government (only very specific issues had been addressed, such as a jobs scheme for young people). In conclusion the claimants believed that since the establishment of the Commission, the Government had sent this type of letter and held these meetings to give the impression that tripartite consultation was being undertaken.

345. Additionally, the claimants presented abundant and detailed information to the Commission to illustrate how the supposed attempts at dialogue by the Government were accompanied by public attacks and stigmatization towards FEDECAMARAS, including by Government spokespersons who claimed to promote dialogue, such as some MPPPST officials. According to the claimants, these attacks created a hostile climate incompatible with social dialogue and belied the Government's supposed openness to dialogue with FEDECAMARAS. In that connection, the claimants made reference to the two meetings held on 11 and 31 January 2017 between FEDECAMARAS and MPPPST officials, during which the Minister had expressed the Government's willingness to create a body for dialogue with FEDECAMARAS to stimulate domestic production (although outside the structured dialogue mechanisms promoted by the ILO and in the absence of mutual trust between the parties) while, at the same time, engaging in acts of intimidation and imposing excessive administrative controls on private companies.⁴⁹⁵ Furthermore, the claimants underlined that the simulated dialogue referred to in the Government's communications to the ILO had been undermined by the public statements of the President when he had declared himself unwilling to enter into dialogue of any kind with FEDECAMARAS.⁴⁹⁶

346. The claimants also alleged a failure to implement the recommendations of ILO oversight bodies and the Governing Board, particularly the commitments made by the Government to the Board during consideration of the complaint and the recommendations following the 2014 high-level mission. Although a meeting on an action plan that included the creation of a forum for dialogue between representatives of the Government and FEDECAMARAS that would have addressed matters relating to the complaint and others, with consultation, had been scheduled for March 2016, FEDECAMARAS had communicated to MPPPST officials via email that it would be unable to attend the first meeting, planned for 5 April 2016, because it had already scheduled a meeting of its National Board on that date in Caracas that would be attended by all its affiliate bodies. The claimants informed the Commission that FEDECAMARAS had not succeeded in changing the date of that first meeting with the Government, scheduled as part of the timeline included in the plan of action, and had not received any further invitations to meetings with Government representatives.

347. With regard to other **employers' organizations**, a representative of FEDEINDUSTRIA⁴⁹⁷ declared before the Commission that its organization had participated in the CNEP (an initiative implemented in 2016 and 2017 that did not subsequently continue). He confirmed that it had taken part in more than 14 meetings with the Government, workers'

⁴⁹⁵ In that connection, in an interview broadcast by the Venevisión television channel, the Minister of the Social Process of Labour, Francisco Torrealba, indicated that at that very moment he was sending a communication to the President of FEDECAMARAS to invite him to his office to debate "seriously" the problems facing workers and production. He had stated during that interview that FEDECAMARAS was a discredited body that had monopolized the supposed representation of private business, to the point that "the last dictator of the Bolivarian Republic of Venezuela was a President of FEDECAMARAS". Communication from the claimants dated 19 February 2017.

⁴⁹⁶ For example, the speeches of the President of 30 April and 3 May 2016. Communication from the claimants dated 24 May 2016.

⁴⁹⁷ Videoconference of 7 May 2019. Hearings of 8 May 2019.

representatives and other business owners, as well as in more than 50 meetings with the Government and other employers (where it claimed to have seen members of some chambers of commerce affiliated to FEDECAMARAS, but not its President). The FEDEINDUSTRIA representative made reference to round tables to follow up on conflict involving workers who had damaged machinery or taken over a company as an example of the results of the dialogue under the CNEP framework. He also reported that the attempted takeover of another company by workers had been avoided after an agreement had been reached on the payment of a Christmas bonus via another social dialogue forum under the auspices of the National Constituent Assembly in 2018. More generally, he reported that FEDEINDUSTRIA had a standing round table for dialogue with the MPPPST that had been convened formally when one of its business owners had lodged a complaint. Furthermore, the representatives of FEDEINDUSTRIA indicated that they were not aware of having receiving any communications or requests for consultation on matters under Convention No. 144, such as consultation on reports on the application of ratified Conventions.⁴⁹⁸

- 348.** Similarly, in reply to the Commission's specific questions on whether the Government undertook consultation on matters under Convention No. 144, EMPREVEN⁴⁹⁹ confirmed to the Commission that it had been sent the reports that the Government had submitted to ILO and that meetings had been held to determine the composition of delegations to the International Labour Conference. COMBOIEM stated that it had received reports and participated in consultations with business owners on other matters as part of CNEP (in which it had participated actively), and it confirmed that no tripartite body existed in the country.⁵⁰⁰
- 349.** With regard to the information submitted by **workers' organizations**, in relation to Convention No. 144, the CTV⁵⁰¹ reported that the prevailing practice for many years had been that the Government did not consult with independent trade unions on matters under the Convention, nor did it communicate the information required under the ILO Constitution. It clarified that until around two years ago it had received copies of reports on the application of ratified Conventions, but in general belatedly and coinciding with the lodging of the complaint and the establishment of the Commission of Inquiry. The CTV underlined that there were no procedures to ensure effective consultation between Government representatives, employers and workers, nor of any other nature, on matters under Convention No. 144 and according to conditions set out by it. The CTV added that the Government also failed to meet its consultation obligations under other ILO regulations. It indicated that, instead, the Government met only with the trade union confederation affiliated with it, thus promoting and supporting parallel trade unions.
- 350.** The CTV also denounced the lack of social dialogue in general and referred to a series of laws that were never subject to consultation with trade unions and that limited or curtailed their rights and those of workers, including: the Basic Act on National Security, 2002; the reforms to the Criminal Code, 2005; the Special Act to Combat Hoarding, 2007; regulations on union elections, 28 May 2009; regulations to guarantee the human rights of workers in union elections, 2009; LOTTT, 2012; the Act on Fair Prices, 2014; and the Constitutional Act on Workers' Production Boards. According to the CTV, all these laws imposed various restrictions on trade union activity, even imposing prison sentences for striking. The CTV

⁴⁹⁸ Meeting with the Commission, Caracas, 11 July 2019.

⁴⁹⁹ Meeting with the Commission, Caracas, 11 July 2019.

⁵⁰⁰ Meeting with the Commission, Caracas, 11 July 2019.

⁵⁰¹ Communications dated 24 September 2018 and 19 March 2019. Videoconference of 6 May 2019.

also reported that the Government occasionally feigned consultation to convey to the ILO the impression that it was open to dialogue. In relation to the complaint lodged by several workers' representatives in 2016, the Government had attempted to use a meeting held in March 2017 on unrelated matters (outsourcing in education and social security) to later claim to the ILO that it had initiated dialogue with unions on the substantive issues contained in the complaint. The UNETE, CGT and CODESA also alleged a lack of consultation, highlighting in particular the adoption without consultation of the Constitutional Act on Workers' Production Boards.⁵⁰²

- 351.** The CTV recalled that the draft basic act on freedom of association, collective bargaining and social dialogue, presented in February 2017, attempted to resolve this situation by providing for a social dialogue council as a high-level body for regular institutional meetings between the Government and the most representative employers' and workers' organizations with the aim of promoting and facilitating tripartite dialogue on all matters relating to work, labour relations, employment, vocational training and social security. According to the CTV, that council could be the most appropriate body for the consultation provided for by Convention No. 144 or could advise the Government on establishing a tripartite body with that specific objective.
- 352.** The UNETE⁵⁰³ also reported that the Government had never undertaken consultation on the reports sent to the ILO – or the measures adopted in relation to its Conventions – despite the fact that it had recently undertaken some consultation on particular laws in an attempt to demonstrate a tripartite dialogue that did not exist in reality.
- 353.** In response to the Commission's request for information and evidence on compliance with the consultation obligations under Convention No. 144, the CBST submitted copies of communications from the Government sent with copies of reports to the CEACR for 2016 (received on 5 September 2016), 2017 (received on 7 September 2017) and 2018 (received on 30 August 2018). With regard to social dialogue in general, the CBST stated that it had participated in multiple consultation forums relating to labour laws and measures, including the CNEP (together with FEDEINDUSTRIA). It had also played a central role in the creation of the Workers' Production Boards and consultation on, and the adoption of, the LOTTT in 2012 (it had been the CBST that had proposed and promoted the reforms, and broad consultation on it had been undertaken, with around 19,000 proposals received).⁵⁰⁴
- 354.** In its written communication, the **Government**⁵⁰⁵ stated that the complaint failed to specify to what extent it had violated its obligations under Convention No. 144. It also stated that Convention No. 144 did not address general consultation on matters of social or economic policy, but limited itself to ILO matters. The Government emphasized that it complied with the requirements for tripartite consultation provided for in Convention No. 144, highlighting in particular that it did not discriminate between trade union confederations and workers' organizations, sending copies of its reports to the ILO to all such organizations. However, employers were confusing: (i) that consultation with tripartite social dialogue, which was also undertaken in the country; and (ii) tripartite social dialogue with the achievement of their political aspirations.

⁵⁰² Communication from the UNETE, CTV, CGT and CODESA (as the Guild of Trade Unions and Employers' Organizations) dated 26 September 2018. Meeting in Geneva, 15 January 2019.

⁵⁰³ Videoconference of 30 April 2019. Meeting in Caracas, 11 July 2019.

⁵⁰⁴ Communications dated 7 January and 27 May 2019. Meeting in Caracas, 11 July 2019.

⁵⁰⁵ Communications dated 12 September 2016, 12 February 2017 and 21 September 2018.

-
- 355.** During its meetings with the Commission, and in response to its question on what form the consultation on the reports submitted to the ILO took, the Government representative stated that the draft reports were sent to the social partners and that, in practice, no responses were received; if the recipients had comments on the reports, they sent them directly to the ILO. At the same time, in response to the Commission's request for documentation to confirm its compliance with the obligation to undertake consultation under Convention No. 144, the Government provided copies of emails and letters to several employers' organizations and trade union confederations (including FEDECAMARAS, CTV, CUTV, CONFAGAN, CODESA, CGT and FEDEINDUSTRIA) and the reports submitted to the CEACR on the application of ratified Conventions for 2016 (via letters dated 2 September and received on 5 September 2016), 2017 (via email dated 7 September 2017) and 2018 (via letters dated 30 August and received on 5 September 2018).
- 356.** Furthermore, the Government resubmitted to the Commission information that it had presented to the ILO in May 2019 according to which it had been unable to present details of the submission of the instruments adopted at the 104th and 106th Sessions of the International Labour Conference to the National Assembly because judgments handed down by the Supreme Court had repeatedly found the Venezuelan legislative parliament to be in contempt. It also submitted copies of the Supreme Court's judgments that had found the actions taken by the National Assembly to be unconstitutional and, therefore, absolutely null and lacking any legal validity or force, including the laws that it had adopted while in contempt of the decisions of the Supreme Court).
- 357.** Moreover, the Government repeatedly strongly criticized the social dialogue model in existence before 2000. It stated that until that point, there had been a dictatorship of trade unions in the Bolivarian Republic of Venezuela, led by the CTV and FEDECAMARAS, there had been no union elections, decisions had been taken without consulting workers and tripartite dialogue had been used by the incumbent Government, together with the two aforementioned organizations, to undermine the rights and aspirations of the working people. According to the Government, the most prominent example was the loss of retroactivity of workers' social benefits, in favour of employers, which had been discussed at a "tripartite round table" on 17 March 1997, at which the national labour movement had been betrayed. The Government believed that, from that moment, the expressions "tripartite" or "tripartite round table", had become an anathema to workers and any honest person in the country.⁵⁰⁶
- 358.** The Government stated, however, that its willingness to include the private sector had increased and, although it had been unable to finalize the plan of action on social dialogue planned in 2016 owing to the complex political circumstances in the country, the following measures had been adopted that year: (i) the appointment of Mr. Miguel Pérez Abad, former president of FEDEINDUSTRIA, as Minister of Industry and Trade and Sectoral Vice-President of the Economy, as a sign of the Government's political will to integrate the private sector, which is committed to the country, into the business sector;⁵⁰⁷ (ii) the creation of the CNEP, comprising representatives of the public authorities, governors, mayors, workers, owners of public and private businesses at the national level, universities, academies and workers. The Government claimed to have created CNEP to provide a forum for debate and dialogue, recommend actions and develop the country's entire work force, with the aim of tackling rent-seeking in the oil sector and overcoming the economic situation and the fall in oil prices. It stated that the CNEP had met periodically with the private sector,

⁵⁰⁶ Communication dated 29 April 2019.

⁵⁰⁷ According to the Government, the President of FEDECAMARAS, Mr. Francisco Martínez, had said that he was "pleasantly surprised" at the appointment and that it was a "friendly" gesture from the executive.

bringing together representatives of the Government, workers and employers; (iii) a series of dialogues, meetings and round tables between the Government and the private sector, in particular the industrial sector round table established on 21 January 2016, as well as those relating to exports, forestry, construction, automobiles, food and agriculture, mining, hydrocarbons, oil, petrochemicals, tourism and telecommunications; and (iv) a meeting between the CTV and the MPPPST on 8 March 2017 with the main aim of dealing with the matters relating to the complaint lodged by workers' representatives at the 2016 International Labour Conference.

359. The Government ⁵⁰⁸ also stated that, more recently (between 26 November and 5 December 2018), consultation had been undertaken with trade union confederations and employers' organizations on the employment policy, the content of the National Plan and reforms to the Act on Care for Persons with Disabilities. ⁵⁰⁹

360. The Government denied that FEDECAMARAS had been excluded and marginalized during the social dialogue and stated that, on the contrary, interactions with it had increased, as evidenced by public statements in which its representatives had admitted that they had been in talks with the Government. It referred to the following examples that, in its view, illustrated its serious intention to undertake dialogue:

- (a) the President's invitation to FEDECAMARAS to the official opening ceremony of the CNEP (FEDECAMARAS itself conceded that it had attended that ceremony in its communication dated 11 October 2016), and several representatives of companies and chambers of commerce affiliated with FEDECAMARAS had participated actively in CNEP. The Government also stated ⁵¹⁰ that the Board of FEDECAMARAS had confirmed, through different traditional and social media, its participation in more than 47 CNEP meetings since its inception in January 2016 (the Government later clarified that the CNEP had been active for less than two years, during which time it had held high-level discussions. Those conversations currently enjoyed a lower profile because some business leaders were reluctant to be photographed next to Government officials);
- (b) the meetings that had been held on 11 and 31 January 2017 between Government representatives and FEDECAMARAS directors. During the meeting of 11 January, the MPPPST had expressed the Government's willingness to enter into dialogue with FEDECAMARAS and build a new relationship to promote domestic productivity. The

⁵⁰⁸ Communication dated 29 April 2019.

⁵⁰⁹ In that connection, the Government submitted copies of: (i) emails dated 26 November to various employers' and workers' organizations (FEDECAMARAS, FEDEINDUSTRIA, CBST, CTV, UNETE, CUTV, CGT and CODESA), giving them slightly more than 24 hours' notice of a consultation meeting on the draft Act on Persons with Disabilities. It also submitted the minutes of that meeting (held on 28 November 2018), which had been attended only by MPPPST, CBST and FEDEINDUSTRIA; (ii) the minutes of a meeting held on 4 December 2018 with representatives of MPPPST, FEDECAMARAS and FEDEINDUSTRIA on the acceptance of the visit of the Commission of Inquiry, the structure of the employers' delegation to the Centenary International Labour Conference and the employment policy (particularly the matter of security of employment); (iii) an email dated 29 November 2018 inviting the same organizations to contribute to the National Plan 2015-2016 that the President had been due to present in early December 2018, highlighting that although the consultation process had begun in early 2018, the suggestions of all employers' and workers' organizations in the country were deemed highly important; and (iv) an email dated 5 December 2018 inviting several employers' and workers' organizations (FEDECAMARAS, FEDEINDUSTRIA, CTV, UNETE, CUTV, CGT and CODESA) to contribute their observations and suggestions with regard to a possible extension to Decree No. 2158 on security of employment (which had been adopted for a duration of three years on 28 December 2015).

⁵¹⁰ In its communication dated 30 October 2017.

following matters had been addressed: an increase to the minimum wage and tripartite consultation, the status of the complaint to the ILO, and a possible agenda. The meeting of 31 January had focused on reviewing Case No. 2254 before the Committee on Freedom of Association. According to the Government, FEDECAMARAS had recognized that some allegations had been addressed or were no longer applicable and agreed to work on a document that detailed the allegations and actions required to make progress in dealing with them. The meeting had also addressed the following: wage scales, security of income, redundancy notices and outsourcing. With regard to the latter, in particular, it had been agreed that the Government would share with FEDECAMARAS the criteria used to identify outsourcing. The MPPPST and FEDECAMARAS had exchanged their points of view and positions via written communications: FEDECAMARAS had written to the MPPPST on 24 January and 3 February 2017, and the Deputy Minister for the Integrated Labour Inspection and Social Security System had written to FEDECAMARAS on 14 February 2017;

- (c) the additional meetings in October 2017. On 19 October the Minister for Trade and International Investment had met with the new FEDECAMARAS Board, resulting in a commitment from the Government to further and contribute to national economic dialogue and to establish the necessary institutional mechanisms, and on 25 October FEDECAMARAS Board had met with officials from the MPPPST. In the Government's view, the results of those meetings were very positive, and an agenda for dialogue and for consulting FEDECAMARAS on its opinion on matters relating to wages was agreed;
- (d) the meeting held on 7 December 2017 between the Government and FEDECAMARAS with the aim of drawing up, jointly, a timeline for meetings and/or round tables on labour matters (a copy of the minutes of that meeting was submitted). It had been decided that timeline would be begin on 14 December 2017, but for reasons beyond the control of the Government, it had been impossible to hold that initial meeting;
- (e) the meeting that had taken place on 19 January 2018 between the Government and FEDECAMARAS at which the format of the high-level visit planned for early 2018 had been discussed and the Government had expressed its willingness to establish the tripartite round table mentioned before the ILO Governing Board;
- (f) the discussion of the pricing policy for staple products and agreements signed with private and public bodies in August 2018. A large number of the private bodies had been members of FEDECAMARAS;
- (g) the meeting held on 4 December 2018 between the Government and FEDECAMARAS, at which the latter had admitted that the allegations of intimidation did not relate to the Government, but to its party and the CBST. The Government had reiterated its willingness to participate in dialogue and to provide mediation between FEDECAMARAS and CBST.

361. With regard to the laws passed by the President via enabling legislation, the Government indicated that article 236(8) of the Constitution granted the President broad responsibility and a direct obligation to pass decrees with the force of law, subject to authorization by means of an enabling act adopted by the National Assembly. It also underlined that the country's economic policy fell within the competence of the executive, in coordination with the other branches of Government.

362. The Government stated, however, that FEDECAMARAS had continued to isolate itself during the constructive dialogue, excluding itself from the National Constituent Assembly and its activities as a business organization, given that its activities were mainly political in nature and against the Government, as demonstrated by its past and present actions. It

emphasized that FEDECAMARAS had demanded social dialogue within the ILO while refusing to participate in some meetings and forums. The Government made particular reference to the fact that: (i) in June 2017 FEDECAMARAS had withdrawn from the planned tripartite meeting in the presence of the ILO Director-General (it had involved itself in whom should represent workers at the meeting as a pretext for its non-attendance); (ii) via a communication dated 24 January 2018, FEDECAMARAS had reported that the conditions for establishing the tripartite round table as part of the mission had not been met. The Government highlighted that this had dealt a major blow to its efforts to establish social dialogue on the recommendations of the ILO oversight bodies; (iii) in November 2018, FEDECAMARAS had not accepted an official invitation extended by the MPPPST to a dialogue meeting intended to address care for persons with disabilities and their labour integration as part of the employment policy; and (iv) more recently, FEDECAMARAS had confirmed that it recognized only the National Assembly as a legitimate authority. In the Government's opinion, FEDECAMARAS had thereby aligned itself with the opposition and the coup ongoing since the self-proclamation of the President of the National Assembly.⁵¹¹

- 363.** Lastly, the Government confirmed to the Commission⁵¹² that it was seeking mechanisms to improve consultation to produce a debate that went beyond written communications, which to date had been the method traditionally used. The Government representatives highlighted that to that end, it was necessary to set political differences aside, given that there were sections of the country's opposition that took a negative view of meeting with the current Government, so that, with these new mechanisms, dialogue could lead to improved compliance with the Conventions concerned. The slow progress so far was a result of the country's political situation. Furthermore, in response to the Commission's question on whether the Government had considered creating a structured body for tripartite dialogue, its representative confirmed that the matter had been considered but, in addition to the bad memories stirred for the working class by the idea of a tripartite commission, the Government believed that a structured body was not obligatory under the Conventions concerned, nor did it guarantee a peaceful process.

⁵¹¹ Meeting with Government representatives, Geneva, 7 May 2019. Hearings of 8 to 10 May 2019.

⁵¹² Meetings with Government representatives, Geneva, 15 January and 7 May 2019.

Part III. Conclusions and recommendations

364. Article 28 of the Constitution of the International Labour Organisation provides that the Commission shall prepare a report embodying its findings on all questions of fact relevant to determining the issue between the parties and containing such recommendations as it may think proper as to the steps which should be taken and the time within which they should be taken. Having set out the allegations and information obtained from its examination, and from the communications, statements and materials received, and having also considered the comments that the ILO supervisory bodies and the missions to the country have made on these matters, the Commission sets out below its conclusions and recommendations.

Chapter 7. Conclusions: A complex web that is hostile to and undermines the action of employers' and workers' organizations that are not close to the Government

365. During the course of its work, the Commission had the opportunity to examine in detail the allegations set out in the previous chapters, which were supported by plentiful documentation, oral statements and evidence, denouncing the existence in the Bolivarian Republic of Venezuela of a climate of hostility, interference and the exclusion of social dialogue for employers' and workers' organizations that are not close to the Government, as well as for their leaders and members. The accusations relate in particular to recurrent acts of verbal harassment, monitoring by the authorities, murders and acts of physical aggression against trade union leaders and members and employers' representatives, as well as material damage to the headquarters of their organizations, which it is claimed benefit from impunity or are insufficiently investigated; arbitrary detentions by the security services, imprisonment and criminal and military trials of the leaders of these organizations; the absence of effective consultations concerning increases in the minimum wage and issues relating to compliance with obligations deriving from the ILO and, in general, the absence of social dialogue; accompanied by various acts of interference, control and favouritism by the Government in the action of trade unions and employers' organizations.

366. In reply, the Government in general denies these allegations and affirms the existence of full freedom of association in the country. It adds that tripartite consultations were held on matters relating to the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26), and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), and that social dialogue was encouraged, that the murders and other physical attacks were mainly the result of common delinquency or were motivated by inter-union disputes and carried out by violent groups not close to the Government; or, in the case of the demonstrations against FEDECAMARAS, involved members of the Government party, the PSUV, or the CSBT Confederation, and did not therefore involve State officials. The Government also recalled that the tone of the diatribe in the country was strong in view of the prevalent situation of political polarization and that verbal aggression was mutual, but never turned into physical violence. The Government also emphasized repeatedly to the Commission the need to reinforce social dialogue and its willingness to seek means of improving compliance with the Conventions in question.

367. In general, during its careful examination of the materials gathered during its investigation, the Commission noted the existence in the country of a series of situations and practices which undermine the guarantees and rights set out in the Conventions covered by the complaint in which, by their action or omission, many State agents were implicated. In the view of the Commission, these practices and situations, which are described in detail below, form part of a web that hinders the free exercise of action by trade unions and employers'

representatives, the holding of effective tripartite consultation and ultimately the functioning of genuine social dialogue in accordance with the terms of ILO standards. Although the following sections set out the findings of the Commission under the separate titles of the allegations used in the previous chapters, their order is inverted so as to address, in the first place, and in line with the practice followed by other Commissions of Inquiry, the most serious allegations of violations of civil liberties. It should also be emphasized that the various sections take on their full meaning through their interrelationship, as distinct manifestations of a complex web that has been impeding the action of employers' and workers' organizations that are not close to the Government. They also have to be understood and addressed within the framework of the economic, political and social situation of the country, without overlooking the historical aspects of clientelism, the politicization of industrial relations and the pre-eminence of the Government in tripartite relations.

7.1. Violations of civil liberties, including physical violence, persecution and harassment against FEDECAMARAS and other social partners

368. During the course of its work, many allegations were made to the Commission and evidence provided, both by the complainants and by workers' organizations, denouncing action against employers' leaders and organizations and trade unions that were allegedly incompatible with respect for the civil liberties inherent to the exercise of freedom of association, including: (i) physical violence against persons and premises; (ii) harassment for purposes of intimidation; and (iii) arbitrary judicial persecution without the guarantees of due process. The content of these allegations and the accompanying statements and evidence are set out in detail in chapter 5 of this report.

369. Before proceeding to examine the substance of these allegations and setting out its conclusions, the Commission first wishes to address two general matters. In the first place, the Commission recalls, in the same way as previous Commissions of Inquiry,⁵¹³ the importance of the principle affirmed in 1970 by the International Labour Conference in its resolution concerning trade union rights and their relation to civil liberties, which recognizes that "the rights conferred upon workers' and employers' organizations must be based on respect for those civil liberties which have been enunciated, in particular in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights, and that the absence of these civil liberties removes all meaning from the concept of trade union rights". The resolution places special emphasis on the following civil liberties, which are considered essential for the normal exercise of trade union rights: (a) the right to freedom and security of person and freedom from arbitrary arrest and detention; (b) freedom of opinion and expression and in particular freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers; (c) freedom of assembly; (d) the right to a fair trial by an independent and impartial tribunal; and (e) the right to protection of the property of trade union organizations.⁵¹⁴ Respect for these liberties is related to various provisions of Convention No. 87, namely: Article 3, which guarantees the freedom of action of organizations; Article 8, which provides that the law of the land and its application shall not impair the guarantees set out in the Convention, a negative requirement which gives rise to the obligation to allow in law and practice the effective exercise of these civil liberties for trade union purposes and which establishes an effective legal bond between trade union rights and the broader area of civil

⁵¹³ See the Reports of the Commissions of Inquiry on Zimbabwe (paras 543–565) and Nicaragua (paras 435–436).

⁵¹⁴ Resolution concerning trade union rights and their relation to civil liberties (International Labour Conference, 54th Session, 1970).

liberties; and Article 11, which requires the adoption of all the necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organize, and which is a positive requirement to adopt measures which shall include guarantees of certain civil liberties the enjoyment of which is necessary for the effective exercise of the trade union rights set out in the Convention.

- 370.** Secondly, the Commission notes that, throughout the proceedings, the Government denied being responsible for the actions of other actors implicated in certain allegations. In this respect, it denied having participated in or instigated: (i) the action by members of its party (the PSUV) or the CBST, *inter alia*, relating to verbal aggression and threats against FEDECAMARAS; or (ii) the intimidatory and violent action by armed groups, such as the armed groups (the so-called *colectivos*) allied to the Government and the other violent or criminal action denounced.⁵¹⁵
- 371.** In this regard, and without entering into detail on such acts, which are examined in the relevant sections of this report, the Commission is bound to make two observations. First, it observes that, from the information gathered, it is possible to question the existence of the separation that the Government claims in relation to the actions attributed to other actors, such as the PSUV (its party) and the CBST, with a view to denying or minimizing State responsibility. The Commission observes that: (i) on certain occasions, the actions that are denounced include direct participation by State actors. For example, state governors and the mayors of municipalities participated in various demonstrations which included aggressive written and oral statements and acts of vandalism;⁵¹⁶ and (ii) on other occasions, it is possible to identify the direction or influence exercised by the public authorities in this action, such as in the stigmatizing demonstrations based in a PSUV policy promoted by persons at the highest levels of the Government, who also occupy high-level positions in the party.⁵¹⁷ The Commission observed that certain members of the Government and of other State authorities, in addition to holding public positions, hold positions as leaders in the PSUV and the CBST and other organizations that are considered to be close to the Government. The Commission warns that such duplication not only gives rise to confusion as to the role played by the persons concerned in the Government or other authority when taking action, but also, and in particular, conflicts of interest between, on the one hand, the

⁵¹⁵ In this respect, the Government indicated that the violence against trade union leaders had its origins in inter-union disputes and conflicts, and did not come from the Government and was not encouraged by its officials. Indeed, the Government attempted to find a solution, particularly through the organization of dialogue forums with the social partners on the subject of violence.

⁵¹⁶ See sections 5.3 and 7.1.3.

⁵¹⁷ In this regard, see the PSUV *Bulletin* No. 134 of 15 November 2018, published on its website, which indicates, among other matters, that: “The people in general, the working class and the revolutionary Government have to take our political and productive responsibilities, as the Bolivarian Socialist Confederation of Workers (CBST) initiated the action to denounce and mobilize against the enemies of the people, and particularly against those responsible for the economic war waged against the people grouped together in FEDECAMARAS; this action will continue over the days to come. Several of the micro-missions approved by the Constituent Congress of the Working Class are also advancing”, p. 5 (Website available in Spanish only: http://www.psuv.org.ve/wp-content/uploads/2018/11/Bolet%C3%ADn_N%C2%BA134.pdf). See also the convocation by the Vice-President for Mobilization and Events of the party (Operational Order No. 0081 of 16 November 2018) calling for “mobilization, State marches towards the premises of FEDECAMARAS in order to publicly denounce the directors of these opposition employers’ associations responsible for the conspiracy”. Finally, in two videos dated 12 (press conference) and 14 (programme *Con El Mazo Dando*) November 2018, the Vice-President of the PSUV and the current President of the Constituent National Assembly, Diosdado Cabello, recognized the role of the party in the organization of these demonstrations.

exercise of Government functions, which require the protection of citizens as a whole, and the exercise of party and trade union functions, on the other. The Commission also wishes to emphasize that the independence of employers' and workers' organizations with respect to the public authorities is an essential element for the full exercise of and respect for freedom of association.

372. Moreover, and fundamentally, the Commission is bound to place emphasis on the principle of State responsibility for compliance with international obligations, such as ensuring respect for the civil liberties necessary for the exercise of freedom of association, which covers both the actions and omissions of State bodies and agents. State responsibility may be derived from the positive action of its bodies, entities exercising public authority or persons under their direction and control, as well as, in accordance with the criteria of due diligence, the acts of individuals, in so far as the State bodies have omitted to take the preventive or protective measures required by the circumstances. In this regard, the Commission also wishes to recall the importance of ensuring robust investigation to clarify responsibilities, identify and prosecute the perpetrators and instigators of acts which impede the free exercise of trade union rights, as well as appropriate penalties and compensation for violations of civil liberties, as the whole situation of impunity is extremely prejudicial to the exercise of the guarantees set out in Convention No. 87.

373. Finally, the Commission is bound to recall the difficulties that it encountered during the course of its investigations, especially in relation to these denunciations, some of which related to serious acts of violence.⁵¹⁸ In the first place, the Commission was bound to regret that, despite its various requests to the Government, none of the security services of the State, namely the SEBIN, DGCIM, CICPC, GNB and FAES of the PNB,⁵¹⁹ agreed to discuss with the Commission the numerous allegations and denunciations that concerned them,⁵²⁰ nor did they provide any written response to the Commission. Secondly, the Commission wishes to emphasize the reticence of the Office of the Prosecutor-General of the Republic, the only counterpart for the Commission, together with the MPPPST, in relation to these allegations, to provide information essential for it to carry out complete and objective investigations into the cases examined in this section of the report.⁵²¹ Thirdly, in relation to the cases respecting

⁵¹⁸ Some of these difficulties are described in chapter 3.

⁵¹⁹ The State security services were invited to appear before the Commission: (i) during the videoconference on 29 April 2019; (ii) during the hearings held in Geneva in May 2019; and (iii) during the country visit in July 2019.

⁵²⁰ With regard to the Government's claim, set out in the letter sent to the Commission on 8 July 2019, that "certain authorities of the security services (SEBIN and CICPC) were present during the videoconference on 29 April 2019 although, regrettably ... the lack of time ... did not allow advantage to be taken of their participation so that they could provide fuller responses and information of interest to the Commission", in its communication of 12 July 2019, sent to the MPPPST, the Commission indicated: "With regard to the comments concerning the participation of the SEBIN and the CICPC in the videoconference of 29 April 2019, we are bound to recall that on that occasion, in response to the Commission's questions, only the representative of the SEBIN spoke, very briefly and without addressing the substance, and that the representatives of the CICPC did not provide any answers. For this reason, the Commission emphasized the importance of ensuring the presence of the authorities referred to above during the hearings in May 2019 and was bound to regret on that occasion that they had not acceded to its request to attend."

⁵²¹ In addition to communications to the Government containing all the allegations received by the Commission throughout its work, the Commission, through its secretariat, sent the Government, on 30 April and 6 June 2019, a detailed list of the principal cases on which it needed to be provided with documentation. At the request of the Office of the Public Prosecutor, the identity numbers were provided of almost all the persons indicated in the allegations, with the exception of those who had

various trade unionists in the state of Bolívar, the Commission did not have access to the oral or written response of the authorities of the Office of the Public Prosecutor and the regional judiciary responsible for these cases, despite having placed emphasis on this aspect.

374. In this regard, the Commission considers that: (i) the absence of oral or written replies from the security services referred to above is of great significance as almost all of the allegations examined below refer to their participation in the acts; (ii) the reticence, and in some cases the active refusal, of the Office of the Public Prosecutor to provide essential documents and information for the proper examination of the cases; and (iii) the refusal of the respective regional prosecutors and courts in the cases of trade unionists in the state of Bolívar⁵²² to meet the Commission are significant facts that the Commission has been bound to take into account, together with the large number of statements and evidence presented, in analysing the allegations and reaching conclusions on them. The Commission deeply regrets the lack of cooperation by the institutions referred to above.

7.1.1. Acts of physical violence against employers' leaders and trade union members and of physical violence against their premises, and the impunity or lack of investigation of such acts

375. The Commission received several allegations of physical assaults perpetrated against employer and trade union leaders, including murders, bullet wounds and serious material damage to their premises. The Commission examined the following allegations in particular: (i) the case involving a bomb attack on the headquarters of FEDECAMARAS on 24 February 2008; (ii) the assault of several FEDECAMARAS leaders, specifically that of Ms Albis Muñoz on 27 October 2010; (iii) the arson attack on the headquarters of the Táchira State Stockbreeders' Association (ASOGATA) on 18 May 2017; (iv) the murders of more than 30 trade unionists between 2015 and 2018; and (v) the physical attacks on several trade unionists while they were carrying out their activities, perpetrated by armed groups (known

been murdered, for whom the Commission did not have the identity numbers. Despite this, in many cases the Office of the Public Prosecutor refused to provide the information, arguing that when a case is under investigation, the documents could only be seen by those who are charged, those defending them and the victims, and none the documents of the investigation are available for third parties, as set out in section 286 of the Basic Code of Criminal Procedure. In a meeting between the Commission and the representative of the Office of the Public Prosecutor, the latter emphasized that the provision of information to the Commission, as requested, on cases under investigation, implied a breach of the law, which the officials of this State authority were not prepared to do. In light of this response, the Commission's attention was drawn to the statements by Diosdado Cabello on his television programme *Con El Mazo Dando* on 23 August 2017, in which he made public details of the investigation that was being carried out in relation to the case of Julio García, a trade unionist in the state of Carabobo, imprisoned and tried by a military court. Finally, in cases in which the investigation stage has been concluded and the sentence handed down, the Office of the Public Prosecutor argued that total or partial access to the files had not always been possible due to the shortage of personnel available to make the searches and/or the shortage of materials, such as paper and toner (see in particular the communication of 25 July 2019, handed to the Commission during its visit to the country from 8 to 12 July 2019).

⁵²² In particular, the cases of Rubén González, Secretary-General of the SINTRAFERROMINERA of Orinoco and member of the Workers' Intersectoral Federation of Venezuela, imprisoned in November 2018, subjected to trial by the military court, and sentenced to five years and nine months of imprisonment in August 2019, according to the information provided by the Government on 5 September 2019; the trade unionists of the FERROMINERA enterprise of Orinoco imprisoned in November 2018, convicted and under conditional release since March 2019; and the trade unionists of the CVG VENALUM enterprise, imprisoned in December 2018, convicted and under conditional release since February 2019.

as *colectivos*), workers of other political leanings or the authorities, which took place in Caracas and Bolívar between 2011 and 2018 and have allegedly not been subject to police or judicial investigations.

Attack on the FEDECAMARAS headquarters

376. It was alleged that the investigation into the attack on the FEDECAMARAS headquarters had given rise to a stay of proceedings following the death of the principal defendant in 2010 and the other two defendants (Mr Montoya and Ms Márquez) had been acquitted in 2014. That acquittal had been appealed and a decision was still pending. The Government responded that the case had been dismissed following the death of the principal defendant, Mr Serrano, and the other two defendants, Mr Montoya and Ms Márquez, had been acquitted due to insufficient evidence. The acquittal had been appealed in 2014 and a decision was still pending.

377. In that regard, the Commission observes that police and judicial documents, as well as the accounts provided, highlight issues in the handling of the case that have not yet been clarified: (i) the two defendants, Mr Montoya and Ms Márquez, accused of assisting the principal defendant, Mr Serrano, who died while planting the bomb, were acquitted despite the fact that, according to the information initially provided by the Government to the CFA, both Mr Montoya and Ms Márquez had confessed; and (ii) the acquittal (issued in June 2014, despite one of the defendants, Mr Montoya, having been murdered in February 2014) was appealed in June 2014, but, more than five years later, a decision in that respect was still pending.⁵²³

Attack on Ms Muñoz and other FEDECAMARAS leaders

378. Regarding the attack on Ms Muñoz and other FEDECAMARAS leaders, it was alleged that: (i) the objective was to oust the main leaders of the organization and, particularly, to prevent Ms Muñoz from making a complaint against the Government to the ILO Governing Body;⁵²⁴ (ii) the investigation had resulted in the conviction of only one of the accused, who was not recognized by the principal victim; (iii) the sentence had been appealed by the accused's lawyers and the case remained open because the second accused was fugitive; and (iv) the third accused, the alleged perpetrator of the shots fired at Ms Muñoz, had died at the hands of the CICPC during his arrest. The Government indicated that: (i) investigations had been initiated immediately, and it had been clearly determined on the basis of the modus operandi of the attackers (shots fired from a moving car at the wheels of another car with a view to preventing its movement) that these were common crimes of kidnapping for financial gain and the attack was entirely unconnected to the victims' positions as leaders of FEDECAMARAS; (ii) one of the accused had confessed and been convicted, the second had escaped from prison and was fugitive with an arrest warrant issued and the third had died during arrest while resisting officers of the CICPC; and (iii) the victims had not attended the hearings set by the court, despite being duly notified.

379. In this regard, the Commission observes that: (i) the shots were not fired from a moving car at another car (upon which the Government had allegedly based its theory of a common

⁵²³ The appeal against the final decision, which was declared admissible, indicates that, inter alia, the analysis of each of the statements provided as evidence by the investigators failed to take into account "the statements of the witnesses, the statements of the police officers who carried out the necessary urgent investigations at the scenes of all the events, and those of the experts who examined the criminal evidence collected at the various scenes".

⁵²⁴ It was reported that Ms Muñoz was planning to travel to Geneva on the day following the attack.

crime of kidnapping for financial gain), but by individuals who had already disembarked from the van and were a few metres from the victims' car; (ii) the witnesses all stated that the attackers did not seem to be common criminals on account of their speech, which was indicative of a certain level of education, and their appearance and clothing; (iii) some elements of the statements of the principal victims were not taken into account in the ruling, such as the total absence of extortion or robbery; the fact that the gunman, having only shot at Ms Muñoz, addressed her in such a way as to suggest that he knew to whom he was speaking; or the participation in the crime of others who were allegedly giving orders to those perpetrating the criminal acts;⁵²⁵ the primary victim did not recognize any of the accused as the perpetrators of the attack, despite having seen her attacker very close up and it is unclear how this element was taken into consideration in the court's investigation and ruling, particularly given that, according to her statement, Ms Muñoz was not called to appear before the court;⁵²⁶ and (v) nine years after the events, the case is still open and one of the accused is fugitive. In light of the above, the Commission notes that several key elements of this case of serious attacks on the FEDECAMARAS leaders have still not been clarified, despite the time elapsed. The Commission expresses deep concern at the manner in which Ms Muñoz' case has been dealt with, in terms of both the investigation and the judicial proceedings.

Attack on the ASOGATA headquarters

- 380.** It was alleged that the attack on the ASOGATA headquarters took place the day after a protest with the participation of the principal leaders of the organization, which is affiliated to FEDECAMARAS and that, two years later, the perpetrators and instigators of the acts have still not been identified. In that regard, the Government replied that: (i) the Office of the Attorney-General had opened a case for serious disturbance of public order with the motive being the theft of electronics by burglary (doors had been forced open) and not arson, and it therefore appeared that the incident was not related to civil protests; and (ii) the case was under investigation and the outcome was not available to third parties.
- 381.** On the basis of the evidence provided by the complainants, the Commission notes that: (i) a fire was started that led to the destruction of the structure of the headquarters; (ii) the attack took place the day after a peaceful protest organized by ASOGATA; and (iii) despite two years having passed since the events, there are still no defendants in the case. The Commission considers that these elements provide sufficient grounds not to exclude the motive for the attack being related to the association's representative activities.

⁵²⁵ While the text of the ruling states that the victims had allegedly been subjected to extortion and calls had been made to their friends to ask for money, two witnesses of the attack stated that: (i) the victims' car, despite being of an excellent make, had been abandoned at the side of the road; (ii) the victims' belongings (Ms Muñoz' purse, the treasurer's official briefcase containing documents and currency, and the money carried by the President of FEDECAMARAS) were not touched by the attackers; (iii) the phone calls made by the attackers were not to request money, but to report what had happened ("the lady", i.e. Ms Muñoz, is bleeding a lot) or receive instructions, for example, that if they did not release the hostages they would all die, to which one of the attackers replied saying "understood, understood, understood, we are going to release the garbage"; one of the witnesses added that this last phone call had provoked a dispute between two of the attackers regarding who fired the shots.

⁵²⁶ The Commission recalls that the authorities did not provide access to any documents in relation to this case, including the notifications that it reported were sent to the victims.

Murders of trade unionists

- 382.** Regarding the murders reported to the Commission that took place between 2015 and 2018, it was alleged that many involved workers from the construction sector, where violence was common, and had not been subject to judicial investigations or preventive measures by the security agencies. In this respect, the Commission notes the Government's response that: (i) none of its officials participated directly or indirectly in such acts, which originated mainly in inter-union disputes over the award of contracts; (ii) the cases of violence reported were investigated; and (iii) the establishment of inter-union round-tables was promoted with a view to persuading the unions to find possible solutions to the murder of trade unionists in the construction sector and that initiative had led to a decrease in the number of murders in the sector.
- 383.** The Commission notes with the deepest concern that, of the 31 murders reported by workers' organizations: (i) for 14 of them, the Office of the Public Prosecutor (the competent body, according to the Government) did not respond or indicated that the names of the deceased were indicated in its records;⁵²⁷ (ii) regarding 16 further cases, the Office of the Public Prosecutor did not provide any further details about the procedures, indicating that they were still being investigated and the files were therefore only available to the parties;⁵²⁸ and (iii) in one case the investigation had been closed (see section 5.1.2).
- 384.** With regard to the Government's reference to the establishment of inter-union round-tables to address the murders of trade unionists in the construction sector, the Commission observes that, given the serious nature of the situation, and notwithstanding the fact that the Government has attributed the decrease in the number of murders to the possible role of the round-tables,⁵²⁹ such a measure can in no way replace the formal investigations that must be carried out promptly by an independent and impartial judicial authority. Indeed: (i) the Commission understands that the perpetrators and instigators of these crimes have not been identified, nor has responsibility for the crimes been apportioned; and (ii) the prevailing context of hostility in the country between certain social partners, and between some social partners and the Government, necessitates the prompt implementation of additional prevention and protection measures in relation to these crimes. The Commission also notes the other reported murders, in addition to those in the construction sector, for which the motives and responsibilities remain unclear, such as the case of Mr Joel Alcalá, Secretary-General of SUTRALUMINA, who was murdered in the streets of Puerto Ordaz on 13 March 2017, after having visited the National Electoral Council (CNE) to declare his decision to challenge the elections to Secretary-General of his trade union.

Attacks on trade unionists

- 385.** Regarding the attacks on trade unionists while carrying out their activities,⁵³⁰ it was alleged that the perpetrators in most of the cases were armed groups and that the State security

⁵²⁷ The Commission recalls that, for most of these cases, the secretariat of the Commission provided the Government with the paternal and maternal surnames of the victims, the date of death, the state in which the murder took place and the trade union to which the victim belonged.

⁵²⁸ In a few cases, it merely indicated that an arrest warrant was ready to be served.

⁵²⁹ On the other hand, several witnesses cited the reduced activity in that sector in recent years as an explanation for this decrease.

⁵³⁰ In this regard, it was alleged that: (i) on 30 August 2016, Mr Eladio Mata, President of the Workers' Union of the Greater Caracas Authority, when he was supporting the unions of the Caracas University Hospital in a protest against violations of collective agreements, organized by the Federation of Health

agencies did not resist those violent acts, which, in most cases, were not investigated and remained unpunished. In its response, the Government indicated that: (i) Mr Mata's case was being investigated; (ii) the cases of Mr Brito and Mr Guédez could not be found in the records of the Office of the Public Prosecutor; and (iii) Mr Morocoima's case was related to inter-union violence for which the Government was not responsible.

- 386.** On the basis of the accounts and evidence received, the Commission notes with deep concern that these acts of violence against individuals were directed against employer and trade union activists in relation to their legitimate activities in defence of their interests, which suggests that the acts were motivated by the intention to prevent, deter or repress the performance of such activities. The Commission notes with concern that most of these incidents do not seem to have been subject to police and judicial investigations. Furthermore, while noting the Government's assertion that the violent events reported are investigated, the Commission cannot ignore: (i) the slowness and lack of progress in cases that the authorities claim to have investigated; and (ii) the numerous statements received from both workers' and employers' representatives indicating that complaints are often not made for fear of harsher reprisals or due to a lack of confidence in the independence of the justice system.⁵³¹

* * *

- 387.** In light of the above, the Commission concludes that a series of acts of violence against employers and trade unionists took place and continue to take place in the country, in violation of basic civil liberties, in particular the safety and physical integrity of individuals, which is a prerequisite for ensuring the free exercise of the guarantees provided for in Convention No. 87. The Commission also concludes that the great majority of these extremely serious acts remain unpunished, either because they have not been investigated, they have been insufficiently investigated, or the investigation is moving so slowly that the proceedings are perpetuated, in violation of the right to effective judicial protection. In this

Workers (FETRASALUD), was severely injured by a gunshot fired by armed groups that formed part of the hospital director's escort; it was also alleged that the gunman was still working in the hospital and had been reported, but the CICIPC had never investigated the case and the Office of the Public Prosecutor had not brought any charges; (ii) on 18 May 2011 in Puerto Ordaz, Mr José Luis Morocoima, Secretary-General of the Union of Workers of BAUXILIUM, during a meeting held by his union to protest against violations of collective agreements, was shot and struck, causing him to lose the hearing in one ear, by armed individuals identified as Chavista *Muralla Roja* (Red Wall) *colectivos*; it was also alleged that, despite the fact that the faces of Mr Morocoima's attackers were visible on the company's video recordings and two persons had been arrested, they had been immediately released and the investigation had not yielded any results; (iii) on 1 July 2013, during a day of protests and hunger strikes for wage increases, among other demands, Mr Raúl Brito, President of APUNEG, had been attacked by a group of students associated with the Revolutionary University Student Movement (MERU), which is close to the Government, and other professors participating in the protest had been beaten and their personal effects destroyed and the APUNEG offices had been set on fire while some professors were inside; it was also alleged that Mr Brito had needed to be hospitalized as result of the assault and that his car had been set on fire; it was also alleged that, on 2 July 2013, a complaint had been submitted to the CICPC and the Ombudsman's Office, but that it had not been followed up; and (iv) on 18 September 2014, at a workers' assembly, Mr Denis Guédez, union delegate of the Caracas University Hospital Union, had been approached by a group of 25 men supported by the hospital management who, without a word, had beaten him causing him to require surgery; it was also alleged that Mr Guédez had filed a complaint regarding the events, but the case had been dismissed.

⁵³¹ In this regard, paragraph 54 of the Report of the United Nations High Commissioner for Human Rights on the situation of human rights in the Bolivarian Republic of Venezuela of 4 July 2018 highlights that: "According to interviewees, few people file complaints for fear of reprisals and lack of trust in the justice system. When they do, authorities do not investigate or do not conduct prompt, effective, thorough, independent, impartial and transparent investigations."

respect, the Commission recalls that: (i) a climate free from violence and that promotes respect for basic civil liberties, particularly the right to personal safety, is essential for the effective exercise of freedom of association; and (ii) the absence of convictions against those guilty of physical violence against employers' and workers' leaders and their organizations results in a situation of impunity in practice, which reinforces the climate of violence and insecurity, and which is extremely prejudicial to the exercise of trade union rights. The Commission wishes to recall once again that, in accordance with the principle of due diligence, the Government is responsible for adopting the necessary measures to ensure that legitimate trade union and employers' activities can take place fully and free from violence in the country, without interfering in such activities.

7.1.2. Judicial persecution of employers' and trade union leaders

388. The Commission also examined numerous allegations concerning the violent detention of employers' and trade union leaders, and of other trade union members, with and without warrants, by State security agencies, giving rise to imprisonment, the opening of judicial proceedings, in some cases in military courts, and the application of preventive and non-custodial measures,⁵³² both during the proceedings and following conviction.

389. In particular, the Commission examined the following cases of leaders of employers' associations affiliated to FEDECAMARAS: (i) Fray Antonio Roa Contreras, President of the Federation of Distillers and Allied Industries (FEDELIF); (ii) Luis Enrique Vázquez Corro, President of the Electrical Commission of FEDECAMARAS Lara; and (iii) Manuel Castillo, President of the Association of Livestock Farmers in Apure State (AGAPURE). The Commission also examined the allegations relating to the following trade unionists: (i) Rubén González, Secretary-General of the Union of Ferrominera Orinoco (SINTRAFERROMINERA); (ii) Rodney Álvarez, member of the SINTRAFERROMINERA Orinoco; (iii) Douglas Álvarez, Yonney Monsalve, Alexis Perdomo, Exddy Perdomo, Francisco Perdomo, Pedro Calzadilla, Argenis Da Silva, José Gregorio and Jaime Briceño, trade unionists at the FERROMINERA company; (iv) José Hidalgo, Secretary-General of the Single Union of Professional University Workers of

⁵³² The legal basis for non-custodial preventive measures is in section 242 of the Basic Code of Criminal Procedure (Decree No. 9042 of 12 June 2012) which provides that: "On condition that the premises giving rise to preventive judicial detention can be reasonably satisfied through the application of another less onerous measure for the accused, it shall be replaced, by the competent court ex officio or at the request of the Office of the Attorney-General or the accused, on the basis of a reasoned decision, by certain of the following measures: (1) detention in the accused's own home or in the custody of another person, without any monitoring or such monitoring as the court may order; (2) the requirement to be subject to the care or vigilance of a specific person or institution, which shall report regularly to the court; (3) regular appearance before the court or the authority designated by the court; (4) prohibition to leave without authorization the country, the area in which the accused lives or an area determined by the court; (5) prohibition to attend certain meetings or places; (6) prohibition to communicate with certain persons, on condition that the right to defence is not affected; (7) immediate removal from the home in the case of aggression towards women, children, or sexual crimes, when the victim lives with the accused; (8) provision of an appropriate financial caution, which may be put up by the accused or another person, in accordance with the principle of proportionality, through the deposit of cash, valuables, the security of two or more suitable persons, or real guarantees; (9) any other preventive or precautionary measures that the court, in a reasoned order, considers appropriate or necessary. In the event that the accused is covered by an earlier substitute preventive measures, the court shall assess the characteristics of the new crime committed, the conduct of the accused prior to the crime and the extent of the damages, for the purpose of determining whether or not to grant a further replacement preventive measure. In no case shall the accused be granted simultaneously three or more replacement preventive measures.

Venalum (SUTRAPUVAL) and Noel Gerdez, Ernesto Morillo and Andrés Rojas, trade unionists at the CVG VENALUM company; (v) Julio Alexander García, Rosmary Di Pietro and Omar Escalante, trade unionists from Carabobo State; (vi) Leonel Grisett, member of the Single Union of the Metallurgy and Allied Industries (SUTISS); and (vii) Elio Palacios, member of FETRAELEC.

Cases involving employers' leaders of FEDELIF and the FEDECAMARAS Electricity Commission, and the trade unionist of FETRAELEC

- 390.** The Commission received allegations concerning the cases of: (i) Fray Roa, detained by the SEBIN in July 2015 for making statements to the press on the shortage of raw materials to brew beer, imprisoned and subjected to judicial proceedings;⁵³³ (ii) Luis Vázquez, detained by SEBIN officials in April 2015 for making statements to the press on the state of the national electricity system;⁵³⁴ and (iii) Elio Palacios, detained on 15 February 2018 by the SEBIN after circulating an audio recording among workers who were members of his union in which he warned them of the conditions of the electricity system and the risk of collapse, denounced the company's attempts to impose a collective contract that would be detrimental to the workers and called on them to attend a rally.⁵³⁵
- 391.** With regard to these allegations, the Government replied that: (i) Fray Roa and Luis Vázquez, through their statements, had committed the crime of causing panic and unease in the community, in violation of section 296-A of the Criminal Code; and (ii) Elio Palacios had been accused of revealing confidential and restricted information or the provision of data and information (as envisaged and penalized under section 108 in conjunction with section 96 of the Basic Act on the Electricity System and Service and section 55 of the Basic Act on National Security) and was under house arrest while awaiting his preliminary hearing.
- 392.** With regard to these allegations, the Commission observes that, when making their statements to the press, these employers' and trade union leaders were expressing views on issues directly related to the defence of the interests of the employers' and workers' organizations that they represented. The Commission also observes that the problems highlighted by the employers' and trade union leaders in their statements are likely to have a direct impact on collective labour relations in their respective companies. Their statements can therefore fall within the scope of the legitimate trade union and employers' activities that they are called upon to undertake as part of their functions and are covered by the freedom of expression to which they are entitled in this respect.⁵³⁶

⁵³³ It was reported that Fray Roa was detained for one year and 17 days during the court proceedings, and that he was convicted to imprisonment for three years and six months and was released in August 2016 subject to replacement preventive non-custodial measures and accessory penalties, such as the prohibition from engaging in political activities and monitoring by the authorities for a period following the completion of the sentence.

⁵³⁴ The complainants indicated that, following two days of detention, Luis Vázquez appeared before the competent court and was released subject to replacement preventive non-custodial measures which were in force until August 2019.

⁵³⁵ It was indicated that Elio Palacios had been released following over a month in detention and that since then he had not participated again in union activities.

⁵³⁶ A right set out in article 57 of the Constitution of the Bolivarian Republic of Venezuela, as well as in international treaties.

393. In this context, the Commission considers that bringing criminal charges on such grounds as causing panic or unrest among the population through the dissemination of false information against employers' and trade union leaders for exercising a basic civil liberty inherent in the exercise of freedom of association is not appropriate, either in light of the content of the statements examined, or the public impact of the persons who made them.⁵³⁷ This is particularly true as such charges result in liability to such penalties as long prison sentences, house arrest, preventive measures that require regular reporting to the court or potential summons to appear before the courts, and the prohibition to be present in the headquarters of their organizations, which have the effect of restricting and inhibiting the exercise of freedom of association immediately and discouraging them from doing so in future.

The case of the Secretary-General of SINTRAFERROMINERA,
Rubén González⁵³⁸

394. The Commission received numerous reports concerning the detention in November 2018 of the Secretary-General of SINTRAFERROMINERA by officials of the DGCIM and the GNB in relation to incidents that had occurred in August that year.⁵³⁹ It was alleged that he had been detained when returning, in the company of other trade unionists, from a march of the Intersectoral Association of Venezuelan Workers⁵⁴⁰ in Caracas to protest against the flattening of the wage scales and the violation of collective agreements.⁵⁴¹ The Government replied that Rubén González had acted violently during an identity check and had been accused of the crimes of assaulting a sentry and insulting an officer of the armed forces, which are offences under sections 501, 502 and 505 of the Basic Code of Military Justice. A warrant for his arrest had therefore been issued in August 2018 and he was subject to military jurisdiction.

⁵³⁷ In a video to which the Commission had access, the President of the Constituent National Assembly said that Fray Roa was unknown.

⁵³⁸ The Commission recalls that in relation to this case and that of the workers of FERROMINERA, the Office received two requests for intervention from the CTV and UNETE on 30 November 2018, which led the Office to intervene immediately with the Government which, in turn, replied in a communication dated 17 December 2018, providing the information reported in chapter 5.

⁵³⁹ The reports of these incidents can be summarized as follows: (i) on 13 August 2018, Rubén González attended an assembly at the entrance to FERROMINERA in Ciudad Piar to inform the workers of changes in the wage scale, and officers of the GNB, who had formed a cordon in front of the enterprise, prevented him from entering and climbed into the van in which he was travelling with other workers from the company and ordered him to drive to the nearest control post, which Rubén González refused to do and proceeded to his home; (ii) when they arrived at his house, the GNB officers entered the residence, raided it without the appropriate judicial warrant and committed acts of violence, including damage to the house, hitting a pregnant woman and taking films without authorization; and (iii) between August and November 2018, Rubén González had led a normal life and at no time had hidden or engaged in clandestine acts.

⁵⁴⁰ During the interviews conducted by the Commission in Puerto Ordaz on 10 July 2019, witnesses indicated that Rubén González had also been in Caracas to testify in the Rodney Álvarez case.

⁵⁴¹ It was alleged to the Commission that following a night of detention in a military barracks of the GNB, during which he was ill-treated, he was transferred to the military prison of La Pica (Maturín, Monegas state), 400 kilometres from his usual residence, where he remained while being tried by a military court. It was also reported that the preliminary hearing had been postponed on several occasions and was held on 20 February 2019 and that the public court hearing began on 3 July, and a preliminary hearing had been held on 16 July 2019.

-
- 395.** In this regard, the Commission observes, firstly, that the assaults that the Government alleges that Rubén González committed and which prompted the issuing of the warrant for his arrest and his subsequent imprisonment and trial: (i) took place shortly before a peaceful trade union activity due to be led by Mr González, which he was prevented from attending by the untimely intervention of the military officers; and (ii) were the consequence of a violent intervention, without a warrant, in his home, during which there was an altercation in which the inhabitants defended themselves against attacks by the military officers.
- 396.** The Commission also observes that: (i) the Government failed to provide any justification giving the reasons for the intervention of military forces in a trade union activity that had not yet begun, or evidence of the alleged acts of violence by Mr González; (ii) the alleged assaults by Mr González were not followed up by the GNB officers who had participated in the raid, despite the fact that he had not gone into hiding, but continued his routine activities between August and November; and (iii) the arrest warrant issued in August 2018 was not served until November, which coincides precisely with the moment when the wage protests led by Mr González spread from the regional to the national level.
- 397.** In communications dated 13 and 19 August 2019, the CTV and the UNETE denounced the conviction of Rubén González to five years and nine months of imprisonment for the crimes of insults (against the sentry and the armed forces),⁵⁴² alleging irregularities in the proceedings and requesting the urgent intervention of the ILO, which it did by a communication to the Government dated 21 August 2019. The Government replied by a communication of 5 September 2019, attaching a copy of the conviction and confirming that Mr González had been sentenced to five years and nine months imprisonment for the crimes referred to above of insulting the sentry and the armed forces. The Government affirmed that the court followed due process and full guarantees, and particularly the right to defence of Mr González, who was represented by three lawyers.
- 398.** Based on these observations, and without prejudice to the fact that the Commission was not permitted to meet Rubén González or the prosecutors or judicial authorities involved in the case, despite having repeatedly requested to do so, orally and in writing, the Commission considers that there is serious proof that Mr González's imprisonment and trial were indeed intended to prevent him from engaging in trade union activities in the immediate future and to serve as an example to discourage trade union activity by members of his union. The Commission is also bound to emphasize that it was the intervention of a military body, the GNB, shortly before trade union protests organized by Mr González, which gave rise to the situation (the reaction to a military raid on Mr González's home, without a warrant) which later resulted in the case being submitted to military jurisdiction and the sentencing of Mr González to five years and nine months of imprisonment.⁵⁴³ The Commission therefore expresses its deepest concern at this trial and the sentence imposed, and considers that they

⁵⁴² Section 502: "Any person who threatens or uses offensive words or gestures to the sentry shall be liable to detention for between six months and one year". Section 505: "Any person who in any manner insults, offends or treats with contempt the national armed forces or any of its units shall be liable to a penalty of from three to eight years of imprisonment". Mr González was not convicted of the crime of attacking the sentry, of which he was charged by the office of the military prosecutor.

⁵⁴³ The Commission notes the oral update on the human rights situation in the Bolivarian Republic of Venezuela, at the 42nd Session of the Human Rights Council (Geneva, 9 September 2019), in which the Office of the United Nations High Commissioner for Human Rights indicated that: "I wish to express my rejection of the conviction of the trade union leader Rubén González to a sentence of imprisonment of five years and nine months by a military court on 13 August for acts undertaken in the exercise of his trade union activities. His family has also been subject to various forms of harassment. The application of military justice to try civilians is a violation of the right to a fair trial, including the right to be tried by an independent and impartial court."

constitute severe criminalization and dissuasion from engaging in trade union activities and a serious violation of Convention No. 87.

The case of the trade unionists of CVG FMO and CVG VENALUM

399. It was reported that trade unionists of FERROMINERA had been violently detained on 27 November 2018 by DGCIM officers, and hoods placed over their heads, while participating in a protest against the flattening of wage scales, which they considered to be in violation of collective agreements and prejudicial to their conditions of work.⁵⁴⁴ It was also alleged that four trade unionists from the CVG VENALUM company had been detained in the early hours of 14 December 2018 by a unit of the DGCIM and the GNB that had violently burst into the enterprise casting area while workers were engaged in a down tools and go slow protest called by certain trade union leaders against the loss of their share of the company's profits, and against measures adopted in violation of the collective agreement that was in force.⁵⁴⁵ It was alleged that in both cases the trade unionists spent several months in prison and that they had confessed under duress, resulting in them being sentenced to several years' imprisonment and released under probationary measures that restricted their trade union activity.

400. The Government replied that: (i) the FERROMINERA workers were not members of the SINTRAFERROMINERA executive committee and did not therefore enjoy special protections, had not submitted a formal request for strike action, for which reason their action was not covered by legal protection, and had been charged, among others, with the offences of resistance to authority, an industrial stoppage, damage to public property and unlawful association⁵⁴⁶ (sections 191, 218, 286 and 474 of the Criminal Code); and (ii) the CVG VENALUM company had suffered an unlawful stoppage, obstruction of thoroughfares and assault on employees who were working by the workers referred to above who, for that reason, had been charged with resisting authority, the prevention and stoppage of a State industry, the illegal stoppage of work, unlawful association, contempt for

⁵⁴⁴ It was reported that: (i) they were abducted, without their families having any knowledge of their whereabouts, to the headquarters of the DGCIM for more than two days without food and water; (ii) they were detained in the Guaiparo prison in San Félix, Bolivar state, in very poor conditions for four months; (iii) the competent court had issued the arrest warrant at the request of the Public Prosecutor, who had based the request solely on the police report of the DGCIM; (iv) the workers had been coerced into confessing to acts that they had not committed and were released subject to probationary measures in March 2019; and (v) together with the probationary measures of having to appear regularly before the courts and the prohibition to leave the country, it had been suggested to them that they should not make statements to the press or participate in protest action under penalty of returning to prison.

⁵⁴⁵ It was reported that: (i) the strikers had not brought the enterprise to a halt as it was a continuous process plant, nor had they prevented the workers from working; (ii) the four workers were brought before the appropriate court and the prosecutor sought their imprisonment; and (iii) following two months of detention in the DGCIM, in February 2019, they were subjected to great pressure and threats to admit the facts, which they did, and they were convicted and released subject to probationary measures to replace detention which included, in addition to the requirement to report regularly to the competent court and the prohibition for them to leave the country without prior authorization, other measures communicated orally, such as the prohibition to make statements to the press or through social media, or to attend meetings or participate in street protests, under the threat of further imprisonment.

⁵⁴⁶ Section 286 of the Criminal Code (unlawful association) provides that where two or more persons associate for the purpose of committing offences, each of them shall be penalized for the sole act of association with imprisonment for between two and five years.

authority, damage to public property⁵⁴⁷ and blockage of the public thoroughfare (sections 191, 192, 218, 286, 357, 473(3) and 474 of the Criminal Code).

401. In this regard, the Commission observes that: (i) in the cases of both the FERROMINERA and the VENALUM trade unionists, the incidents occurred in the context of trade union activities; (ii) several reports indicated that the detentions were carried out violently by the State security forces, without respecting the guarantees of due process,⁵⁴⁸ such as the right to defence, notification of the charges and the presumption of innocence: the reports made were substantiated by audio-visual evidence; (iii) the charges brought and the proceedings were for serious criminal offences, such as unlawful association (criminal association), which are normally applied in cases of organized crime, against trade unionists engaged in trade union activity for the defence of their occupational interests; (iv) although the many reports received agreed that the action was peaceful, the Government provided no evidence to substantiate the criminal charges referred to above;⁵⁴⁹ (v) many reports affirmed that in prison the trade unionists were crammed together, with little access to natural light or drinking water, only eating if their families brought them food, and very little access to medical care if it was needed, which was aggravated by the violence from the common criminals with whom the trade unionists and trade union leaders were imprisoned; and (vi) after months of confinement in these prisons, the trade unionists were released under non-custodial probationary measures that will be in force for several years and have the effect of severely restricting their trade union activities during the period covered by their convictions.

⁵⁴⁷ The companies in which the workers were employed are all publicly owned.

⁵⁴⁸ Article 49 of the Constitution provides that: "All judicial and administrative acts shall be subject to due process, and accordingly: (1) Legal assistance and defence are inviolable rights at all stages and levels of the investigation and proceedings. Every person shall have the right to be notified of the charges for which she or he is being investigated, to have access to the evidence and to be accorded adequate time and means to conduct her or his defence. Any evidence obtained in violation of due process shall be null and void. Any person found guilty shall have the right of appeal, subject to the exceptions set out in this Constitution and the law. (2) Every person shall be presumed innocent until proven otherwise. (3) Every person shall have the right to be heard in all types of proceedings, with due guarantees and within such reasonable period as may be legally determined, by a competent, independent and impartial court established in advance. Any person who does not speak Spanish or is unable to communicate verbally shall be entitled to an interpreter. (4) Everyone shall have the right to be judged by her or his natural judges in ordinary or special jurisdictions, with the guarantees established in this Constitution and the law. No one may face trial without knowing the identity of the person judging her or him, and may not be judged by exceptional courts or commissions created for that purpose. (5) No one shall be obliged to confess guilt or testify against her or himself, her or his spouse or partner, or any relative within the fourth degree of consanguinity or the second degree of affinity. A confession shall only be valid if made without coercion of any kind. (6) No one shall be punished for acts or omissions not established as a crime, offence or infringement in pre-existing laws. (7) No one shall be tried for the same acts for which that person has been tried previously. (8) Everyone may seek from the State the reinstatement or compensation for a legal situation prejudiced by unwarranted judicial error, delay or omission. The foregoing is without prejudice to the right of the individual to establish the personal liability of the magistrate, State judge, and to appeal against them.

⁵⁴⁹ On this point, the Commission is once again bound to recall that, despite its requests, it did not receive authorization from the Government to examine documents such as the reports of the police or the public prosecutors, or a summary of such reports, containing information to substantiate the charges made by the Office of the Attorney-General, and which would have enabled it to examine in greater depth the information received.

402. Therefore, in light of the numerous testimonies and audio-visual evidence received, the Commission considers that the use of the criminal offences indicated above and the resulting penalties in the case of workers for their engagement in activities inherent to freedom of association, and in relation to which there is no evidence of acts of violence, is in violation of freedom of association as set out in Convention No. 87. Indeed, analysis of all the evidence shows that the trade unionists were placed under sufficiently persuasive pressure to lead them to confess to the charges against them, even when they had not committed the alleged acts, in particular out of fear of prolonged imprisonment in a context of the absence of guarantees and of complete lack of trust in the independence of the judiciary. The Commission is bound to recall that criminal sanctions may only be imposed in relation to trade union activities involving acts of violence against persons or property, or other serious violations of criminal law. In response to the Government's indication that the workers were not members of the executive committee, the Commission recalls that the guarantees set out in Convention No. 87 cover the exercise of freedom of association by all workers without distinction, and not only trade union leaders.

The case of the Presidents of professional associations and the trade union leader in Carabobo state

403. The Commission received allegations that, on 12 August 2017, Julio García, Rosmary Di Pietro and Omar Escalante were detained by the SEBIN after allegedly committing the crimes of treason, military rebellion, theft of property belonging to the armed forces and the assault of a sentry. They were tried by a military court in Caracas for their alleged participation in the terrorist attack on Fort Paramacay on 6 August 2017.⁵⁵⁰ It was also alleged that months before his detention, Julio García had participated in protest action against the conditions of work and employment in the health-care sector and that all three had participated in meetings relating to their representative and trade union activities in a location close to the attack of which they were accused. The Government replied that there were no denunciations relating to the cases of the Presidents of the professional associations and the trade union leader in Carabobo.

404. In this regard, the Commission observes that: (i) the Presidents of the professional associations and the trade union leader were detained under conditions of extreme violence by the State security forces and during their detention the guarantees of due process were violated, as they were not allowed access to legal assistance until several days after their arrest, were not informed of the charges brought against them and the presumption of innocence was not respected; (ii) the two Presidents of the professional associations were acquitted several months after being imprisoned and were released under probationary measures, without any compensation for the damage caused by such action and without any clarification of the evidence upon which they were charged; and (iii) Omar Escalante has been covered by probationary measures which prevent him from freely exercising his trade union activities for two years, without any explanation of the reasons for the charges made against him.

405. Based on the reports and evidence received, and in light of the absence of explanations or justification from the Government on the reasons that led to the detention, imprisonment and trial of the Presidents of the professional associations and the trade unionist, the Commission considers that: (i) the bringing of criminal charges such as terrorism and treason against

⁵⁵⁰ The allegations were that: (i) the three were detained over 170 kilometres from their usual place of residence and released after more than one month's imprisonment, under non-custodial probationary measures; and (ii) while Mr Garcia and Ms Di Pietro were acquitted on 18 December 2018, without being provided with explanations concerning the charges that had led to their detention and without compensation, Mr Escalante was still covered by probationary measures and a military prosecution that remained open.

leaders of professional associations and trade unionists in relation to their trade union activities; (ii) the use of violence against these leaders and the violation of their constitutional guarantees; (iii) their trial by a military court; and (iv) the continuation of criminal proceedings for years, with the imposition of probationary measures on the leaders, constitute serious violations of the civil liberties inherent to freedom of association and contribute greatly to the repression and hindering of that freedom, and confirm the perception examined earlier in the report that the exercise of trade union activities constitutes a high-risk activity in the country.

The cases of the employers' leaders of AGAPURE

- 406.** It was alleged that Manuel Castillo, together with other AGAPURE leaders, had been detained in March 2018 by the GNB and the municipal police of Apure state on the orders of the Office of the Mayor of San Fernando, with the use of violence, while they were participating in a protest against a demand made by the Mayor's Office that they considered to be illegal. The Government replied that Mr Castillo and the other AGAPURE leaders had been brought before the competent procedural court, which had set aside their detention because no relevant crime had been committed and had granted the accused full release without restrictions.
- 407.** In light of the information gathered on this case, the Commission observes that: (i) at the time of their detention, the employers' leaders were engaged in peaceful protest action in defence of their professional interests; (ii) the State security forces acted violently with the aim of preventing the action; (iii) the leaders of the associations were detained for those activities and an investigation was opened against them; and (iv) despite their release a few days later with full freedom, they were offered no compensation for the damage caused.
- 408.** The Commission accordingly considers that, in this case, as in those examined previously, the violence of the State security forces against employers' leaders during the exercise of their legitimate activities, and their unjustified detention, undermine the exercise of basic civil liberties, such as freedom of expression and freedom of assembly, thereby inhibiting and violating the exercise of freedom of association.

The case of the SUTISS trade unionist

- 409.** The Commission received reports alleging the detention of Mr Grisset, a SUTISS trade unionist, by the GNB on 22 January 2017 in relation to criminal proceedings initiated against him and other workers in 2006 following their participation in protest action.⁵⁵¹ It was alleged that Mr Grisset, together with leaders from his trade union and other workers from Sidor, had been arrested and charged with the crimes of misappropriation, restriction of the freedom of work, the prohibition of taking the law into their own hands and failure to comply with the special regime of the security zone, as set out in sections 191, 192, 270 and 468 of the Criminal Code and section 56, in conjunction with sections 47 and 48, of the Basic Act on State Security. According to the allegations, these trade unionists and workers were only protesting (without going on strike) against the allegedly very poor working conditions maintained by a contractor enterprise for its staff. The Government replied that Mr Grisset was awaiting trial.
- 410.** In relation to this case, the Commission observes that: (i) the trade unionist was imprisoned in 2006 for the exercise of reportedly peaceful trade union activities, for which he was charged with offences under the Criminal Code and the Basic Act on State Security; (ii) the Government did not provide any justification of the charges brought against him, or evidence

⁵⁵¹ It was reported that, at the time of the preparation of the present report, Mr Grisset was still covered by probationary non-custodial measures and awaiting the sentence.

of violence during the trade union action; (iii) the criminal proceedings against Mr Grisset have been going on for 13 years and he has been granted conditional release under probationary measures that restrict his exercise of basic civil liberties; and (iv), as a result of this situation, Mr Grisset is reported to have had to leave the country.

- 411.** On this basis, the Commission once again observes with deep concern the bringing of criminal charges against trade union leaders for the exercise of their activities, and that the Government has not provided the Commission with any justification or evidence concerning the grounds for the charges. The Commission also regrets that the criminal proceedings have been ongoing for over a decade, and in that context probationary measures have been imposed that restrict the exercise of basic civil liberties. The Commission considers that such a situation completely restricts and inhibits the exercise of freedom of association.

The case of the other SINTRAFERROMINERA trade unionist

- 412.** The Commission also received allegations concerning the violent detention by CICPC officers of Rodney Álvarez, a SINTRAFERROMINERA trade unionist, on 17 June 2011. He was accused of the murder of a worker at the company several days earlier during an assembly to elect an electoral board.⁵⁵²

- 413.** In relation to this case, the Commission observes that: (i) the trade unionist was detained for an incident that occurred during a trade union activity that he had attended in response to a call by its leader, Rubén González; (ii) while there are numerous reports claiming Mr Álvarez's innocence, despite the time that has elapsed, the case has never been the subject of a court ruling on who was responsible for the alleged acts; (iii) several applications for non-custodial probationary measures had been rejected, and there was no response to an application for the protection of constitutional rights (*amparo*) to the Constitutional Chamber of the Supreme Court of Justice submitted by the private defence counsel on the grounds of judicial delays and denial of justice;⁵⁵³ and (iv) for the past eight years, Mr Álvarez has been detained in prisons where living conditions are extremely unsafe,⁵⁵⁴ and where there is a high risk to his personal safety.⁵⁵⁵

⁵⁵² It was alleged that: (i) the crime was committed by a trade unionist close to the Government, who had been seen carrying an arm, in contrast with Mr Álvarez who was not armed, which was seen clearly in the film recorded by the enterprise security cameras; (ii) Mr Álvarez was accused of being a follower of Rubén González's trade union movement; (iii) he was under detention and, after being sent to various prisons in the country, was in the El Rodeo II prison in Miranda state; (iv) the case was subject to procedural delays, the constitutional guarantees had not been respected, such as due process, the presumption of innocence and the right to trial in a court of justice; (v) Mr Álvarez had been tortured to make him confess, which he had refused to do; (vi) Mr Álvarez did not receive medical care despite the fact that his state of health was very poor; and (vii) despite the absence of a conviction, his wages had been suspended, as well as the benefits to which his family was entitled.

⁵⁵³ It was alleged that this measure was in violation of section 26 of the Basic Act on the protection of constitutional rights and guarantees, which sets a period of 96 hours, following the submission of the report, for the parties to express their views, and 24 hours from that time for the court to issue its ruling.

⁵⁵⁴ Among other issues, the lack of access to drinking water and the lack of food caused him digestive problems and malnutrition.

⁵⁵⁵ Since his imprisonment, Mr Álvarez suffered the following attacks by other prisoners (common criminals): injury by a firearm on 27 December 2017, six knife wounds on 6 August 2018 and he was beaten up on 5 July 2019. The Office of the Attorney-General has not opened any investigations into these acts.

414. The Commission expresses deep concern at the imprisonment of a trade union leader for eight years without his guilt being proven and in the total absence of any justification by the Government of the evidence that led the Office of the Public Prosecutor to bring charges against Mr Álvarez. The Commission considers that the imprisonment of a trade unionist for so many years without a conviction constitutes a very serious breach of due process and a serious violation of freedom of association.

* * *

415. Based on the analysis of the above cases, the Commission draws the following conclusions on the aspects set out below which involve serious violations of the guarantees of freedom of association set out in Convention No. 87:

- (1) *Charges for offences criminalized under the Criminal Code and the Basic Code of Military Justice for the exercise of employers' and trade union activities:* The Commission observes with concern that serious criminal charges were brought against employers' leaders, trade unionists and members of employers' organizations. The charges included causing panic and unease among the population, unlawful association, treason, terrorism, resistance and contempt for authority, for action carried out during their trade union or employers' activities. In the total absence of justification by the competent authorities concerning the grounds for the charges, as well as the absence of investigation and a judicial ruling on the substance (apart from the verification of certain confessions), the Commission believes that such charges run a great risk of the severe criminalization of trade union action and that they undermine the appropriate operation of the rule of law.
- (2) *The actions of the State security forces during arrests, the charges brought by the Office of the Attorney-General, the subjection of civilians to military courts and the independence of the judiciary:* The Commission observes with the deepest concern that numerous witnesses, some of whom substantiated their statements with audio and visual evidence,⁵⁵⁶ reported to it the same acts of violence, physical and moral attacks and attacks against human dignity, abuse committed during arrests by State security agencies, particularly the SEBIN, DGCIM, CICPC, GNB and FAES,⁵⁵⁷ which committed the most basic violations of constitutional guarantees and civil liberties. Allegations were raised against them of violations of the right to due process and the presumption of innocence, by preventing trade unionists from having access to legal

⁵⁵⁶ The Commission had access to videos showing the State security forces using violence.

⁵⁵⁷ On this subject, the Report of the United Nations High Commissioner for Human Rights, of 4 July 2019, on the situation of human rights in the Bolivarian Republic of Venezuela, indicates in paragraph 32 that: "The security apparatus includes the Bolivarian National Guard (GNB), the Bolivarian National Police (PNB) and its Special Action Forces (FAES), the Bureau for Scientific, Criminal and Forensic Investigations (CICPC), the Bolivarian National Intelligence Service (SEBIN) and the General Directorate of Military Counterintelligence (DGCIM). The GNB and PNB have been responsible for the excessive use of force in demonstrations since at least 2014. The FAES, a rapid-response unit created in 2017 to combat organized crime, has allegedly been responsible for numerous extrajudicial executions in security operations, as well as the CICPC. The intelligence services (SEBIN and DGCIM) have been responsible for arbitrary detentions, ill-treatment and torture of political opponents and their relatives. Armed *colectivos* contribute to this system by exercising social control in local communities, and supporting the security forces in repressing demonstrations and dissent."

defence and assistance, the denial of all their rights,⁵⁵⁸ including the notification of the charges against them, their subjection to a military jurisdiction and considering them to be guilty without proof.

In this respect, the Commission considers that, taken together, all the reports received, together with the refusal by those security agencies to account for their actions,⁵⁵⁹ constitute serious proof that they acted with the objective of repressing and intimidating the trade union movement and employers' organizations that are not close to the Government when making detentions. All of this, in the generalized context of violence and harassment examined in the previous two sections, constitutes a serious violation of human rights, civil liberties and freedom of association.

The Commission also regrets that in none of the cases examined was it possible to obtain an explanation from the Office of the Public Prosecutor of the acts that had led to the charges; the Commission further observes that none of the charges brought by the Office of the Attorney-General were challenged by the competent procedural courts.⁵⁶⁰ Under these circumstances, and on the basis of the many and diverse testimonies heard from both employers and trade unionists, the Commission considers that there is sufficient evidence to conclude that, in many cases, the charges brought by the Office of the Public Prosecutor lacked solid grounds and that the competent courts, by accepting the charges without hearing the accused or their defence counsel,⁵⁶¹ and ordering their detention, did not show the independence required by their functions.⁵⁶²

⁵⁵⁸ The cases of the Presidents of professional associations and of the union leader of the state of Carabobo, who were apprehended in their homes or in the course of their activities and immediately imprisoned without any contact with their families during the initial days of their detention, which were dismissed after a month of imprisonment.

⁵⁵⁹ With reference to the indication by the representative of the Office of the Public Prosecutor that this agency could not respond to testimony of abuses by the agencies if such acts had not been denounced to the Directorate for the Protection of Fundamental Rights of the Office of the Attorney-General, the Commission considers to be likely and credible, in the context of the violence and repression emphasized in previous sections, the statements made by many witnesses reporting the fear of having recourse to public institutions to complain of acts of violence against them due to the risk of reprisals by the Government. Other witnesses indicated that they had attempted to denounce acts of violence to the appropriate agencies, and generally the CICPC, but that their complaints had not been accepted or receipts had not been issued.

⁵⁶⁰ Although in some cases the charges were dismissed, as in the case of the Presidents of professional associations in Carabobo state, it is also clear that they were charged some months later and that the leaders were detained for more than a month and released on probation for several months, for which they received neither explanations nor the appropriate compensation.

⁵⁶¹ The witnesses who reported on the cases of workers in the FERROMINERA and VNALUM enterprises indicated that, when they appeared in court, after being detained and ill-treated, and without their families being informed of their whereabouts for several days, the judge did not hear them and only indicated the charges against them and informed them that they were being detained.

⁵⁶² On this subject, the Report of the United Nations High Commissioner for Human Rights, of 4 July 2019, on the situation of human rights in the Bolivarian Republic of Venezuela, indicates in paragraph 33 that: "Institutions responsible for the protection of human rights, such as the Attorney-General's Office, the courts and the Ombudsperson, usually do not conduct prompt, effective, thorough, independent, impartial and transparent investigations into human rights violations and other crimes committed by State actors, bring perpetrators to justice, or protect victims and witnesses. Such inaction contributes to impunity and the recurrence of violations." It adds in paragraph 56 that: "The lack of independence of, and corruption within, the judiciary are also major obstacles faced by victims

-
- (3) *Preventive detention, imprisonment conditions and confessions*: On the basis of the reports and evidence gathered, the Commission observes that the prosecutions of employers' representatives and trade unionists examined involved in some cases unlawful detention without the precise notification of the charges and in others up to several years of preventive detention.⁵⁶³ The Commission also observes that many of them were imprisoned at a considerable distance from their places of residence. For example, Rubén González is imprisoned 400 kilometres from his city of residence, Rodney Álvarez 680 kilometres away and the employers' representatives from Carabobo over 170 kilometres from their residence. In light of the above, the Commission cannot rule out the possibility that the imprisonment of the trade unionists and employers' leaders under trial is a form of punishment for the exercise of legitimate trade union activities; such penalties would constitute one more element of a broader system intended to inhibit the exercise of freedom of association in the short term and discourage it in future.

The Commission also heard many reports denouncing the extremely bad living conditions in most of the prisons in the country, where prisoners are held in overcrowded conditions, with limited access to drinking water or food, and are sometimes held in isolation cells without natural light, with little or no medical attention, and in the company of common criminals, some of whom are dangerous and could, and in some cases did, inflict physical and psychological harm on them. This is exacerbated by the lengthy proceedings and procedural delays. In this respect, analysis of the cases demonstrated to the Commission that the administration of justice is very slow.⁵⁶⁴ The Commission considers that allowing criminal proceedings relating to the exercise of trade union activities to continue for several years,⁵⁶⁵ combined with

in their search for justice and reparation"; and in paragraph 57 that: "The Attorney-General's Office has regularly failed to comply with its obligation to investigate and prosecute perpetrators".

⁵⁶³ Under the terms of section 236 of the Basic Code of Criminal Procedure: "The procedural court, at the request of the Office of the Attorney-General, may order the preventive detention of the accused on condition that the existence is substantiated of: (1) a punishable act that merits preventive detention and for which the penal consequences are not clearly prescribed; (2) substantiated evidence that the accused has committed or participated in the commission of the punishable act; (3) a reasonable assumption, based on an assessment of the circumstances of the specific case, of the risk of flight or of hindering the search for the truth in relation to a specific act under investigation. Within 24 hours of the application from the Public Prosecutor, the procedural court shall issue its decision. In the event that it agrees that the requirements set out in this provision have been met to order preventive detention, the court shall issue a warrant for the arrest of the accused for whom detention is requested. Within 48 hours of the detention, the accused shall appear in court for a preliminary hearing, in the presence of the parties, and of the victim if the latter is present, and shall determine whether the preventive detention shall be maintained, or shall be replaced by a less onerous measure. If the court agrees to maintain the preventive detention during the preparatory phase, the charges shall be presented, on an application made for dismissal or the closure of the case, as appropriate, within 45 days of the court ruling. If this period has elapsed without the Prosecutor bringing charges, the detainee shall be released, by order of the court, which may impose a replacement probationary measure. In any case, the court, at the request of the Office of the Attorney-General, shall order the preventive detention of the accused where there are grounds for believing that the latter will not comply with the orders in court, in accordance with the procedure set out in this section."

⁵⁶⁴ Rodney Álvarez (8 years), Leonel Grisett (13 years), Luis Vázquez (4 years), Omar Escalante (2 years), Elio Palacios (1 1/2 years) and Fray Roa (1 year and 17 days).

⁵⁶⁵ The Commission heard reports and received evidence indicating that court proceedings are extremely slow, that the dates on which preliminary hearings are held are deferred on many occasions before they are held and that each stage of the procedure is delayed, sometimes due to the inertia of

imprisonment in extremely poor and dangerous conditions, represents an extremely serious violation of the guarantees of freedom of association set out in Convention No. 87.

In the view of the Commission, in light of the violence involved in the arrests examined above, imprisonment during proceedings, the slowness of proceedings and the extremely poor conditions in the prisons, there is evidence for considering, as confirmed by many witnesses, that even in the absence of direct coercion of the accused by the authorities, all of these elements exert sufficiently persuasive pressure for them to make confessions, even when they have not committed the acts, so that they can benefit from release under probationary measures, even if release is conditional, and can return to their families, whom they often support.

- (4) *Imposition of non-custodial probationary measures and procedural delays:* The Commission observes that, in most cases involving the prosecution of trade unionists and employers' leaders examined above, non-custodial probationary measures were applied during proceedings and while the sentence was being served. The Commission observes that such measures, in addition to strict requirements to report to the authorities (the frequency varies between once a week and once every 45 days) and the prohibition to leave the country, may also include unspecified measures that the court can order at its discretion, which are often related to the capacity to make statements, protest or enter the headquarters of their trade union or employers' organization. The Commission further observes that, while such measures are in force, the trade union or representative employers' activities of the accused are severely restricted or completely prohibited.

The Commission considers that the imposition of unspecified probationary measures that prohibit the accused from making statements or participating in public meetings,⁵⁶⁶ in cases where there are no duly substantiated grounds for criminal charges against employers' leaders and representatives and trade unionists who exercise their right of expression and demonstration, or a specific and appropriate justification for the application of each measure,⁵⁶⁷ implies in practice a restriction on the representative trade union capacity of employers' leaders and representatives and trade unionists for very long periods of time,⁵⁶⁸ which constitutes a clear and explicit violation of civil liberties and freedom of association.

7.1.3. Harassment of employer and trade union leaders

- 416.** Over the course of its work, the Commission examined several complaints regarding various types of harassment of employer and trade union leaders, including: (i) a smear campaign in the media against the leaders of FEDECAMARAS and affiliated institutions and companies, which included statements by public officials to the press and on national television, and the dissemination of posters bearing insults, unfounded accusations and threats of imprisonment

the system and in other cases wilfully with a view to keeping the accused in detention or the imposition of probationary measures restricting their freedom of action.

⁵⁶⁶ In the case of Mr Garcia, the prohibition to make statements and attend meetings were set out in the release document, which the Commission saw.

⁵⁶⁷ Two of the leaders from Carabobo, Julio García and Rosmary Di Pietro, were covered by probationary measures for almost three months before their acquittal.

⁵⁶⁸ In the cases of Luis Vázquez and Leonel Grisett, for whom the non-custodial probationary measures have remained in force since 2015 in the former case, and since 2006 for the latter, at the time of the preparation of the present report.

and prosecution, inter alia; (ii) calls for hostile demonstrations outside the FEDECAMARAS headquarters, which involved verbal abuse and damage to the façade of the building; (iii) the persecution of employer and trade union leaders and individuals close to them, including surveillance by State vehicles, the presence of members of the State intelligence services at their activities, photographs, videos and audio recordings of private conversations and daily activities, without the consent of the leaders or a court order, and the material was then published and discussed in the State media by members of the Government and those close to it, with the aim of intimidating and discrediting the leaders; (iv) the arbitrary and sudden detention of trade union leaders without a court order by State security agencies, in particular the SEBIN, for periods of between 24 and 48 hours, sometimes in poor conditions and with armed personnel, to provide explanations for statements to the press and other legitimate activities inherent to the exercise of freedom of association; and (v) the implementation of certain economic and land policy measures, including land seizure measures, for the purpose of threats and intimidation.

Media smear campaign

- 417.** With regard to the numerous allegations of a media campaign against FEDECAMARAS and its leaders, the Government stated that, at that time in the country, due to the severe social and political polarization, there was a heated debate that was purely verbal and did not entail physical violence and FEDECAMARAS was perceived by many to be part of the opposition.
- 418.** On the basis of a large number of statements and ample evidence demonstrating the violence of the official discourse against FEDECAMARAS leaders and its affiliated organizations, the Commission observes the derogatory comments made by high-ranking Government officials, including the President of the Republic and the current President of the Constituent National Assembly, in statements to the press, on national television or through printed propaganda disseminated in locations including the premises of departments of the national public administration that are indicative of a pattern of highly hostile actions by the Government towards employers' leaders, particularly those linked to FEDECAMARAS, harassment and rejection of the rightful role of such an institution as a defender of the legitimate interests of its members.

Protests against FEDECAMARAS

- 419.** Regarding the demonstrations against FEDECAMARAS, the Commission notes the Government's assertion that it was not responsible as the demonstrations had been called by partisan and trade union organizations exercising their right to demonstrate peacefully and that, if there had been any violence, it had not been reported. The Government was acting as a mediator between FEDECAMARAS and the CBST. However, the Commission observes that several of the protests and demonstrations against FEDECAMARAS, in which verbal abuse was perpetrated, the façades of the headquarters were sometimes damaged and pamphlets with accusatory, derogatory and stigmatizing content were delivered to the organization and its affiliates, were called, organized and attended not only by members of the PSUV and CBST, but also serving governors and mayors.⁵⁶⁹ While recognizing the

⁵⁶⁹ For example, the demonstration on 22 November 2018 in front of the headquarters of FEDECAMARAS Bolívar (Puerto Ordaz), which was called and led by the chief of the State police, Mr Justo Noguera Pietri, who is the governor of the state of Bolívar and a member of the governing party (PSUV), and Mr Tito Oviedo, chief of the municipal police. The Commission had access to the message calling for the demonstration, which invited participants to march from the PSUV headquarters to the FEDECAMARAS headquarters, and to the video of the governor's statements in which he smeared FEDECAMARAS, accusing it of increasing prices, causing shortages of consumer goods and being responsible for the failure of the Government's economic policy.

importance of respecting the freedom of expression and protest of all actors throughout the country's political and social spectrum, the Commission recalls that, when those acts involve violence that could prejudice the civil liberties of others, the Government is responsible for taking the appropriate prevention and protection measures, through the relevant bodies, without interfering in the activities of employers' and workers' organizations. In this regard, the Government's efforts to act as a mediator between FEDECAMARAS and the CBST are welcome and encouraged, but are still insufficient and do not seem to be very sincere in light of the hostile discourse under examination.⁵⁷⁰

Persecution of employer and worker leaders

420. With regard to the persecution, the Commission received several allegations that employer and worker leaders had been subject to surveillance and harassment during their trade union and employers' activities and daily lives, some of whom had consequently been forced into exile. In particular, the Commission examined, from the viewpoint of the employers, the allegations of surveillance and harassment of the FEDECAMARAS Presidents, Mr Roig and Mr Larrazábal, the President of the Empresas Polar group, Mr Mendoza, and the former President of CPAEMIA, Mr Oscar García Peñaloza, as well as the storming of the FEDENAGA headquarters in Táchira state by heavily armed members of FAES and DGCIM; and the workers' allegations of surveillance and intimidation of the ASI President, Mr Carlos Navarro, the President of FETRA AMAZONAS, Ms Carmen Mata, the Executive Secretary of FETRASALUD, Mr Pablo Zambrano, the President of FEDETRANSPORTE, Mr Zuleta, the Secretary of the Lara Automotive Union of Public Transport, Mr Cuicas, the member of SITRAMECA, Ms Deillily Rodríguez, and the trade union members of the enterprise CORPOELEC, Ms Damaris Cervantes Polanco and Mr José Cedeño Zorrilla.⁵⁷¹

421. In this respect, the Government stated that: (i) employer and trade union leaders were not persecuted in the country; (ii) no complaints of persecution against those individuals had been made, except the one lodged by Mr Navarro, which was, in the Government's opinion, unfounded; and (iii) there had been no complaint regarding the intrusion into the FEDENAGA headquarters by FAES and DGCIM officers, but that intrusion could have been related to issues of illegal immigration.

422. In light of the above, the Commission observes that: (i) this persecution and harassment was primarily motivated by the employers' or trade union activities of the leaders, for example, Mr Roig's expression of views contrary to Government policies during his travels in the country, the FEDENAGA protests and the dissident trade union activity of several of the trade union leaders;⁵⁷² (ii) while some evidence was presented, including witness statements, videos and photos, the witnesses who appeared before the Commission stressed

⁵⁷⁰ On this point, paragraph 81 of the Report of the United Nations High Commissioner for Human Rights on the situation of human rights in the Bolivarian Republic of Venezuela of 4 July 2018 calls on the Government to: "Halt, publicly condemn, punish and prevent all acts of persecution and targeted repression based on political grounds, including stigmatizing rhetoric and smear campaigns".

⁵⁷¹ Persecution was also alleged against the following trade union leaders: Ms Marcela Máspero, President of UNETE (emphasizing that she was allegedly forced to leave the country due to her trade union activities); Mr José Gregorio Matute Quiñonez, member of FADESS (the Commission had before it the complaint presented to the Office of the Attorney-General on 26 November 2014 reporting death threats against him and his family); and Mr Javier Torres, leader of the Movement 7 La Voz Alcasiana in CVG Alcasa.

⁵⁷² Including the transport strikes organized by Mr Zuleta, the participation of Ms Mata in protests against the violation of collective agreements held in Amazonas on 23 January 2019, the statements made about the health system by Mr Zambrano and the marches organized by Mr Navarro on 1 May 2017.

the difficulty of providing evidence, as it was necessary to collect evidence during the persecution (as in the case of daily surveillance by motorcycles or vans without licence plates or the physical presence of armed military personnel at their activities) in situations that, by their very nature, were intended to instil fear.

Sudden and arbitrary detention without a court order

- 423.** Regarding the sudden and arbitrary detentions without a court order by SEBIN of employer and trade union leaders to demand explanations for their trade union or employers' activities, particularly their press statements or the organization of protests, the Commission examined the allegations related to the cases of the employers Mr Garmendia (President of CONINDUSTRIA), Mr Rodríguez (President of ANSA), Mr Rosales Briceño (President of the Venezuelan Association of Clinics and Hospitals), Mr Pestana (President of FEDEAGRO) and Mr Gutiérrez (President of CADUAINCO); and the workers Mr Zuleta, president of SUTTASEL and FEDETRANSPORTE and Mr Cuicas from the Lara Automotive Union.
- 424.** In its response, the Government indicated that the majority of them had gone to the SEBIN headquarters of their own accord and had been summoned because their statements, considered false by the Government or issued without evidence, could cause public distress. In other cases, the Government indicated that no record of the events could be found in the registers of the Public Prosecutor,⁵⁷³ for example in relation to the detentions of Mr Gutiérrez, Mr Rodríguez and Mr Cuicas.
- 425.** The Commission notes that, in most of these cases, employer and trade union leaders were detained without a court order and with the aim of demanding explanations for activities that are part of the legitimate action of trade union and employers' organizations.⁵⁷⁴ In this regard, the Commission considers that calling trade union and employer leaders to give evidence to State intelligence services, for long periods without access to food and faced with armed officers, for simply expressing differing opinions and publicly questioning Government policies, or for organizing meetings to protest peacefully against such policies, constitutes an act of intimidation that is a clear violation of basic civil liberties, in particular the freedoms of expression, assembly and demonstration, as well as freedom of association.

The implementation of economic policy measures, particularly land seizure

- 426.** Lastly, the Commission received allegations regarding the implementation of certain economic policy measures, including the land reclamation policy, as a form of intimidation and reprisal against leaders of employers' organizations for their activities in such positions. On this matter, the Commission wishes to clarify that the protections afforded under Convention No. 87 are recognized in relation to the free exercise of the right to organize of employers and workers. In this regard, the Commission would like to emphasize, as the CFA

⁵⁷³ As previously noted, the security agencies involved did not provide to the Commission written or oral responses to these allegations, despite having been repeatedly requested to do so.

⁵⁷⁴ Including statements by employer leaders on the impact of a virus on productivity (Mr Garmendia of CONINDUSTRIA), on the shortage of medicines and supplies in clinics and hospitals (Mr Rosales Briceño of the Venezuelan Association of Clinics and Hospitals), or on the shortage of medicines caused by import restrictions (Mr Gutiérrez of the Chamber of Customs Traders of the state of Vargas), or of union leaders on the transport situation in Venezuela (Mr Zuleta of FEDETRANSPORTE).

has done ⁵⁷⁵ and, in response to similar allegations, the 1991 report of the Commission of Inquiry on Nicaragua, ⁵⁷⁶ that it is not within its remit to rule on issues relating to the seizure or expropriation of land or other measures against private property, or detrimental economic measures, except in so far as the application of such policies implies discrimination against employers' leaders based on their membership or leadership of employers' organizations, their participation in representative activities and/or their trade union or employers' opinions. For this reason, the Commission has deemed it appropriate to examine these allegations in light of the other incidents of harassment that create a hostile environment for FEDECAMARAS members, paying particular attention to the context, which allows it to determine whether there may have been discrimination in the application of these measures with the aim of discouraging or penalizing representative action. It is on the basis of this understanding that the Commission will examine this allegation.

427. With regard to the Government's alleged use of the land recovery or reclamation policy to intimidate members and leaders of FEDECAMARAS, the complainants reported that in general many of the land recoveries had been carried out not only against leaders (whose cases had been reported to the ILO), but also the owners of companies affiliated to FEDECAMARAS, who had been publicly threatened with a review of their ownership title after they had voiced opinions against the Government's policies. The Government stated that: (i) the land recovery policy, under the Land and Agricultural Development Act (LDTA) of 13 November 2001, consisted of a land census that had been universal in scope and involved a large number of owners including, among many others, leaders of FEDECAMARAS and affiliated organizations and companies, who represented 0.74 per cent of all land recovered; (ii) the policy targeted land that had been idle, unproductive or used illegally, or the ownership of which had not been proven through documentation, with the ultimate aim of dismantling the landowning regime, rather than persecuting any member of FEDECAMARAS; (iii) in the cases reported by FEDECAMARAS, the legality of the measures had been verified, and the presumed owners had been unable to demonstrate the chain of title, which needed to be uninterrupted since 1848; and (iv) because these were not expropriations, there was no right to compensation.

428. The Commission has examined three of the reported cases:

- With regard to the farm of Mr Gómez Sigala, former Director of FEDECAMARAS and former President of CONINDUSTRIA (La Bureche estate), it was reported that: (i) the estate had been confiscated in 2009 on the pretext that it had been idle, a claim that was reportedly false, as more than 80 per cent of the land had been cultivated and was about to be harvested, although the crops were destroyed during the recovery; and (ii) Mr Gómez Sigala could demonstrate title to the estate.
- With regard to the estate of Mr Brito (Las Misiones estate), former President of FEDECAMARAS, it was alleged that: (i) the estate had been confiscated by the

⁵⁷⁵ The CFA stated that it was not within its mandate to determine whether the authorities had acted within the law with regard to matters of agrarian reform except in so far as the steps taken constitute discrimination against employers or where they concern enterprises where workers are employed and where breaches of Conventions Nos 87 or 98 are alleged (Case No. 2254, 363rd Report, March 2012, para. 1345).

⁵⁷⁶ Report of the Commission of Inquiry on Nicaragua: "Expropriation of land belonging to employers' leaders. The Commission would like to clarify first that it is examining this issue only in so far as the expropriation of land for the purposes of agrarian reform might have constituted an act of discrimination or sanction against the persons concerned because of their functions or activities as leaders of an employers' organisation. In such case this would be an infringement of Article 3 of Convention No. 87 by means of an intervention of the public authorities resulting in a limitation of the rights specified in the aforementioned Article or a restriction of its legal application."

National Land Institute (INTI) in 2009 after being declared idle, which was reported to be untrue; it had formed part of a reserve of thousands of trees that had been destroyed during the recovery, along with the internal roads; (ii) deeds to the farm existed, with a full legal history, but the Government had not recognized them; and (iii) the measure was intended to punish the positions that the employers' leader had been forced to take.

- With regard to the ranch of Mr Albornoz, President of FEDENAGA (the El Gólgota ranch), it was reported that: (i) in 2017 independent recovery proceedings had been launched because its production was less than 80 per cent of its capacity and it had been used in an unsuitable manner, although it had not been declared idle; (ii) the land was fully productive, as confirmed by a legal inspection; (iii) the land was private property and its legal history dated back to 1788; (iv) due process had not been respected; and (v) the decision was reported to have its origins in FEDENAGA's participation in the peaceful protests under way at the time in the livestock sector in Táchira state.

429. With regard to these cases, the Government stated that: (i) Mr Gómez Sigala's estate had been recovered because it was idle and because the occupant had been unable to demonstrate title, with the INTI finding a break in the chain of title; (ii) Mr Brito's estate was not engaged in any productive activity, and was idle, and Mr Brito had been unable to demonstrate private title to the land, with the INTI finding a break in the chain of title; and (iii) Mr Albornoz had been unable to demonstrate private title to the land, and although it was not reported that FEDENAGA had participated in the 2017 protests, Mr Albornoz was known to hold anti-Government opinions. However, that did not constitute grounds for his persecution.

430. Based on analysis of the above information, the Commission observes that, in general and as has been reported to other supervisory bodies in the past, including the 2014 high-level tripartite mission,⁵⁷⁷ the criteria established in the current legislation to determine whether land is idle appear to permit a significant margin for discretion. The criteria used by the INTI to prove land title, and their application, were repeatedly criticized before the Commission, with allegations that they greatly hindered and even prevented confirmation of ownership.⁵⁷⁸

431. With regard to the specific cases submitted for its consideration, and in the light of all the information gathered, the Commission considers that:

- (a) several of the alleged incidents of the use of land recovery procedures to intimidate members and leaders of employers' organizations not close to the Government were preceded by threats from public officials of the possible seizure of land based on employers' representative action;⁵⁷⁹
- (b) in addition to the links between threats and inspections and land seizure, some inconsistencies and evidence of irregularities can be observed during the procedures that are challenged. For example: (i) with regard to La Bureche estate (Mr Sigala), the

⁵⁷⁷ See the report of the 2014 high-level tripartite mission, paragraph 47, emphasizing "the importance of taking every measure to avoid any kind of discretion or discrimination in the legal mechanisms governing the expropriation or recovery of land, or other mechanisms that affect the right to own property" (document GB.320/INS/8).

⁵⁷⁸ Meetings in Caracas on 8 and 12 July 2019, see section 5.3.5.

⁵⁷⁹ For example, statements made by the President of the Constituent National Assembly, Mr Cabello, regarding Mr Albornoz, President of FEDENAGA (*Con el Mazo Dando*, 9 December 2016), referring to the FEDENAGA leader's participation in the Congress of the Colombian Cattle Ranching Association. These statements preceded the land recovery procedure for Mr Albornoz' estate, see chapter 5.

Commission was provided with photographs showing that the land was occupied and the sugar cane planted there had been cut down and, although the INTI highlighted that compensation was paid for buildings, as well as existing crops, its representatives confirmed that no compensation had been paid for the seizure of La Bureche estate (despite the fact that, in addition to the sugar cane, other structures had been built on the estate, including facilities and a house); (ii) the absence of prior notification (or notice) of the May 2017 inspections of the estate belonging to the leader of ASOGATA, Ms Oliva, and the failure to issue a productive farm certificate, despite the fact that, according to eyewitnesses, the inspection found that the estate was productive and the owner made a written request for certification from the INTI following the inspection; (iii) the information provided by the lawyers interviewed pointed to procedural flaws in the recovery procedures for the El Gólgota estate (Mr Albornoz). The Commission also notes that some elements contained in that case file raise doubts concerning the reasons behind the decision to recover the property and the determination of the surface area to be recovered;⁵⁸⁰ and (iv) several documents in the INTI files relating to these procedures, such as the decision to initiate the land recovery, draw attention to the membership and representative activities of the persons concerned, even though such matters should be irrelevant if the measures are applied independently of the position as employers' leaders of the persons covered by such procedures.⁵⁸¹

- (c) while the Commission is not in a position to judge whether or not the Land Act was applied correctly in the reported cases, it was also unable to set aside the doubts raised by the complainants regarding the abuse of the land recovery procedures initiated against the employers' leaders and their intimidatory purpose. The same doubts also arise on examination of the explanations and documents provided by the INTI, for example in relation to declarations of idleness and the aim of improving land use, which are allegedly given as the reasons for all land recovery procedures. This is illustrated by the case of Mr Sigala (La Bureche estate): although the declaration of idleness was based on crop suitability (the INTI considered the cultivation of sugar cane to be unsuitable), once they had been recovered, the lands were handed over to a corporation created months previously by the Government which did not impose any conditions on the crops to be cultivated there,⁵⁸² contradicting the INTI's claims that the best use was

⁵⁸⁰ Although the Government claims that idleness of the lands would be the only basis for their recovery and that there is no possible discretion regarding the recoveries and their extension, an INTI internal legal report, dated 26 October 2018, concludes that "the recovery is recommended of the entire land of the El Gólgota estate, since the alleged owner is carrying out agro-productive work on it", while "leaving the decision regarding the area to be recovered to the discretion of the National Land Institute".

⁵⁸¹ The decision of the INTI board, of 17 June 2010, to initiate the recovery procedure of the La Bureche estate, identifies the "presumed owner" as the "current president of CONINDUSTRIA". Similarly, the decision to initiate the recovery procedure of the El Gólgota estate, of 20 June 2017, when referring to the "presumed owner" (Mr Albornoz) alludes, as the only additional detail to his name and identity number, to his position as "President of FEDENAGA" (a reference that is repeated in other documents in the file).

⁵⁸² The INTI board, in its decision on the recovery, stressed that the land was suitable for planting cereals and oilseeds and that sugar cane cultivation was not suitable for this type of soil. However, the cereals and oilseeds referenced in the declaration of idleness were not cultivated and the land is reportedly now being used for a seed production project (through a commodatum loan granted on 6 October 2010, to a public corporation established months earlier). Similarly, the commodatum agreement sent by the Government contains a very broad definition of the agricultural purposes to which the recovered estate should be dedicated and does not specify which crops it should be used for (its second clause establishes that the land "will be used and allocated by the commodatum recipient for the establishment, development and construction of a social production unit, which will

made of recovered lands, which had not been the case prior to the recovery.⁵⁸³ Similarly, with regard to the case of Mr Brito (Las Misiones estate), there were also contradictions (between the explanations given by the Government to the ILO supervisory bodies and the content of the INTI files submitted to the Commission) with regard to important issues such as land quality and alleged idleness.⁵⁸⁴

- (d) The Commission is unable to make an expert assessment of the absence of an uninterrupted chain of title since 1848, which the Government claims affects the three cases cited by the complainants. However, the Commission observes significant discrepancies between the explanations given by the INTI and the detailed land registry documents submitted by the complainants with regard to the chain of title,⁵⁸⁵ and between the different accounts given by the INTI itself.⁵⁸⁶

be dedicated to plant and/or animal agricultural production to foster new processes and strategies as the basis for socialist agrarian development and the projects they consider necessary for the strengthening of agri-food sovereignty”). This flexibility of use afforded to the new occupants is not consistent with the strict terms of the INTI recovery decision, which declared idleness based precisely on the type of crop and judged that the cultivation of sugar cane, one of the most widespread crops in the area, was not “suitable”.

⁵⁸³ These doubts are raised without even considering the other issues raised by the complainants that were not satisfactorily clarified by INTI, such as the allegation that the land was being used for military purposes and that the land had been abandoned (the complainants provided photos attesting to the abandonment in January 2019); or the testimony of a producer from the region who declared to the Commission that cultivated sugar cane was the most suitable crop for those lands. In this respect, the Commission notes that, although INTI agreed to provide a report on the production of the estate, it did not do so, nor was a reply received to the request to provide evidence that the land taken was indeed allocated for the reported agricultural production (seeds).

⁵⁸⁴ The Government stated to the CFA that no productive activity was taking place on the land, and it was entirely idle, despite having type IV soil suitable for agricultural plant use (363rd Report of the CFA, Case No. 2254, Interim Report, para. 1312, March 2012). However, the INTI technical report on which the recovery procedure was based found that the soil was class VII (i.e. of inferior quality, type I being the highest quality) and that, in terms of current land use, it took note of the production of forest plantations and reforestation on part of the land (p. 3, INTI decision to initiate the recovery of 15 January 2009).

⁵⁸⁵ With respect to the La Bureche estate, the discrepancy should be noted between: (i) the recovery decision, which indicated that the affected party did not provide a chain of title prior to 10 April 1848 and that it was considered to be vacant land (the INTI orally argued that between the two oldest documents registered – from 1714 and 1868 – there was no obvious connection between the titleholders); and (ii) the detailed registration documentation and the explanations of the complainants, which demonstrated an uninterrupted chain of title from 1808 onwards.

⁵⁸⁶ With regard to the Las Misiones estate, INTI gave two conflicting explanations in response to the Commission’s question as to why it was considered that Mr Brito could not prove his ownership: (i) the report of 24 April 2019 by the INTI legal consultant indicated that Mr Brito had failed to prove ownership and that the INTI had proved a break in the chain of title (without giving details); and (ii) in response to the Commission’s question at its meeting on 9 July 2019 to specify to what extent there was a break in the chain of title, the INTI changed its explanation: instead of detailing the break which, in April 2019, its report had indicated to be verifiable, the INTI representatives stated that the alleged owner had not made any request or provided documentation to prove that it was private land. However, it is clear from the documentation provided by the complainants that Mr Brito did provide documents to support his ownership (the appeals he filed against the INTI decision allege, in a long list of documents, an uninterrupted chain of title since the independence of the Venezuelan nation). As for the El Gólgota estate, the complainants and INTI disagree as to whether or not Mr Albornoz’ chain of ownership was accredited (the INTI cited insufficient documentation and the complainants

432. The Commission also observes that the reported cases that did not result in the seizure of farms suggest that the land recovery policy is being used as a threat to intimidate employers' leaders who are not close to the Government, despite the recommendations made by the 2014 high-level tripartite mission to the Government on these issues. For example: (i) the threats made by the President of the Constituent National Assembly in his television programme on 15 December 2016 concerning the application of the land policy in response to the representative activities of FEDEAGRO and its then President ("I hope the people from FEDEAGRO, this gentleman, has his estates in order"); (ii) the statements made by the Governor of Táchira in May 2017, threatening with expropriation any employers in the livestock sector who participated in protests ("their estates will be expropriated, their livestock will go to the Bolivarian armed forces and their estates will go to the INTI"), which were followed by several inspections; and (iii) the sporadic, repeated inspections of the estate owned by the President of FEDENAGA, known as Vieja Elena, in Barinas state, which was in violation of the applicable rules and practice, under which, as stated by INTI to the Commission, once an estate has been certified as not idle it could not be inspected again for two years.⁵⁸⁷

433. In light of the above, the Commission considers that there are indications, and in some cases evidence, which do not allow it to exclude the possibility that the application of the land recovery policy was used, in cases such as those cited here, as a mechanism for reprisals against employers' leaders, particularly the leaders of FEDECAMARAS and its affiliated organizations. Nor can it rule out that they may have been motivated, at least in part, by the intention to carry out reprisals for, or to discourage, the representative activities of those affected. The Commission considers that the Government's responses, provided both orally and in writing, and through access to INTI files, do not satisfactorily resolve the suspicions raised by the testimony and documentation submitted by the complainants; and, to a certain extent, the documents submitted by the INTI itself suggest the existence of irregularities.⁵⁸⁸ Similarly, although it is not within the Commission's remit to examine the general land recovery policy, which falls outside its mandate, it observes with concern that the mere fact that prominent public officials responded to the representative activities of employers' leaders (such as the protests) with threats of inspections and land seizure is in itself a worrying form of intimidation related to the exercise of freedom of association, in violation of Convention No. 87.

434. Similarly, the Commission notes the other economic policy measures that were allegedly prejudicial to the business sector, such as inspections by SUNDDE, the numerous threats of expropriation (for example against companies in the Polar group)⁵⁸⁹ and the decision not to

allege, providing official registration documentation, that ownership has been proven since 1788) and the procedure is pending judicial resolution.

⁵⁸⁷ From the INTI documents submitted to the Commission, as well as the testimonies gathered, it appears that the new inspection in January 2010 had no legal basis and was carried out despite the fact that the affected party informed the authorities that his land had already been certified as not idle fewer than two years previously (29 April 2008).

⁵⁸⁸ As noted above, the flexibility of use, without specifying the type of crop, was the basis for the commodatum loan agreement concluded after the La Bureche estate had been declared idle and recovered precisely because of the type of crop.

⁵⁸⁹ On this matter, the Commission also received a number of serious allegations regarding hostile actions against the Polar group, as one of the most visible business groups of FEDECAMARAS, such as: verbal abuse, threats, detentions of managers, recording and broadcasting of the private conversations of its president by the authorities with the participation of the President of the Republic, who announced a judicial investigation, and use of State television to carry out a media campaign against the business group concerned. This harassment included numerous cases of expropriation,

provide dollars at the official rate to certain companies affiliated to FEDECAMARAS. The Commission considers that, although falling within its mandate, it is not its role to express an opinion on the content of the Government's general economic policies. The Commission wishes once again to draw attention to the fact that the incidents analysed above, including the threats of expropriation and the withholding of currency from FEDECAMARAS members, made publicly by high-level officials, including the President of the Republic and the President of the Constituent National Assembly, lends credence to the reasonable belief that on occasions these measures were adopted for the purpose of harassment both through the application of general rules and repeated inspections,⁵⁹⁰ due to the opposition to the Government of certain employers' leaders or their membership. This all restricts the guarantees of the right to freedom of association set out in Convention No. 87.

* * *

435. Based on all the documentary evidence and testimonies gathered in relation to the allegations of harassment and physical and psychological violence examined in this section, the Commission concludes that the acts of persecution, detention and defamation against employers' and trade union leaders, often originating from State agencies and their representatives, not only individually constitute obstacles to the exercise of basic civil liberties, but also, in view of their reiterated nature over the years, contribute to the creation of a climate of stigmatization and intimidation that strongly discourages the exercise of freedom of association and is in violation of Convention No. 87.

7.2. Absence of tripartite consultation, in particular on minimum wage fixing and the promotion of the application of international labour standards, and exclusion from social dialogue

436. The complainants, along with most of the trade union confederations that provided information to the Commission, reported a lack of tripartite consultation in relation to Conventions Nos 26 and 144, as well as the exclusion from social dialogue of organizations not close to the Government. The Government denied these allegations, claiming that it complied with its obligations to consult as set out in those Conventions and considering that it had strengthened social dialogue. It also expressed its willingness to enhance compliance with those instruments and with consultation mechanisms and procedures.

7.2.1. Approval of increases in the minimum wage without tripartite consultation

437. With regard to the alleged fixing of the minimum wage without consultation, the Commission notes that, since 2014, and more recently against a backdrop of progressive hyperinflation, the Government has approved more than 20 increases in the minimum wage. The Commission only examined the increases in the minimum wage and did not examine the increases in the Socialist CestaTicket (food benefit scheme), in the belief that the

some of which materialized and many of which remained merely expropriation threats that did not come to pass.

⁵⁹⁰ The Commission also notes with concern the allegations of looting of companies and properties linked to FEDECAMARAS by groups close to the Government or with the inaction of State security forces (sometimes supported by audiovisual material sent to the Commission by the complainants – as in the case of the looting of companies in the Polar Group on 11 March 2019).

CestaTicket did not form part of the national minimum wage system and was therefore not included in the scope of application of Convention No. 26.⁵⁹¹

- 438.** The Government stated that it had consulted the social partners on the different increases equally, and: (i) argued that FEDECAMARAS had refused to participate because it disagreed with the Government's wage policy and because it wished to discuss instead issues of economic policy; (ii) highlighted that in 2014 FEDECAMARAS admitted that it had been consulted on one of the increases, as reported in the national press; (iii) referred to several meetings, arguing in particular that consultation had taken place within the National Council for the Productive Economy (CNEP); and (iv) provided, by way of specific proof, certain communications in which it had sent generic requests to the social partners for their opinions on the minimum wage.
- 439.** However, the Government provided no adequate response to the detailed allegations of its failure to meet its obligation to consult on the minimum wage submitted by the complainants and most trade union confederations (with the exception of the CBST): (i) the Government did not provide sufficient evidence to counter the majority of the detailed reports from the complainants that it fixed the minimum wage without consultation (see the table at the start of section 6.1); (ii) the information gathered reveals that on some occasions consultation appeared to take place, but often in a form that clearly could not have this purpose, for example via communications that were sent belatedly (on the same day as or after the entry into force of the increase) or generic consultation that lacked information or details on the planned wage fixing on which precise input could be provided (despite FEDECAMARAS' requests for that information as a basis for an informed opinion); (iii) the Government's argument that FEDECAMARAS had excluded itself is contradicted by communications from the latter submitted by the Government itself in which the Federation, in response to generic invitations, regrets their untimely nature, complains at the total lack of information on the basic terms of the wage adjustment under consideration so that it may issue an opinion, and demands to be duly consulted; (iv) as reported in the national media, the President of the Republic has stated publicly that there is no consultation with FEDECAMARAS to approve minimum wage increases (see section 6.1), decreasing the credibility of the exiguous formal invitations that the Government claims to have sent to FEDECAMARAS seeking its views (whether via letter or orally at the meetings cited by the Government, and which FEDECAMARAS denies entailed genuine consultation on the minimum wage); (v) several trade union confederations (CTV, UNETE, CGT, CODESA and ASI) also reported, with corroboration from several witnesses, that they had not been consulted on the minimum wage increases and denied that consultation had taken place in accordance with Convention No. 26 in the context of the CNEP; (vi) these confederations highlighted that, in 2012, the Decree with the rank, power and force of the Basic Labour Act (LOTTT) rescinded the provisions of the LOTTT that mandated prior consultation with the most representative workers' and employers' organizations as a condition for approving minimum wage increases (this obligation had previously been fulfilled through a tripartite commission that had not met since the change of Government in 1999) and replaced those provisions with an ambiguous provision on "broad consultation" that makes no explicit mention of when such consultation should take place or of the participation of workers' and employers' organizations;⁵⁹² (vii) the CBST was the only trade union confederation to state

⁵⁹¹ See the 2018 CEACR observation on the application of Convention No. 26.

⁵⁹² The original provisions read: "In the event of disproportionate increases in the cost of living, the National Executive, having first consulted the most representative workers' union and the most representative employers' organizations, the BCV and the National Economic Council, may decree the salary increases that it deems to be necessary to maintain workers' purchasing power" (section 138), and, "in the event of disproportionate increases in the cost of living, [the National

that the Government had complied with its obligation to consult on the minimum wage, submitting as its only evidence a video of a meeting with the Government that merely featured a long speech by the President of the Republic to the confederation's leaders in which he presented his economic recovery plan, with no evidence of any consultation; (viii) FEDEINDUSTRIA presented an account that did not contradict the complainants' allegation (it referred to the aforementioned letters sent in 2018 and 2019 that contained a generic request for opinions on the minimum wage over the coming six months and added that informal consultation had taken place in the past, although it did not provide any details); (ix) EMPREVEN stated that no consultation had taken place recently (as in the past, when a letter inviting opinions had been sent); (x) COBOIEM stated that, in general, it had been consulted on increases in writing and with sufficient notice, although it did not provide any evidence in that regard (despite the Commission's request for it). It did, however, state that it had not been consulted on the fixing of the minimum wage, which involved the wage levelling in September 2018; and (xi) the complainants, with the support of CTV, UNETE, CGT, CODESA and ASI, drew attention to the seriousness of the loss of purchasing power in the face of alarming hyperinflation, and reported that the unilateral fixing of the minimum wage by the Government had resulted in a minimum wage that was not fit for purpose and highlighted the need to address this urgent problem through social dialogue and tripartite consultation.⁵⁹³

- 440.** The Commission recalls that the main objective of Convention No. 26 is the fixing of minimum wages, particularly for the industry and commerce sectors where wages tend to be low. However, as stated by the Government, it leaves national authorities significant room for manoeuvre in terms of how it is applied. It provides for mandatory consultation with employers' and workers' representatives before the machinery to fix the minimum wage is applied to a particular sector or sectors (Article 3(2)(1)). The complainants allege that this obligation has not been met. In that connection, and as recalled by the Government, it should be emphasized that the consultation envisaged in the Convention does not require or imply joint decision-making (or the requirement to establish specific institutions or bodies to fix the minimum wage). The opinions expressed during consultation do not constitute participation in decision-making, but are merely a stage in the process that leads to wage fixing intended to assist decision-making.

Executive,] having first consulted the most representative workers' union and the most representative employers' organizations, the BCV and the National Economic Council, may fix compulsory minimum wages of general or restricted scope" (section 172). The LOTTT removed this provision and introduced the following wording in section 129, which eliminates the requirement for prior consultation with the most representative workers' and employers' organizations before fixing the minimum wage and instead introduces a vague reference to consultation: "Following an analysis and by decree, the National Executive shall fix the minimum wage each year. To this effect, through broad consultation, it shall ascertain the views of the various social organizations and socio-economic institutions." From the statements gathered by the Commission during its visit to the country, it is apparent that the tripartite commission that met to discuss wages ceased to be convened following the change of Government in 1999, and was not replaced by any tripartite body designed for this purpose (moreover, many organizations reported non-compliance with the law in this regard and the unilateral fixing of the minimum wage by the Government since 1999). As for the National Economic Council, established by Decree No. 2011 of 8 March 1946 and comprising 17 members (including representatives of universities, the Central Bank, employees and workers, and chambers, associations and corporations), the Government continued to request its technical opinion on the fixing of the minimum wage until the amendment of the LOTTT in 2012 (the last request for an opinion was by letter from the MPPPST of 16 March 2012).

⁵⁹³ Many of the organizations and witnesses interviewed by the Commission also complained that, with the September 2018 minimum wage adjustment, the Government had imposed a single wage scale, the application of which was unclear and violated existing collective agreements. The Commission did not examine these issues as they fell outside the scope of the complaint.

441. However, the Commission reiterates that consultation should be more than the mere provision of information and should provide the opportunity to influence the final decision, which is impossible when it takes place after the adjustment to the minimum wage has been determined or announced, or has already entered into force, as occurred, according to reports submitted to the Commission, in the case of several increases on which the Government claimed to have held consultations. While the Convention is flexible in terms of its application, whichever method is chosen must allow for genuine consultation, that is, with reasonable timeframes and the sharing of a minimum amount of information on the machinery and reasons for fixing the level of the minimum wage under consideration by the Government if such consultation is to be effective. While the Commission recognizes that the situation of hyperinflation experienced by the country in recent years makes the application of the Convention extremely complex in terms of fixing the minimum wage so that it serves its purpose, it is no less true that the situation brings into even sharper relief the importance of the obligation to consult employers' and workers' representatives in the determination, and before the application of minimum wage systems, not only with a view to complying with the letter of the Convention, but also to meet its objectives. Also, although the Commission recognizes – as stated by the Government – that the Convention does not require consultation on the Government's economic policy, it recalls that it does require consultation before the minimum wage-fixing "machinery is applied".

* * *

442. The information gathered thus reveals the Government's failure to comply with Convention No. 26. In addition to the numerous increases in relation to which the Government did not provide specific evidence of consultation, regarding the communications submitted by the Government to prove that consultation had taken place with employers' and workers' organizations, the Commission considers that the mere sending of such belated and/or generic communications, containing abstract requests for proposals "in relation to the minimum wage" over six months, without providing any information on the anticipated machinery for fixing and applying the minimum wage, cannot be deemed to comply with the provisions of the Convention, which establish the obligation of the Government to engage in effective consultations.

7.2.2. Absence of tripartite consultation on promoting of the application of international labour standards

443. The Commission notes that by ratifying Convention No. 144, member States undertake to implement procedures that ensure effective consultation in relation to ILO standards with the participation of representatives of employers' and workers' organizations. The Convention, and Recommendation No. 152 which supplements it, are flexible with regard to their methods of application, as consultation can take place through various bodies, or even in writing, as highlighted by the Government. The Convention provides that consultation shall be undertaken at appropriate intervals fixed by agreement, but at least once a year, and that the representative organizations shall be consulted on the nature and form of the procedures. As set out in Article 5(1), the subjects on which consultations shall be held are: items on the agenda of the International Labour Conference; the submission of Conventions and Recommendations adopted by the Conference to the competent authorities; the re-examination of unratified Conventions and of Recommendations; questions arising out of reports on ratified Conventions; and proposals for the denunciation of ratified Conventions.

444. In this connection, the Commission observes that the Government has argued from the outset that the obligation for consultation under Convention No. 144 does not include the broad consultation referred to by the complainants (on governmental and legislative measures that affect the world of work and the interests of employers), and that the text of the complaint

does not contain specific allegations of the violation of the requirement for consultation set out in the Convention.⁵⁹⁴ The Commission regrets to note, however, that the Government did not provide evidence of due compliance with the requirements of the Convention, either in terms of effective consultation on the ILO matters listed in Article 5(1) of the Convention, or on the nature or form of the consultation procedures under Article 2(2), despite receiving repeated oral and written requests to do so from the Commission.⁵⁹⁵

445. In response to the allegations made by the complainants and most trade union confederations of the lack of effective consultation on the matters covered by Convention No. 144, the Government merely submitted the communications that it had sent to employers' and workers' organizations forwarding its reports to the CEACR for the years 2016, 2017 and 2018. The Commission observes in this regard that, although the Deputy-Minister of Labour stated that draft reports were sent (specifying that the drafts were sent and that no responses were received in practice, and that the recipient organizations, if they had sent any comments, had sent them directly to the CEACR), the text of those communications reveals that what was sent to the employers' and workers' organizations was only the finalized reports sent to the CEACR ("we send ... the following reports"). The Commission also observes that these communications, beyond occasionally including a formal reference to the Convention in their headers, did not invite or initiate consultation, and were sent late, making consultation in any form impossible.⁵⁹⁶ In this respect, the Commission emphasizes that, with these communications, the Government is merely complying with article 23(2) of the ILO Constitution, which requires each Member to communicate to the most representative organizations copies of the information and reports sent under article 22 of the Constitution. However, the communications sent by the Government do not reflect the requirement of consultation set out in Article 5(1)(d) of the Convention.

446. Furthermore, the Government indicated that the Constituent National Assembly was in a situation of contempt on respect of the multiple judgments of the Supreme Court of Justice issued from 30 December 2015 and that, once that situation had been resolved, the required submissions under article 19 of the ILO Constitution would be set in motion. Without entering into examination of the alleged situation, which falls outside its mandate, the Commission is bound to recall the fundamental distinction underlying the purpose of Convention No. 144: although they are related, the obligation to submit to the competent

⁵⁹⁴ In the adversarial procedures before the Commission, both the complainants and the trade unions made more precise statements on the absence of consultation regarding the matters envisaged in Article 5 of Convention No. 144.

⁵⁹⁵ The absence of information regarding compliance with Convention No. 144 had already been noted by the CEACR, which requested "the Government to provide information on the consultations held with respect to each of the matters relating to the international labour standards covered under Article 5(1) of the Convention. The Committee further requests the Government to communicate information on the effective consultations held with social partners on the manner in which the functioning of the procedures required by the Convention could be improved. In addition, and in the context of the procedures required by the Convention, the Committee expresses the hope that the Government will take measures to establish a reasonable time period that will provide sufficient advance notice to enable employers' and workers' organizations to form their opinions and make the comments that they consider appropriate in relation to the drafts communicated by the Government, in accordance with Article 5(1)" (see CEACR, Bolivarian Republic of Venezuela, observation on the application of Convention No. 144, 2017).

⁵⁹⁶ The official deadline for sending reports to the ILO – and comments from the social partners – is 1 September. If, despite the late submission, the organizations concerned could still submit their observations to the CEACR, it was practically impossible for them to do so with knowledge of the reports (i.e. the views of the Government) and, in any case, the possibility of tripartite consultation, the purpose of the Convention, was eliminated.

authorities the Conventions and Recommendations adopted by the International Labour Conference set out in article 19 of the ILO Constitution, and the consultation provided for in Convention No. 144, are separate matters. The Commission observes that the Government did not provide any information on its compliance with the obligation to consult on the submission of Conventions and Recommendations, even during the period prior to the Constituent National Assembly's alleged contempt, which postdates the lodging of the complaint.

- 447.** Similarly, the Government did not provide evidence or information relating to consultations held on the other matters under Article 5(1) of the Convention, that is, the items on the agenda of the Conference, the re-examination of unratified Conventions and of Recommendations, and proposals for the denunciation of ratified Conventions. There is no evidence of the discussion of any of these matters, despite their relevance. For example, in April 2019, a communication was sent to the Government as a follow-up to the work of the Tripartite Working Group of the Standards Review Mechanism.⁵⁹⁷ The communication, which related to the inclusion of an item on the agenda of the Conference regarding the derogation of four Conventions, was sent at the request of the Governing Body to: (i) follow up with member States bound by one or more of these Conventions; and (ii) encourage the countries concerned to consider ratifying the updated instruments on these subjects, that is, occupational safety and health. These issues are prime examples of the matters that, as recognized by the Government when it referred to Article 5(1) of the Convention, would have required tripartite consultation.
- 448.** None of the organizations allegedly close to the Government (CBST, FEDEINDUSTRIA, EMPREVEN and COBOIEM) appeared to be aware of the consultation obligations under Convention No. 144 and, in response to the Commission's questions, did not provide examples or evidence of compliance. FEDEINDUSTRIA stated that it had not received any communication or request for consultation on these matters, not even with regard to the reports on ratified Conventions. The CBST, COBOIEM and EMPREVEN referred simply to the communication of the reports noted above.
- 449.** Moreover the Government did not provide evidence or information on the consultation of representative organizations on the nature and form of the procedures, as required by Article 2(2) of the Convention.

* * *

- 450.** In conclusion, and in light of the information and documentation gathered, particularly the documents submitted by the Government, which merely provided information on the reports sent and outlined its difficulties in complying with the obligation of the submission of the instruments adopted to the competent authorities, the Commission observes that the Government did not provide evidence of its compliance with the consultation requirements under the Convention. It is the Commission's understanding, on the basis of the statements and documentation provided by the Government, that the Government considers that Convention No. 144 does not add anything to the obligations set out in articles 19 and 23 of the ILO Constitution, thereby disregarding its obligation to hold tripartite consultations, which is the central contribution of Convention No. 144 to the ILO body of standards.

⁵⁹⁷ The Tripartite Working Group of the Standards Review Mechanism, established by the Governing Body of the ILO, meets once a year to review international labour standards and ensure that the ILO has a clear, robust and up-to-date body of standards.

7.2.3. Exclusion from social dialogue of organizations that are not close to the Government

- 451.** In addition to compliance with the obligation for tripartite consultation on the matters provided for under Article 5(1) of Convention No. 144, the Commission addressed the alleged exclusion of FEDECAMARAS and workers' organizations that are not close to the Government from social dialogue and consultation on issues relating to the world of work and their members' interests. This was in contrast with the fluid dialogue that the Government appears to maintain with employers' organizations and trade unions that are close to it. The Commission examined this allegation primarily through the lens of compliance with the guarantees provided for in Convention No. 87.
- 452.** The Commission noted the Government's claims to have promoted social dialogue, without exclusion, and that it invited FEDECAMARAS to participate. The Commission also notes that a number of meetings were held between the Government and FEDECAMARAS (in addition to the exchange of certain communications and invitations) and that the Government claimed to have strengthened its dialogue with the organization, but that it was FEDECAMARAS that had excluded itself and did not wish to participate in good faith. In that regard, the Government alleged that FEDECAMARAS had refused to attend a tripartite meeting in Geneva during the International Labour Conference in June 2017, justifying its refusal by citing the composition of the Workers' representation. Notwithstanding the Government's affirmations that the tone of the social and political debate was heated, the Commission observes that the most high-ranking authorities of the Government, including the MPPPST and the President of the Republic, have been making comments of a derogatory, aggressive and intimidatory character that are not conducive to facilitating dialogue with the most representative employers' organization, including comments to the effect that they do not wish to meet that organization.⁵⁹⁸
- 453.** The Commission has also been informed of some Government communications and meetings with the social partners (including some meetings with FEDECAMARAS) in which a number of issues were reportedly discussed, and particularly the complaints before the ILO. But the Commission notes that many of the invitations to dialogue to which the Government referred as evidence cannot be regarded as genuine consultations. Rather they are generic invitations without sufficient detail, or not sent with the necessary notice (invitations were sent a little over 24 hours in advance of consultations on the Act for Persons with Disabilities), or without reference materials being provided (in the case of the National Plan and the Act for Persons with Disabilities).
- 454.** With regard to the allegation that the Government took such steps merely to create an appearance of social dialogue to the ILO, the Commission cannot fail to note that these letters and invitations often seem to be concentrated in specific periods that can be related to the action of the ILO supervisory bodies. Commitments to engage in dialogue were made to the ILO Governing Body when it was considering the appointment of a Commission of Inquiry, but they were not acted upon (see chapter 1). Moreover, the letters and invitations recently provided by the Government as evidence of its promotion of dialogue are concentrated in a short period of nine days (from 26 November to 5 December 2018) after the Government had agreed to participate in the Commission's procedure and before the first formal meeting with the Commission.
- 455.** The Commission notes that these allegations of exclusion and lack of genuine dialogue made by the complainants and most trade union confederations contradict the accounts given by organizations close to the Government. For example, the CBST stated that recurrent and

⁵⁹⁸ For example, the statements made by the President of the Republic on 30 April and 3 May 2016, see section 6.2.

highly satisfactory consultation existed. The Commission therefore regrets to note that the information gathered suggests that the Government has been favouring organizations that support its political programme, and excluding those that are not close to it from the consultation and participation of social partners in relation to standards and measures that affect their interests. For example, the only employer's representative appointed by the Government to both the Presidential Commission that drafted the LOTTT reforms and the Supreme Labour Council was from FEDEINDUSTRIA. Nor was FEDECAMARAS officially invited to participate in consultations in the CNEP. Similarly, the privileged position of dialogue with the authorities enjoyed by the CBST (the confederation that the Government deems the most representative and that claims not only to be consulted regularly by the Government, but even to have the capacity to promote significant legislative reforms, such as that of the LOTTT, and new regulations, such as the LCCPT) contrasts with the exclusion that FEDECAMARAS has been reporting to the ILO supervisory bodies for many years.

456. The Commission also emphasizes that the discriminatory exclusion from consultation of the most representative employers' organization, in contrast with the privileged treatment of other organizations close to the Government, when combined with the creation of a hostile environment and the stigmatization of FEDECAMARAS, gives rise to a violation of the guarantees of freedom of association set out in Convention No. 87. Both the CFA and ILO missions (specifically the 2014 high-level tripartite mission) have expressed concern at the exclusion of organizations critical of the Government and urged the latter to promote an appropriate environment for social dialogue.⁵⁹⁹

457. The Commission recalls that: (i) the exercise of freedom of association depends on the existence of a democratic political system in which fundamental rights and civil liberties are respected, and social dialogue is a cornerstone of such a system; (ii) the full exercise of freedom of association is only possible in a system of social dialogue that respects the representativeness and independence of workers' and employers' organizations, thus ensuring respect for the freedom to join organizations and other guarantees provided for in Articles 2 and 3 of the Convention; (iii) participation in social dialogue processes is central to the action of employers' and workers' organizations covered by the guarantees set out in Article 3 of the Convention, in relation to which freedom of association must be ensured and the public authorities shall refrain from any interference in such action that would restrict or impede its lawful exercise; (iv) the development of suitable conditions for social dialogue cannot be separated from respect for civil liberties and other prerequisites to enjoy the guarantees of freedom of association set out in the Convention (in general in Articles 3, 8(2) and 11); and (v) any favouritism or unequal treatment by the Government that discriminates against independent organizations or organizations not close to it is prejudicial to the right of employers and workers to establish and join organizations of their own choosing, and the right of those organizations to organize their activities and formulate their programmes in full freedom, without interference from the public authorities (Articles 2 and 3 of the Convention).⁶⁰⁰

⁵⁹⁹ The CFA, particularly as part of Case No. 2254, has been firmly urging the Government to undertake: "full consultations on draft legislation covering labour, economic or social matters that affect their interests and those of their members be held without delay with the most representative organizations of workers and employers, including FEDECAMARAS." (see chapter 2).

⁶⁰⁰ As stated in the report of the direct contacts mission to the country in 2004: (i) on the one hand, social dialogue can be a tool for dealing with reported problems regarding the observance of freedom of association; and (ii) on the other hand, an assessment could be made of the extent to which the action of the public authorities in designing and structuring their system of social dialogue could influence the right of workers and employers to join organizations of their choosing (such as whether

458. The Commission is bound to conclude that the favouritism noted towards organizations that are close to the Government in relation to dialogue and consultation, and the exclusion or unequal treatment of representative organizations, in particular FEDECAMARAS, for the mere fact of not being close to the Government, are serious and worrying conclusions resulting from the information provided to the Commission and are in violation of the guarantees of freedom of association provided for in Convention No. 87, as noted above.

459. Similarly, in light of the shortcomings identified in this report in social dialogue and tripartite relations in the country, the Commission wishes to emphasize the importance of ensuring full respect for the basic rules of social dialogue and tripartite consultation, in accordance with international labour standards, free from stigmatization, intimidation or other forms of aggression, and as their indispensable prerequisites, including full respect for freedom of association and the independence of employers' and workers' organizations.

* * *

460. The Commission wishes to recall the importance of promoting social dialogue with representative employers' and workers' organizations, as enshrined in the ILO Constitution and the Declaration of Philadelphia, and clarified in relation to the application of international labour standards in Recommendation No. 152.⁶⁰¹ Although, as rightly stated by the Government, the strict obligation set out in Convention No. 144 is limited to matters relating to the ILO standards listed in Article 5(1) of the Convention, Paragraph 5(c) of its accompanying Recommendation No. 152, recommends consultations on the preparation and implementation of legislative or other measures to give effect to international labour Conventions and Recommendations, in particular to ratified Conventions (including measures for the implementation of provisions on consultation or collaboration with employers' and workers' representatives), taking into account national practice. While Recommendations do not have the binding force of Conventions, these instruments have followed the same process of drafting and tripartite adoption by the International Labour Conference. Recommendation No. 152 is intended to complement and clarify the content of Convention No. 144.

461. The Commission observes with concern the Government's resistance to the institutionalization of social dialogue and tripartite consultation mechanisms, despite various calls by the ILO supervisory bodies and direct contacts and high-level missions in that regard. Since 1999, the bodies created for dialogue and consultation on minimum wage fixing and matters relating to international labour standards were first abandoned and then removed, and no permanent tripartite body was created to replace them. The various employers' and workers' representatives are required to come together and cooperate independently, through social dialogue, in preparing and implementing legislative, social and economic measures, in accordance with the ratified Conventions, and particularly those cited in this complaint.

462. Although the Conventions referred to in the complaint do not require a specific structure for social dialogue, the Commission is bound to emphasize the advantages to be derived from their institutionalization. The Commission recalls the historical shortcomings in tripartite

favouritism or exclusion may unduly condition the decisions of workers and employers to join certain organizations) and the right of such organizations to organize their activities and formulate their programmes in full freedom, without interference by the public authorities.

⁶⁰¹ The promotion of dialogue and consultation is also provided for in other Conventions relating to issues raised in the allegations (for example the Employment Policy Convention, 1964 (No. 122), which is given effect by some of the laws that the complainants allege were adopted without consultation). However, observance of Convention No. 122, although referred to during the hearings, was not raised in the complaint and the Commission is therefore unable to examine it.

relations in the country, particularly the pre-eminence of the Government (see chapter 2) and the worsening of the situation in recent years. In this context, the creation of stable, representative bodies of tripartite composition that conform to objective, verifiable and pre-established criteria with the agreement of the parties is vital for the development of solid social dialogue that appropriately represents the interests of employers and workers and which are not dominated or manipulated by any particular movement or interest. This institutionalization of social dialogue, in the form that best suits the social and political context and culture of the Bolivarian Republic of Venezuela, must not only adequately reflect the plurality of perspectives, needs and interests of the tripartite constituents, but also unite their efforts to contribute to national development and the achievement of social justice.

7.3. Other allegations of state interference in the independence of employers' and workers' organizations and in the relations between them

463. The complainants and several trade union confederations provided information to the Commission on multiple cases of interference by State institutions and actors close to the Government in the independence of employers' and workers' organizations and in the relations between them. The Government denied these allegations and affirmed that it guarantees freedom of association.

7.3.1. Favouritism and the promotion of parallel employers' and workers' associations close to the Government and obstacles to the functioning of other organizations

464. The Commission notes that the Government affirmed that the independence of employers' and workers' organizations is fully respected and denied any acts of favouritism, although it also observes that the Government did not provide satisfactory answers to counter the allegations concerning the creation or replacement of occupational organizations, favouritism towards organizations close to the Government and obstacles to the functioning of independent organizations (see section 4.1).

465. The Commission notes that these allegations, intimately linked to other reported violations and one of the central themes of the complaint, have been made to the ILO by national and international social partners for almost two decades. This is reflected in the various complaints, denunciations and observations related to interference made to the various supervisory bodies (and the various ILO missions to the country) and the reiterated recommendations resulting from those proceedings, which have urged an end to the interference in relation to both employers' and workers' organizations (see section 2.3.1).⁶⁰²

Favouritism and promotion of organizations close to the Government

466. With regard to employers' organizations, the Commission is bound to first address the characterization by the Government of FEDECAMARAS as a rebel and opposition organization, rather than an employers' organization. The Commission notes the Government's statement that FEDECAMARAS supported the 2002 coup d'état, that it has been promoting an economic war against the Government and the people and that it supports

⁶⁰² See the conclusions of the Committee on the Application of Standards of the International Labour Conference in 2015.

the political opposition and its leaders, including on whether or not to recognize the State authorities. The Commission also notes that FEDECAMARAS disassociated itself institutionally from the 2002 coup d'état. The Commission further observes that the Government itself affirms that it recognizes FEDECAMARAS as a representative organization of Venezuelan employers, something that the Commission was also able to note throughout its work. Moreover, the ILO supervisory bodies have repeatedly recognized FEDECAMARAS as the only employers' organization for which the most representative status continues to be unchallenged (see section 2.3.1.5) and have regretted that the Government has used its responses to the ILO to attack and level accusations against this organization, rather than taking measures to avoid action and statements that smear it.⁶⁰³

467. In this regard, the Commission is bound to recall that, although certain purely political activities, and particularly any that go against the legal order, do not enjoy the protection and guarantees set out in Convention No. 87,⁶⁰⁴ employers' and workers' organizations enjoy under the terms of the Convention, while respecting the law of the land, which shall itself be in accordance with the Convention,⁶⁰⁵ the right to organize their activities and formulate their programmes of action in full freedom. This right encompasses the organization of collective action and political activities related to the defence of the occupational interests of the members of employers' and workers' organizations. This part of the complaint is examined in the light of these considerations.

468. While the Government indicates that its confrontation with FEDECAMARAS is in the past, the Commission's investigations, as well as the other allegations and the Government's own statements, show that FEDECAMARAS has been considered a political adversary. The Commission has also received multiple reports testifying to the Government's ties with other organizations that are close to its political programme, or promoted or favoured by it, and illustrating its discrimination against organizations that are not close to it, such as FEDECAMARAS. These include: (i) the appointment of the President of FEDEINDUSTRIA as the only employer member of the Higher Labour Council, even though the ILO supervisory bodies requested the Government to appoint a member of FEDECAMARAS to the Council,⁶⁰⁶ which the Government failed to do; (ii) the links formed over the past two decades between the leadership of other employers' organizations (FEDEINDUSTRIA, EMPREVEN, CONFAGAN, COBOIEM and CONSEVEN) with the Government and its party, one of which designated President Chávez as its Honorary President; (iii) the questioning of the representativeness and independence of many of these organizations;⁶⁰⁷ (iv) the evidence provided by employers' leaders that had ended the

⁶⁰³ See the [378th Report of the CFA, Case No. 2254, Interim Report, para. 842](#), June 2016.

⁶⁰⁴ As recalled by the report of the Commission of Inquiry on Nicaragua (1991), on that occasion in relation to workers' organizations, it was clarified during the preparatory work for Convention No. 87 that, in defining a workers' organization as one "for furthering and defending the interests of workers", that these terms do not restrict the right of trade unions to participate in political activities or limit trade union action to simply occupational matters. International Labour Conference, 31st Session, 1948, *Record of Proceedings*, p. 476.

⁶⁰⁵ The Convention provides in Article 8(2) that: "The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention."

⁶⁰⁶ See [372nd Report, Case No. 2254, Interim Report, para. 761](#), June 2014.

⁶⁰⁷ In some of their interventions, the representatives of these other organizations, in their oral replies to the Commission, adopted the Government's arguments, and even identified themselves with the Government (using expressions such as "we are a Government that ..."). Caracas meetings, 11 July 2019.

affiliation of their organizations with FEDEINDUSTRIA due to the pressure under which it put them to be politicized and to support the positions of the Government;⁶⁰⁸ and (v) the reports by employers' leaders concerning favouritism towards organizations and employers close to the Government and discrimination against those that are not.⁶⁰⁹ The complainants emphasized that this policy of attacking and discriminating against FEDECAMARAS can be seen even at the highest levels, including the President of the Republic, for example blaming the organization for shortages and stating, in relation to access to currency, that it would not have access to dollars.

469. The Commission also notes that the ILO Credentials Committees have questioned the Government's insistence in the past on the inclusion in the Employers' delegation to ILO meetings, without the agreement of FEDECAMARAS as the most representative organization,⁶¹⁰ of organizations that it was not able to prove were more representative, thereby drawing attention to Government favouritism for those organizations. Similarly, the Commission observes that, despite being requested to do so, the Government did not provide specific information to confirm the representativeness and independence of the organizations denounced by the complainants as parallel organizations that are close to or favoured by the Government authorities.

470. With regard to the organizations concerned, FEDEINDUSTRIA indicated to the Commission that it was an independent organization and claimed to have broad membership, but clarified that over the past 15 years the representativeness had not been verified of any employers' organizations. COBOIEM also claimed to represent business at all levels, and EMPREVEN denied that there was favouritism towards certain employers' organizations. Both complained that FEDECAMARAS had not agreed to be included in the country's Employers' delegation to the 2019 Conference. However, beyond general statements, these two organizations, which had not responded to the Commission's invitations prior to the last phase of the procedure (the country visit), did not provide data or specific evidence to counter the complainants' specific allegations or to prove their own representativeness and independence. The other employers' organizations that were questioned and invited by the Commission to submit their observations did not provide any response or statement addressing these allegations.

471. The allegations relating to workers' organizations are also long-standing. The Commission recalls the comments and concern expressed by ILO supervisory bodies with regard to the trade union referendum promoted by the Government in 2000 with a view to unifying the trade union movement and the suspension or dismissal of trade union leaders on the pretext that the leaders of workers' confederations were not representative of the working class (see sections 2.1.2 and 2.3.1). The Commission also refers to the Government's failure for years to recognize the CTV executive committee elected in October 2001 (due to the failure of the CNE to issue the decision), even though at the same time the executive committee had been recognized of a confederation (UNETE) that was then close to the Government, but that had

⁶⁰⁸ Hearings in Geneva, 8 to 10 May 2019.

⁶⁰⁹ In particular, complaining that public officials had denied access to raw materials under State control requested by employers that had not complied with the required political allegiance. Other testimony by employers emphasized that it was known that enterprises affiliated to FEDEINDUSTRIA benefited from favourable treatment. For example, they were normally more successful in the competitions organized by the Government to obtain foreign currency. Caracas meeting, 8 July 2019.

⁶¹⁰ Except at the ILO Centenary Session of the Conference in 2019. See footnote No. 619.

not even held an election.⁶¹¹ With regard to subsequent developments, the Commission notes that for several years UNETE maintained a close relationship with the Government and that it was considered to be the most representative confederation until 2011. UNETE then lost this status following a debate on trade union independence, during which a trade union movement questioned the need for such independence and defended the subordination of trade unions to the Government's programme and its party, and proposed the establishment a new socialist Bolivarian confederation, the CBST. This confederation received the direct and public support of the Head of State and its leaders, right from its establishment, and expressed loyalty to Government policy and its party.⁶¹² Since then, the Government has considered CBST the most representative confederation and, by virtue of that status, it has been appointed to lead the Workers' delegations to the International Labour Conference. In that regard, although the Commission does not have evidence that questions the representativeness of the CBST (its affiliates include various federations, particularly in the public sector), it observes that the close relations of collaboration and involvement between the confederation, the Government and its party have been public knowledge and evident since its foundation. Not only is this clear from the evidence and documents submitted by the complainants and various trade union confederations, as described in chapter 4, but it is also corroborated by the observations and information provided by both Government sources and the CBST, which suggest a lack of true separation between the CBST, the Government and its party.⁶¹³ It is not therefore surprising that the support from

⁶¹¹ In its report, the ILO direct contacts mission of October 2004 drew attention to the situation in which "the CTV has an executive committee resulting from an election, even though it is challenged by the CNE, and the executive committee is only recognized in practice by the Government for very limited purposes, while the executive body of the UNETE confederation is recognized, despite the absence of an executive committee resulting from an election (para. 122). The CEACR has repeatedly urged the Government to recognize the executive committee of the CTV, considering that the de facto blockage of its recognition was in violation of the right of the organization to elect its representatives in full freedom, and that the CTV had suffered discrimination by the authorities, which had conversely recognized the executive committee of the UNETE confederation, despite the fact that it was not the result of an election.

⁶¹² According to reports of this historic moment, the highest leader of the new confederation indicated, in response to the greeting of President Chavez: "President, you are our leader, command". See Consuelo Irazno: "La triste historia del sindicalismo venezolano en tiempos de revolución: Una aproximación sintética", in *Nueva Sociedad*, March–April 2018.

⁶¹³ Much of the testimony and many documents gathered by the Commission confirm the alleged collaboration between the CBST and the Government. In terms of the documents provided to the Commission by the CBST (by a communication dated 28 May 2019): a communication of 28 October 2016 to the country's Ambassador in Madrid which includes the CBST in the Government delegation of the country to the ILO Governing Body (the letter refers to the appointment of "a delegation to participate as the representative of our Government" and the action taken as a result, and in order to seek the support of the Embassy for the delegation during its journey and a stay by the delegates of a few days in Madrid, and indicates that the "delegation will be composed of", in addition to the Deputy Minister and Director of International Relations, also the national coordinator of the CBST, while the title of the message forwarding the communication is "MPPPST Delegation"); and internal Government documents, including some high-level documents, communicated to the CBST by the Government (diplomatic fax from the Ambassador in Geneva to the Chancellor, of 16 June 2016, regarding the lodging of a complaint by Workers' delegates to the Conference, and the referral to the CBST of the internal Government position concerning the complaint: forwarding by the MPPPST to the CBST of other internal diplomatic cables between the Chancellor and the Ambassador, including confidential information addressed to the Government, such as the access and password provided by the ILO to the Government for the provision online of credentials of the tripartite delegation to the International Labour Conference in 2018, which were subsequently the subject of an objection concerning the designation of the Worker representatives); internal Government positions on its action during the Conference; internal Government reports concerning its strategy of defence in

Government actors received by the CBST has influenced its role, and that of its affiliates, in the trade union landscape. Similarly, and with regard to other levels of trade union organization, the Commission notes with deep concern the numerous written and oral testimonies (some from individuals who are directly involved) denouncing and reporting the practices of the creation and promotion of parallel federations and trade unions that are close to the Government (see section 4.1).

Determination of representativeness

472. With regard to the determination of representativeness, the Commission notes the Government's indications: (i) in relation to employers, none of the employers' organizations were registered (therefore considering that their representativeness could not be assessed, which was the reason why the request was ultimately made for the registration of FEDECAMARAS); and (ii) with reference to workers, the Government made use of criteria (in particular, membership, participation in collective bargaining and public and high-profile action, and presence in the country), the application of which resulted in the CBST being the most representative organization, as the only confederation which provided information on its membership and the only confederation fully present and active on the territory (participating in collective bargaining, with a media presence and organizing popular demonstrations on 1 May). However, the Commission observes that, further to these statements, the Government did not provide it with updated comparative data relating to the application of the criteria that it said it uses or other quantitative information offering a basis for a verification and objective comparison of representativeness.

473. The Commission also observes that both the other confederations and the complainants consider that the machinery for the assessment of membership set out in the LOTTT was not compatible with freedom of association, which was the reason indicated by FEDECAMARAS for not responding to the recent calls by the MPPPST for its registration. However, just before the Commission's arrival in the country, the Supreme Court of Justice issued a ruling⁶¹⁴ in which it found to be constitutional and in accordance with trade union independence the provisions and procedures set out in the LOTTT respecting registration and the assessment of membership (which had been challenged in an appeal for the protection of constitutional rights that had been pending since 2013), and according to the empirical data provided by the Government for the past year (2018), only 6.25 per cent of all the organizations registered that year⁶¹⁵ had been able to comply with the requirements

relation to the objection concerning the Workers' delegation referred to above; and showing that the Government shares with the CBST communications sent to Government authorities by other workers' organizations opposed to the CBST (provision by the MPPPST to the CBST of a communication from the UNETE to the Government of 25 April 2017 providing its proposal for the Conference delegation). In terms of the testimony provided by the CBST: its references to the capacity of the confederation to wield influence to resolve disputes in favour of its unions through contacts with the Government authorities; its references to the Workers' Production Boards as its own project in the implementation of which it could play a coordination role not envisaged in the law and which would be the responsibility of the public authorities (videoconference of 7 May 2019). In terms of the Government, its references to its contacts with the CBST to resolve issues relating to other organizations not affiliated to the CBST, such as the registration of the ASI, when the settlement of these issues should be a matter for the authorities and the organizations concerned (meeting with Government representatives on 9 January 2019).

⁶¹⁴ Constitutional Chamber of the Supreme Court of Justice, Ruling No. 0170, issued on 4 July 2019.

⁶¹⁵ The MPPPST indicated that 52 per cent of the trade unions in the country were considered to be "active" and 48 per cent "inactive", but did not explain to the Commission the meaning of these terms. Even taking as a reference the organizations that the Government considers to be "active", the figure is still worryingly low, at 12 per cent.

of section 388 of the LOTTT.⁶¹⁶ Testimony both from the complainants and particularly from many workers' organizations confirmed the fears that the CEACR had been expressing concerning the incompatibility with the guarantees set out in Convention No. 87 of these provisions of the LOTTT on registration, and particularly section 388. The testimony emphasized that compliance with these requirements, in addition to being onerous, could facilitate the identification of trade unionists who are not close to the Government and lead to reprisals against them. They also emphasized that they discourage membership by workers, out of a fear of providing all their personal data in a context of the proliferation of denunciations with a view to the repression of independent trade unionism. The Commission is bound to reiterate earlier comments by the ILO supervisory bodies concerning the need to amend these provisions and to recall that other systems can be established for the objective measurement of the representativeness of workers' and employers' organizations without it being necessary to provide the list of trade union members to the authorities.⁶¹⁷

474. The Commission observes that, in light of these deficiencies in the determination of representativeness, the Credentials Committees of the ILO have since 2007 repeatedly recommended the Government to have recourse to ILO technical assistance with a view to making progress in the establishment of objective and verifiable criteria. The Commission notes that the Government affirms that it has taken into account the recommendations of the Credentials Committees and has not refused to receive ILO assistance. However, the Commission regrets to note that the Government has never availed itself of such assistance, despite successive Credentials Committees insisting on the need to do so and repeatedly regretting that the Government has not given effect to their recommendations.⁶¹⁸ The Government claims that the Credentials Committees have urged it to ensure the "broadest possible" delegations. In reality, this is more in line with the position that the Government attempted to set out in the past to Credentials Committees to justify the inclusion of organizations considered to be close to it. The Credentials Committees did not accept these claims and instead have reminded the Government that, while the objective of facilitating broad agreement may be laudable, the inclusion of members (technical advisers) in the Employers' or Workers' delegations could not be imposed against the will of their most representative organizations.⁶¹⁹ The Government's obligation consists, as recalled by the Credentials Committees, of actively seeking an agreement and, failing an agreement, of

⁶¹⁶ Section 388 of the LOTTT establishes the requirement for unions to provide to the National Trade Union Register detailed and updated information on membership: name and family names, identity card, nationality, age, occupation or job, and domicile of members.

⁶¹⁷ The Credentials Committee at the 108th Session of the Conference (June 2019) also made reference to the previous comments of the CEACR on this subject. The 2014 high-level tripartite mission also reminded the Government that it could have recourse to ILO technical assistance for the adoption of criteria and procedures to measure the representativeness of workers' and employers' organizations.

⁶¹⁸ The same occurred with the Credentials Committee of the American Regional Meeting held in Panama in 2018, in relation to which the Government wrongly insisted during the hearings that it had found to be without basis the objections made to the designation of the Venezuelan delegation. The Commission is bound to recall in this regard that the Credentials Committee referred to above examined two objections concerning the nomination of employers and workers by the Bolivarian Republic of Venezuela and that in each case it once again urged the Government to request ILO technical assistance to make progress in the establishment of objective and verifiable criteria of representativeness. Similarly, the Credentials Committee of the 108th Session of the International Labour Conference (June 2019) decided to renew the monitoring measures (see section 2.3.1.5).

⁶¹⁹ In this regard, the complainants affirmed that it was not until the 2019 Conference that the Government respected the decision of FEDECAMARAS not to include FEDEINDUSTRIA in the Employers' delegation.

determining the most representative organization based on objective, verifiable and pre-established criteria.⁶²⁰

Other forms of interference

475. The Commission also observes that the Government's statements to the ILO that it is committed to respecting the freedom of association of employers and workers are in contrast with the statements by its highest authorities challenging the value of trade union independence for the achievement of the Government's socialist programme, and the legitimacy of the historical workers' and employers' organizations. In this regard, the Commission is bound to recall that Government action, directly or through the powers exercised by members of the Government party, which interferes with the right to organize is not compatible with the independence of the trade union movement guaranteed by Convention No. 87. Workers and employers have the right, without interference by the authorities, to determine the organizations that they wish to establish and join, to organize their activities and elect their leaders. Interference by the authorities can take various forms, as reflected in the allegations made to the Commission in the context of the complaint, from verbal harassment to favouritism for inclusion in public bodies and the development of institutional mechanisms which can limit independent employers' or trade union action.

476. In this regard, with a view to examining the interference in the life of independent organizations alleged by the complaint, including from the perspective of workers' organizations, the Commission examined allegations of obstacles to the registration of unions and their electoral processes. The Commission received numerous denunciations of the use of such mechanisms to favour organizations close to the Government and to the prejudice of independent organizations by making their operation impossible (for example, failing to register them or preventing their participation in collective bargaining through electoral "abeyance" (*la mora electoral*)). As these matters have been covered by multiple conclusions and recommendations of ILO supervisory bodies (see section 2.3.1), the Commission focused its attention on the most illustrative and recent cases that had arisen.

Trade union registration

477. The Commission focused its examination on the non-recognition of the ASI confederation as a symptomatic case of the alleged use of registration procedures to discriminate against organizations that are not close to the Government. In this regard, the Commission observes that, although the Government indicated that the application for the registration of the ASI and its subsequent clarification were of very low quality, the information and evidence provided by both the ASI and the Government show that: (i) the documentation for the initial application for registration already contained all the essential elements for the establishment of a trade union confederation in accordance with the national legislation; (ii) the delay in issuing the decision on the application was totally unjustified, as it amounted to one year and seven months, despite the many requests for information made by the ASI, both by letter and through visits;⁶²¹ (iii) the objections raised in the initial decision to deny registration reflect

⁶²⁰ Without making any reference to the need for delegations to be as broad as possible, the Credentials Committee of the Conference in 2018 indicated that: "In those situations where there are two or more representative workers' organizations, the Government is obliged to actively seek an agreement between them for the purpose of nominating the Workers' delegation. ... Failing an agreement among the most representative organizations, the Government must actively assess, based on objective and verifiable criteria, which organization (or group of organizations that have agreed on a common proposal) is the most representative."

⁶²¹ The Deputy Minister responsible for the National Trade Union Register indicated to the Commission that the delay was due to a lack of interest by the ASI, and that its representatives did

excessive administrative control equivalent to prior authorization;⁶²² (iv) less than 30 days following notification the ASI provided a written response answering all the questions required to clarify the application; (v) the Government's statement that the written clarification was of even worse quality than the initial application is contradicted by the documents received by the Commission, which show that the ASI complied with all the requirements set out in the notification requiring further information; (vi) faced with this observation, the Government later changed its explanation and indicated that the problems were confined to two objections; based on its analysis of these two objections in light of the documentation received and the applicable legislation, the Commission notes not only wording that was unclear, but also a lack of substance intended to hinder registration;⁶²³ and (vii) in conclusion, the Government's explanations that the administration was seeking solutions to make registration possible and that the authorities considered that the only obstacle was to correct these specific aspects are not borne out by the documents provided to the Commission. Moreover, the fact that the authorities responsible for the Register and the ministerial authorities failed to provide any reply or indication to the ASI, despite the numerous opportunities available to them, on the many occasions that the ASI sought information, prevented the ASI from knowing the position of the administration and from raising questions concerning and complying with any further clarifications required for its registration.

- 478.** The Commission notes with concern that the Government has neither denied the issues raised nor considered them contrary to Convention No. 87, even though they involve serious violations of the right of employers' and workers' organizations to establish organizations (in this case confederations) of their own choosing without previous authorization, and particularly: (i) the failure to provide the decision requesting clarifications for over one year and seven months, despite the reiterated visits to the authorities to seek information on the matter; (ii) the raising of objections to the application for registration that are not compatible

not come to the Registry to be informed, and indicated that it was their obligation to come in person to be notified. Nevertheless, the ASI provided detailed evidence, which was confirmed by another Government representative, of its numerous attempts to obtain information from the authorities on the situation with regard to its application. The ASI emphasized in this respect that, even after the date on which the decision had been issued, the MPPPST replied to its requests for information indicating that the application was still in the process of being reviewed. The ASI indicated that it did not seek other remedies, for example through the courts, because it considered that the process was subordinate to the executive authorities and, as admitted informally by the Government, it was a political question that depended on the President of the Republic.

⁶²² The objections sometimes lack an explicit legal basis (such as the detailed information required to convene an assembly) or appear to be intended to impede registration in violation of the right of trade unions to create federations and confederations of their own choosing (such as, among matters of detail, objecting that the assemblies did not begin at the exact time set out in the convocation, or claiming that the application did not specify the type of organization that it was intended to establish, when it was clear from all the documentation that it was a confederation).

⁶²³ With reference to the founder members, the authorities appear to have raised an objection to the failure to provide the names of all the members of six of the organizations that make up the ASI (a requirement that, under the terms of the LOTTT, does not appear to be applicable in relation to the establishment of trade union federations or confederations, and which moreover the CEACR has been challenging as not in conformity with Convention No. 87) and also to have criticized the failure to attach the documentation for the executive committee (even though the written clarification and the attached documents contain the signatures of all the members of the executive committee of the ASI). With regard to the statutes, the authorities indicate that they had not been brought into conformity, as requested by the National Register of Trade Unions, with the provisions of sections 412, 413 and 414 of the LOTTT (even though the written clarification contains an amended version of the statutes which specifically include these provisions, explicitly referring to them and recalling the need to give effect to them).

with respect for freedom of association, such as objecting to the founding assembly having begun with some delay or claiming that the type of organization that it was intended to establish was not specified, when there was no possible doubt from all of the documents submitted that the registration of a confederation was being sought; and (iii) the failure to reply to the request for clarifications, impeding the registration and leaving the ASI in a situation of ignorance, uncertainty and lack of formal recognition, as a result of which its situation was dependent on a decision by the Government. The Government indicated that it had been flexible in inviting the ASI to discuss the composition of the delegations to the International Labour Conference, but had no doubt concerning the exclusion of the ASI from the list of organizations that the frustrated high-level tripartite mission planned to meet. In that regard, the Commission is bound to emphasize that the process of registration should be a mere formality and that it should in no way be equivalent to previous authorization. The Commission considers that the obstacles raised in relation to the application for the registration of the ASI are not compatible with the guarantees set out in Convention No. 87 and constitute a serious violation of the Convention.

479. The Commission also recalls that it is not an isolated allegation. The Commission notes with concern the multiple denunciations received, with their respective evidence, of obstacles and other practices contrary to freedom of association by the National Trade Union Register, including delays, failure to send replies, the non-receipt of applications and documents, and decisions which interfere in the life of unions, such as officially ordering the removal of the Secretary-General of a union who had been dismissed⁶²⁴ (see section 4.1).⁶²⁵ The Commission also observes that, although the Government indicates that the function of the National Trade Union Register is to guarantee the exercise of freedom of association, none of the unions interviewed that are not close to the Government trusted the Register to be impartial. Most of these organizations allege, with reference to specific situations and data included in the present report, that the National Trade Union Register and its sensitivity to Government instructions constitutes one of the principal obstacles to the exercise of freedom of association in the country. It should also be recalled that the ILO supervisory bodies have commented on this problem and have requested the Government to take the necessary measures to ensure that the registration procedures are in accordance with the Convention in both law and practice. Three complaints have been made in the past to the Committee on Freedom of Association against the Government alleging, among other matters, the refusal or delays in trade union registration, in Cases Nos 2160, 2161 and 2249. The Committee on Freedom of Association regretted the delay and urged the Government to take the necessary measures for the registration of the trade unions concerned. The CEACR has also expressed

⁶²⁴ Decision of the National Trade Union Register, of 30 April 2014, requiring the SUTPGEF to restructure its executive committee by removing its Secretary-General, who had been dismissed after making statements questioning the official version of the serious oil accident in 2012. In this regard, the Commission considers that this official decision by the National Trade Union Register constitutes undue interference in the right of workers' organizations to elect their representatives in full freedom, as set out in Convention No. 87.

⁶²⁵ The representatives of the UNETE complained that the National Trade Union Register had absolute discretion and that there were hundreds of applications blocked by the Registry. In this regard, the Commission observes that the Government provided statistical data indicating a trend for a fall in the number of refusals of registration (falling from 654 in 2013 to 32 in 2018). However, it should be emphasized that these figures do not take into account the applications for which no response was obtained from the administration (such as the ASI, referred to above) and need to be compared with the number of new unions established over the same period. This comparison shows a significant prevalence of refusals of registration. Between 2013 and 2018, the total number of new unions registered was 776, compared with a total of 1,287 cases in which registration was refused.

concern at the many denunciations concerning obstacles and excessive delays in registration.⁶²⁶

Election processes

480. With reference to trade union elections, interference was alleged to prevent or limit the capacity of unions not close to the Government to take action, particularly through the application of so-called electoral “abeyance”. The provisions respecting electoral “abeyance” set out in sections 401 and 402 of the LOTTT require trade unions to hold elections every three years as a minimum (every five years for federations and confederations) and that executive committees for which the term of office has expired do not engage in, meet or represent the union in legal acts that go beyond mere administration. The unions alleged that, by blocking or delaying election procedures, or delaying their recognition, and then considering that the organizations concerned were in electoral “abeyance”, they are prevented from operating, and from participating in collective bargaining processes or calling for compliance with collective agreements. Very many witnesses emphasized that these acts of interference are undertaken with the support of the CNE and the Supreme Court of Justice which, in their view, lack any real independence in relation to the Government, and with the involvement of the National Trade Union Register, which comes under the authority of the MPPPST.⁶²⁷ The Commission observes that the Government and the CNE denied these allegations and indicated that: (i) recourse to the CNE was optional, with a view to supporting election procedures, and the unions can organize elections independently and go to the National Trade Union Register for their certification; (ii) there have been very few cases (four since 2011) in which, at the request of one of the parties, the CNE has suspended the procedure; (iii) the existing legal provisions were intended to facilitate elections and guarantee trade union democracy and the human rights of union members; and (iv) the aim was to combat past practices when apex organizations directed trade unions without holding elections.

481. However, the Commission received a large quantity of information and evidence of many specific cases that bear witness to interference in election procedures to promote trade union options close to the Government and remove the capacity of independent unions to take action. They also reveal the existence of structural problems in the provisions and procedures for trade union elections, with significant emphasis being placed on the mechanism of electoral “abeyance”, which is in violation of the rights of workers’ organizations to elect their representatives and to organize their activities and programmes of action. In this regard, it should be emphasized that:

- (i) although the Government indicated to the Commission that the intervention of the CNE was optional, that is not clear from the applicable provisions: on the contrary, as

⁶²⁶ See the CEACR observation on the application of Convention No. 87 in the year that the complaint was made (2015).

⁶²⁷ According to the reports received, interference took the forms of: (i) it being impossible in practice to hold elections without the participation of the CNE: even though the Government has been stating that the participation of the CNE is voluntary, various trade union confederations explained how its participation is necessary in practice; (ii) the imposition of a very complex and costly procedure by the CNE, with excessive requirements; (iii) challenges to electoral procedures and their partisan resolution, with decisions on appeals, with the support of the Supreme Court of Justice, coming out against unions or candidates who are not close to the Government; (iv) the failure to recognize or publish the results of elections held by organizations that are not close to the Government (such as SINTRAINCES and SUEPGEC), or unjustified and discriminatory delays in the recognition of their election procedures (for example, FETRASALUD).

indicated by many witnesses, in practice it is not conceivable for unions that are not close to the Government to hold elections without the involvement of the CNE;⁶²⁸

- (ii) the perception of the inevitability of having recourse to the CNE and its rules and procedures is confirmed by the rulings of the Supreme Court of Justice and the decisions of the Office of the Attorney-General respecting election procedures; the views expressed by these authorities on the law, as set out in various decisions, are not in accordance with the statements made by the CNE or the Government that recourse to the CNE is optional;⁶²⁹

⁶²⁸ Although the CNE indicated that all of its rules had to be interpreted as if its intervention and its procedures were optional, the Commission was bound to observe that that was not clear from a simple reading of the provisions. The “Rules to guarantee the human rights of men and women workers in trade union elections” (adopted by the CNE by Decision No. 091113-0510 and applicable to all trade union election procedures, clause 2), establish the functions of the CNE (clause 8) and, although some of these functions are set out as being limited to cases in which the union has voluntarily requested the assistance of the CNE, others are worded in general terms, without limits on their application. The latter include: (1) receiving notifications of the convocation of elections, for which the rules set out requirements, including the publication of the formal convocation by the CNE, and emphasizing that failure to comply with this formality means that the electoral procedure cannot be initiated; (2) producing the definitive electoral register and receiving and determining appeals against the electoral commission; and (3) publishing the convocation and results of the election procedures notified to it. Clause 17 of the Rules also provides that the electoral commission shall provide to the CNE one of the copies of the report setting out the totals, the outcome and the proclamation of the results when certification of the electoral procedure is requested. Similarly, although the “Rules on technical assistance and logistical support for trade union elections” (adopted by the CNE by Decision No. 120119-003) are in theory only applicable to unions that request the participation, technical advice or logistical support of the CNE, clause 13 of the “Rules to guarantee the human rights of men and women workers in trade union elections”, referred to above, requires the electoral commission to adopt an electoral project which, as a minimum, sets out the provisions contained in the “Rules on technical assistance and logistical support for trade union elections”. The latter contain detailed and complex rules, with many steps to be followed and documents to be submitted, as well as many occasions in which action is required by the authorities (the requirement for them to express “their agreement” with the electoral project, to issue the preliminary electoral register, to produce a definitive electoral register, etc.). Although during its visit the CNE emphasized to the Commission that these rules have to be interpreted such that both its intervention and its procedures are optional, a literal reading of the rules as a minimum results in confusion and may give rise to doubts as to the possibility of not having recourse to the CNE. While in certain areas, the rules limit the participation of the CNE to cases in which it has been requested on a voluntary basis, the provisions referred to above in general terms require the intervention of the CNE, and a systematic reading of the text leads to the interpretation that this intervention is applicable to all electoral procedures. That is in accordance with the understanding of many of the trade union witnesses interviewed by the Commission, who considered that the participation of the CNE in trade union elections could not be avoided. In this context, according to the representatives of the UNETE, although certain isolated provisions could make it seem that recourse to the CNE is optional, the conjunction of the different provisions set out in the rules makes it clear that it is not possible to avoid having recourse to the CNE to hold election procedures. Caracas meeting, 11 July 2019.

⁶²⁹ In contrast with the indications provided to the Commission by the Government and the CNE, the Supreme Court of Justice emphasizes, in relation to the holding of trade union elections, that they must “comply with ... the procedures set out in the rules to guarantee the human rights of men and women workers in trade union elections and the rules on technical assistance and logistical support for trade union elections, adopted by the National Electoral Council (ruling dated 15 May 2009 of the Electoral Chamber of the Supreme Court of Justice, Case No. AA70-E-2018-000056, issued at the same time that the Government and the CNE were assuring the Commission that the intervention of the CNE was optional and that the procedures envisaged in its rules on technical advice and logistical support for trade union elections were only applicable when such assistance had been requested

-
- (iii) the labour inspection services also assume the need to refer to the CNE when they require the “electoral gazette or receipt issued by the CNE to certify the validity of the executive committee of the union” as a requirement for the conclusion of collective agreements;
 - (iv) the limited cases that were cited by the Government as examples of election processes held independently do not change these findings as, in their great majority, they were election procedures in organizations considered to be close to the Government which enjoyed greater latitude from the authorities,⁶³⁰ or were procedures that were subject to denunciations for irregularities or interference by groups close to the Government;⁶³¹

voluntarily (videoconference of 23 April and hearings of 8 to 10 May 2019). Similarly, see the position of the Office of the Attorney-General, Ruling No. 107 of the Supreme Court of Justice, Electoral Chamber of 28 July 2016 (No. 107, Case No. 2015-000120, of 28 July 2016).

⁶³⁰ One of these unions (SUTISS) indicated to the Commission that it did not have recourse to the CNE as a challenge, despite considering that the law required the organization to have recourse to the CNE.

⁶³¹ In response to a request by the Commission to show that it was feasible not to have recourse to the CNE, the Government made reference on various occasions to two specific cases of trade unions that had held election procedures without requesting the assistance of the CNE: SITRAMECA (in its most recent elections in 2016) and SUTISS. Moreover, during the country visit, the Deputy Minister responsible provided a list of 15 smaller unions which had also carried out election procedures (the MPPPST also provided two forms from the National Trade Union Register to certify procedures held with the CNE and independently). In this regard:

- (1) in the case of the SITRAMECA elections, the procedure was subject to allegations of serious irregularities and abuses, denouncing control of the committee and the election procedure by a group close to the Government which was not in the majority and emphasizing that the union was able to do without the CNE because the procedure was controlled by a group close to the Government, which acted in an intimidatory manner (among other measures, in the presence of armed vehicles and State security agents) and with total impunity. Subsequently, the President of the Republic celebrated the victory of this group with a tweet. Moreover, based on the documents of the National Trade Union Register covering this election procedure, it was also noted that, when initiating the procedure, SITRAMECA notified the CNE (of the commencement of the election procedure and informing it of its intention to hold the procedure without its assistance, which is not in accordance with the statement by the representatives of the CNE to the Commission that a union could hold elections without any notification to the CNE), and the certification of the elections by the National Trade Union Register once again refers to the CNE as if it had certified the elections (although the Government claimed that it must have been an error, the persistence of the reference to the CNE coincides with the allegation of the omnipresence of the Council in trade union election procedures);
- (2) with reference to the SUTISS: although the Government indicated that the union had been led for a long time by leaders who were opposed to the Government and that elections had never been held with the CNE, the information provided by the trade union leaders concerned raise doubts about this: (i) various trade unionists indicated that it could not be considered that the leaders of the SUTISS who held elections without going through the CNE were opposed to the Government, and that they were instead in affinity with it; (ii) they emphasized that the law does indeed require elections to be held with the CNE and that the elections held by SUTISS independently were carried out “irreverently”, ignoring the law, and that the Government then tolerated them; (iii) in the most recent election, it had been necessary to accept oversight by the CNE (according to the allegations, under threat from the public enterprise of not being recognized) and that the election procedure fell through following the lodging of an appeal with the Supreme Court of Justice by three workers who were alleged to be controlled by the authorities (they were reported to be unaware of procedures for the protection of constitutional rights); (iv) that had resulted in the suspension of the election procedure, which had still not been resolved, and from that time the executive committee had not been able to function; (v) although the Government claimed to the

-
- (v) in response to questions by the Commission, the Government recognized the need to consider engaging in a campaign with a view to clarifying that the procedure of the CNE is entirely optional;
 - (vi) the inevitability of having recourse to the CNE and the interference that its participation may involve have to be viewed in relation to the onerous nature of its rules and procedures and the multiple opportunities that they offer to unduly impede and delay election procedures. The Commission noted that the level of detail and complexity of the rules applicable to trade union elections could give rise to confusion and offer numerous opportunities to block election processes;⁶³²
 - (vii) the denunciations received from unions criticizing the Government were in contrast with the absence of complaints of delays by unions that are close to the Government;⁶³³
 - (viii) in most of the specific cases of unions which denounced interference by the CNE, and in those for which the CNE was able to prove that the election process was finally certified, alarming delays occurred, of up to four years;⁶³⁴

Commission that those who were alleging interference had not gone to the courts to try and resolve the situation, it is not evident from the rulings provided by the MPPPST that there was any remedy available to the trade unionists (the latest ruling provided, of June 2015, simply ordered the reiteration of the notification of the ruling requiring suspension for the three workers who had applied for the protection of their rights); accordingly, the Government did not provide indications explaining the reasons why the procedure had not yet been concluded which in 2015 gave rise to the suspension of the election “until a final ruling is issued”;

- (3) in relation to the 15 other unions, the information provided by the Government shows that 11 of them are affiliated to the CBST or Bolivarian federations or federations indicated as parallel in the allegations received (for example, the FTUV) and that none of the four other unions are affiliated to other confederations. According to various witnesses from confederations that are not close to the Government, these 15 organizations are Bolivarian unions close to the Government, which would explain why they were able to hold their elections independently without difficulty.

⁶³² Many witnesses complained that the procedure was too onerous for many organizations and that in view of the large number of steps and requirements the rules could facilitate the lodging of appeals (not only with the CNE, but also the Supreme Court of Justice) and discretionary action by the authorities. Such discretionary action could occur when appeals were examined or in the assessment of compliance with the various stages or the requirements set out in the rules, and could easily lead to delays in the procedure through administrative inaction or delays, or demands for many corrections or requirements that are not justified from the viewpoint of guaranteeing freedom of association.

⁶³³ Although the statistical data provided by the CNE show that some unions affiliated to the CBST were affected by significant delays (of up to more than two years) in relation to procedures that were challenged, the representatives of the CBST, in contrast with other confederations, indicated to the Commission that the unions affiliated to the CBST did not encounter difficulties, such as delays, in election procedures, and emphasized that only a very small percentage of their affiliates suffered electoral “abeyance”.

⁶³⁴ In this regard, for SUEPGEC, the 2014 elections were certified in February 2019 and have still not been published in the *Electoral Gazette*; and for SINTRAINCES, certification of the elections held on 30 August 2016 was not published until 16 October 2018. The delays identified (of between two and five years) are reported to have had the prejudicial effect that the union is not operational except for internal administrative acts (due to the impossibility for a union to function in the event of being in electoral “abeyance”, as its office holders have not been renewed following the expiry of the period imposed by law). It should be emphasized in this respect that, in accordance with section 410 of the

-
- (ix) the CNE recognized that through challenges to the election process it could paralyse the capacity of a union to operate, as certification was not issued until all of the challenges had been resolved;⁶³⁵ and the statistical data provided by the CNE on the election procedures held from 2017 to 2019 shows in general that challenges to the procedures generally result in important delays in election processes;
 - (x) the CNE indicated that the recent delays in the publication of certification were due to the transition to the electronic publication of its *Gazette*, but that it was possible for unions to request certification of the election process from the CNE; however, trade union witnesses and the reports received emphasize difficulties and evasion in obtaining certification;⁶³⁶ and
 - (xi) electoral “abeyance” (*la mora electoral*) is a systemic problem: the statistics provided by the Government show that in 2018 (the most recent year for which full data is available) some 66 per cent of registered trade unions were in electoral “abeyance”.⁶³⁷

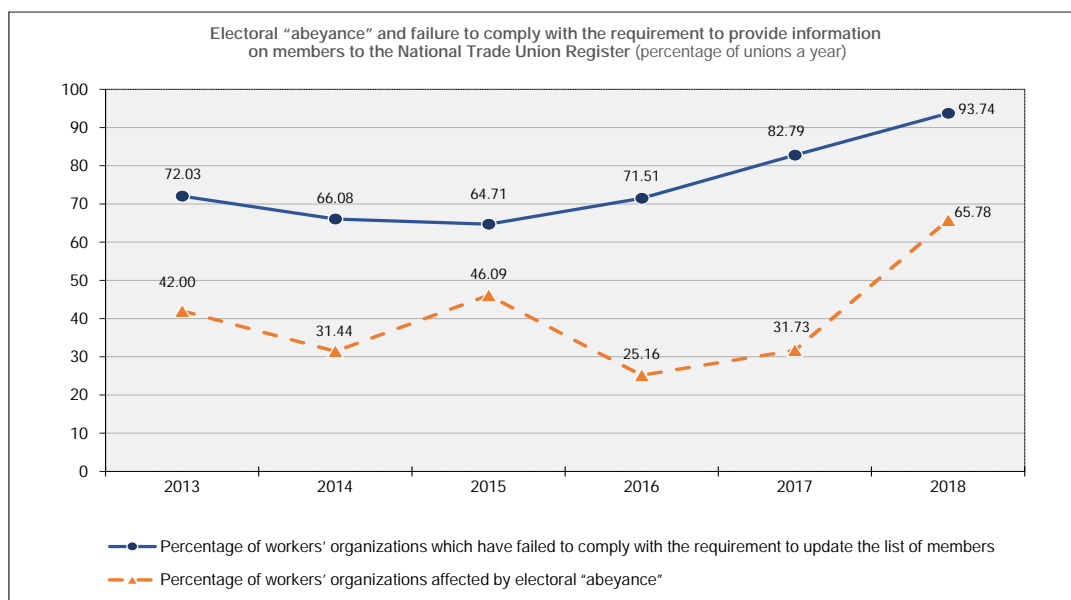
482. The following figure summarizes the quantitative impact (as a percentage of the organizations affected) of problems of electoral “abeyance”, as well as the requirements set out in the LOTTT to keep the union register up to date, based on the data provided by the Government. The figures confirm the serious extension of these forms of interference, which point to the existence of systemic obstacles to the exercise of freedom of association and raise questions concerning the explanations provided by the Government, which attribute the resulting difficulties to the lack of cooperation by unions with the applicable procedures.

LOTTT, renewal of office holders has to take place as a minimum every three years for first-level unions and every five years for federations and confederations.

⁶³⁵ Although challenges do not normally have a suspensive effect on the procedure (the CNE indicated that suspension is granted in very few cases), the election procedure was not certified until all the challenges had been resolved (which could last a long time, as various challenges could be made during the procedure) and, accordingly, a union could fall into and remain in electoral “abeyance” for a long period.

⁶³⁶ In the case of the SUEPGEC union, the Government indicated that its 2014 election process was certified in February 2019 and that, although it had still not been published in the *Electoral Gazette* five months later, it was possible for the union to go to the CNE and request the certification. The union informed the Commission that at the beginning of July 2019 (just before the Commission’s visit to the country) its representatives had gone to the CNE to request the certification of the election process and had been told that the signature of the registrars was missing, for which reason it was not provided to them.

⁶³⁷ Even though the MPPPST indicated that, with a view to reducing the problem of electoral “abeyance” and preventing prejudice to the workers, alternative collective bargaining procedures not set out in law were permitted, such as round-table meetings or union coalitions, certain organizations that are not close to the Government complained that they did not have access to these flexible options. Although the MPPPST referred by way of illustration to a coalition in the electricity sector in which, according to the MPPPST, leaders were represented who were both for and against the Government, federations in the sector that were not close to the Government complained to the Commission that, in contrast, instead of offering facilities, they were excluded from collective bargaining. Similarly, various union witnesses in the education sector complained that the authorities tolerate certain abuses to favour organizations close to the Government so that they are not affected by the electoral “abeyance”, unduly allowing three federations close to the Government affected by electoral “abeyance” to merge into a new federation which abusively took advantage of the initial “grace” period allowed for new organizations to impose themselves in collective bargaining over organizations that were not close to the Government, to which “abeyance” was strictly applied.



Source of the data: MPPPST, 2019.

483. In light of all of the above, the Commission is bound to conclude that the institutions, rules and practices referred to above interfere in trade union election and registration procedures and are in violation of freedom of association, as they are prejudicial to the independence that must be enjoyed by organizations in this regard, allow options close to the Government to be favoured and contribute to undermining the independent trade union movement and the capacity for action of both workers’ organizations and employers and their organizations in their relations with workers’ organizations. The Commission recalls that this has already been the subject of reiterated comments by the ILO supervisory bodies.⁶³⁸ Based on its own findings, the Commission notes with deep concern the operation of a complex web of measures, in law and in practice, which are in violation of the guarantees set out in Convention No. 87, and particularly the right of organizations to choose their representatives in full freedom, to organize their administration and activities and to formulate their programmes.

* * *

484. The Commission is bound to recall that, although there may be relations between employers’ or workers’ organizations and political parties, it is essential to preserve in each country the

⁶³⁸ See section 2.3.1. In particular: (i) the CFA has examined various cases relating to these issues, and has considered that the principle of electoral “abeyance” set out in the LOTT is a violation of trade union independence, as it incapacitates trade unions in which elections are pending from engaging in collective bargaining. It has urged the Government not to impose the intervention of the CNE in election procedures and to amend any legal provisions which allow the CNE to interfere in trade union elections (for example, in Case No. 2736); (ii) the high-level technical mission that visited the country in 2006 noted with concern the large number of trade unions that were in a situation of pending elections; (iii) the CEACR has emphasized the need to modify various provisions of the LOTT and the related practices, including: not allowing a non-judicial authority such as the CNE to determine appeals relating to trade union elections; eliminating in law and practice the principle that pending elections remove the capacity of trade unions to engage in collective bargaining; removing the requirement to communicate the election schedule to the CNE; and removing the requirement to publish the results of trade union elections in the *Electoral Gazette* as a condition for recognition; and (iv) the CFA emphasized the need to avoid any interference by the authorities, and particularly the CNE, and that its intervention should only be possible when so requested by the organizations concerned.

freedom and independence of trade union and employers' movements so that they can carry forward their economic and social mission, irrespective of any political changes that may occur.⁶³⁹ The development of trade unionism is affecting the Government, as illustrated, among other situations described to the Commission, by the establishment and development of the CBST, which has taken the form of a non-independent trade union model, with the confederation considered to be the most representative being intimately involved with the Government and its political programme. In this context, the authorities have favoured in various ways the proliferation and action of employers' and workers' organizations close to the Government and its party, while weakening and even removing organizations that were not close to the Government. Paradoxically, this trade union panorama, resulting from almost two decades of governments of the same political tendency, recalls particularly acutely the complaints of connivance between the political authorities and elite trade union and employers' representatives made by the leaders of those governments when engaged on their path to obtaining this same power (see section 4.1).

485. The Commission is not in possession of quantitative data allowing it to measure precisely the impact of Government interference, for example in terms of the extent to which it has affected the transformations in the representativeness of trade union confederations, or the extent to which the large growth in the number of new unions with the change of Government starting in 1999 is a reflection of the free exercise of the right to organize, as argued by the Government, or rather the creation of many parallel organizations close to the Government, as indicated by the majority of trade union confederations and supported by the accounts of many witnesses (including the accounts made by persons directly involved in the promotion of parallel organizations close to the Government). In any event, in the light of its examination (see section 4.1, recounting the numerous cases of the promotion and support for organizations close to the Government, and discrimination against organizations that are not close to it), as well as the reiterated comments of the ILO supervisory bodies over nearly two decades noting with concern this governmental interference, the Commission is bound to conclude that the changes in the Venezuelan trade union panorama were influenced by the action of the Government and its party. The attempts by the Government to favour employers' organizations close to its political programme did not have the same impact, coming up against the active resistance of the complainants, even though the capacity of FEDECAMARAS to take action in the country was undermined. In any case, and irrespective of the outcome, they amount to very serious interference, aggravated by the attacks and exclusion referred to by the allegations examined below, in the right of employers to establish and join organizations of their own choosing.

7.3.2. Interference in relations between workers' and employers' organizations

486. Throughout the procedure, the complainants alleged that, behind the rhetoric of the working class as protagonists, the Government had been attempting for years to establish institutional mechanisms to interfere in and exert State control over collective labour relations between workers and employers with a view to furthering its political agenda. The Commission focused its examination on the Workers' Production Boards (CPTs), as these new institutions were highlighted by the complainants as proof of their allegations.⁶⁴⁰ As it is not

⁶³⁹ In this regard, the Commission refers to the resolution concerning the independence of the trade union movement adopted by the International Labour Conference in 1952.

⁶⁴⁰ The reform of the LOTT introduced workers' councils (section 497 reads: "Workers' councils are expressions of the participation of the People's Power as protagonists in the social and labour process, with the aim of producing goods and services that meet the needs of the people. The forms of participation of men and women workers in the management, organization and operation of the

within its mandate to analyse the Government's economic policy or control over production, the Commission limited its examination to the impact these new institutions might have on the exercise of freedom of association as set out in Convention No. 87, in particular any allegations of Government interference in collective relations between employers and workers through their freely chosen organizations.

487. The Commission observes that the establishment of Workers' Production Boards is the subject of conflicting accounts. While the Government and its supporters in the CBST state that their function is to contribute to production and its control by workers and argue that their operation should have no impact on freedom of association, the complainants and other critical social partners consider that Workers' Production Boards represent a threat to trade unions and their free relations with employers and their organizations, although for the time being the establishment of these and similar institutions has not been successful, in part owing to resistance from some employers and in places of work with consolidated independent trade union organizations. The Commission also notes that, in the absence of the immediate implementation in all the workplaces envisaged in its regulations, the presence of Workers' Production Boards appears to be still in its infancy, with a short history, and focused on certain priority sectors (food, hygiene, etc.). Under these circumstances, the Commission was unable to assess the extent of the possible practical implications (it should be recalled that, in response to repeated requests for information on their impact, the Government referred to production improvements in three companies). However, it is clear from the Commission's findings that the operation of these new institutions could significantly undermine the exercise of freedom of association.

488. The Commission notes that the current regulations of 2018 (LCCPT) sought to address some of the concerns raised by the CEACR (and the CFA) in relation to the introduction and the initial 2016 regulations respecting the Workers' Production Boards⁶⁴¹ by removing from their composition direct representatives of public authorities and including a provision respecting their relations with trade unions. Section 17 of the LCCPT provides that Workers' Production Boards are not by their nature trade unions and in the exercise of their functions

workers' councils shall be established in specific legislation.""). Although there is some confusion as to whether the Workers' Production Boards represent the implementation of this legislative mandate (as is the interpretation of many of those interviewed) or another concept (as seems to be inferred from section 17 of the LCCPT), both share the notion of worker participation in the productive process. The complainants also denounced the Feminist Labour Brigades and the General Staff of the Working Class as interference mechanisms, on the operation of which the Commission obtained very little information.

⁶⁴¹ The CEACR had expressed serious concerns about the possible negative impact on the exercise of freedom of association of the initial regulation of the Workers' Production Boards through Decree No. 2535 of 8 November 2016. In its 2017 observation on the application of Convention No. 87 the CEACR stated that: "While noting the Government's indications that the purposes of Workers' Production Boards would differ from those of trade unions, the Committee considers that both the composition of these new bodies that includes the participation of representatives of the public authorities and the wide definition of their purposes may undermine the right of workers to establish organizations of their own choosing (Article 2 of the Convention), and may significantly interfere with the right of these organizations to organize their activities and to formulate their programmes in full freedom and may ultimately lead to independent trade unions being replaced by these new bodies. Similarly, the Committee considers that the creation of Workers' Production Boards is bound to affect the development of collective industrial relations between employers' and workers' organizations in accordance with the various ILO Conventions on freedom of association and collective bargaining ratified by the Bolivarian Republic of Venezuela." The CEACR therefore requested the Government "to take all the necessary measures, as a matter of urgency, to eliminate, in both law and practice, the imposition of structures for the organization of workers that include a participation of representatives of the public authorities such as Workers' Production Boards." The CFA expressed similar concerns in the context of Case No. 2254.

shall not carry out trade union activities, nor impede or interfere in the exercise of the right to freedom of association and collective bargaining. However, the Commission observes that this same provision emphasizes the cooperation and support of trade unions and other worker organizations for Workers' Production Boards,⁶⁴² and a joint reading of the other provisions does not dispel the concerns raised by the supervisory bodies regarding the possible negative impact of Workers' Production Boards on the liberty to exercise freedom of association, particularly taking into consideration: (i) the mandatory nature of the Boards (implementation in all work units – section 8) and their composition, which includes a member of the militia; (ii) the appointment of the MPPPST as the body with responsibility for the Boards (section 6), which also controls their elections through an assembly convened and attended by one of its representatives (section 9); (iii) their wide remit and functions, which overlap with trade union activities (section 12) by including not only the functions of guaranteeing the supply of products and services – monitoring and supervision, reporting boycotts, etc. – but also of promoting and encouraging cooperation between workers within the work unit, and with other work units, and the general function of contributing to the socialist model (section 4); along with (iv) the significant powers granted to members of the Workers' Production Boards, including access to competent bodies to report any activity that brings to a halt or affects the production process, free access to places of work and confidential communication with workers in order to obtain information, access to data to be provided by the employer, compulsory paid leave and privileges (section 16).

489. The Commission also observes that, while according to official Government discourse Workers' Production Boards are classified as bodies for the workers' participation as protagonists, both the law and emerging practice show their implementation to be part of the web of state and civil-military control over collective labour relations developed by the Government in order to further its political agenda. On the one hand, Workers' Production Boards constitute a mandatory form of worker organization with direct Government control through the role of the MPPPST as the body responsible for their establishment and composition, which also receives information. In this respect, the Commission received reports of arbitrariness and an absence of safeguards in the nomination procedures, the lack of clarity and regulation of which contrast with the highly regulated and bureaucratized nature of the procedures imposed by the authorities on trade union elections, justified by the Government as part of an approach based on guarantees. Likewise, there were reported cases of the appearance of a representative of the MPPPST in the workplace directly informing who the members were or demanding an election be held without a voting list. On the other hand, Workers' Production Boards also involve civil-military control in the form of: (i) the mandatory presence of a member of the militia, with the potential to intimidate the employers' and workers' organizations concerned; as is the case if a Workers' Production Board considers that legitimate activities under Convention No. 87 are jeopardizing productive activities or are incompatible with the achievement of the socialist agenda, to which the Boards must contribute under the law; and (ii) the leading role assumed by the CBST in both the establishment of the Boards and their operation. The CBST affirms that it is assuming functions not provided for by the LCCPT, such as organizing the establishment of Workers' Production Boards, coordinating their operations and centralizing the receipt of their reports of production anomalies. This involves the CBST exercising the supervisory functions of a quasi-public authority in work centres, which could also unduly give it, through its member organizations, a position of power over other trade unions and in its relations with employers. Similarly, this leading role of the CBST in the activities of

⁶⁴² In the same vein, the LOTT calls on unions to collaborate with and support workers' councils, imposing on the former (under the pretext of complementarity) functions linked to the Government's political model, rather than respecting their freedom to act on behalf of their members. Section 498 of the LOTT establishes that: "Workers' councils and trade union organizations, as manifestations of the organized working class, shall develop initiatives of support, coordination, complementarity and solidarity in the social and labour process, aimed at strengthening their consciousness and unity".

Workers' Production Boards could challenge the claim by the Government and the CBST to the ILO that there is no overlap between the action of the trade unions and Workers' Production Boards. In contrast, the possibility of such overlap has been reported by the majority of actors, including organizations that are not critical of the Government, such as FEDEINDUSTRIA; as well as a blurring of the distinction between the actions of the Government authorities and those of the CBST, which is close to the Government.

490. Lastly, despite the limited implementation, the Commission's findings suggest that there is a possibility of competition or conflict between the mandate of the Workers' Production Boards and trade union activity. Taking into account that the Public Authority and the civil-military authorities support the Workers' Production Boards in achieving their objectives, this possibility of overlap in the respective spheres of action poses a tangible threat to the enjoyment by independent workers' and employers' organizations of the guarantees provided for in Convention No. 87. On the one hand, there is potential for conflict in the attainment of these institutions' objectives (for the unions, representing the interests of their members; for Workers' Production Boards, not only protecting production, but also "promoting workers' cooperation" or "contributing to the socialist model"), as well as the fears highlighted in this respect by the complainants and various trade union confederations, with specific allegations that demonstrate Government monitoring of and discretion over the composition of Workers' Production Boards, or attempts of the Boards to occupy the trade union space. On the other hand, the Commission observes that the CBST itself, aware of the emerging practice regarding its promotion, organization and coordination role for Workers' Production Boards, although insisting that there should be no conflict between its functions, did not rule out conflict between Workers' Production Boards and trade unions. The CBST clarified that, in such cases, it would take action to encourage dialogue and recognized that, regarding possible production stoppages resulting from a strike (an area of trade union activity in relation to which several unions expressed fears of interference), Workers' Production Boards could play the role of ensuring that stoppage protocols were followed and the earliest possible resumption of work. In this regard, it should be noted that trade unions not close to the Government have been complaining that strike regulations impede the exercise of the right to strike in practice. Under these conditions, and according to the CBST's statement to the Commission, the coexistence of both institutions and the remit attributed to them can only be understood in the context of the Government's political programme. Under the Government's model, both institutions are called upon to contribute to the Government's socialist political project, in particular (as enshrined in the Act on the National Plan) of the control of production by People's Power institutions (including Workers' Production Boards). In the transition period towards this model, trade unions would be called upon to cooperate with Workers' Production Boards⁶⁴³ – a trade union function that is consistent with the public functions that the Government has been insisting on attributing to trade unions (and employers' organizations), despite criticism from the ILO supervisory bodies.⁶⁴⁴ Lastly, the Commission observes that, during its visit to the country,

⁶⁴³ This notion of cooperation is present both in the LCCPT and in section 489 of the LOTT in relation to workers' councils – another attempt to establish control over production by the People's Power.

⁶⁴⁴ Sections 365, 367 and 368 of the LOTT regarding both trade unions and employers' organizations. With respect to the supervisory bodies' criticisms of the Government's attempts to use legislation to distort the role of trade unions by attributing to them public functions such as the protection, defence and development of the interests of the whole population, as well as national independence and sovereignty, see Part 2.3.1 of the LOTT.

it received complaints of the action of Workers' Production Boards undermining the independent action of trade unions.⁶⁴⁵

491. In the light of the above, the Commission is bound to conclude that the implementation and operation of Workers' Production Boards, under the conditions described and the control of the Government and the trade union confederation close to it, pose a serious threat to the exercise of freedom of association, in particular the right of workers and employers to establish and join organizations of their own choosing, and the right of such organizations to organize their administration and activities and to formulate their programmes without any interference in the relations between employers and trade unions. Under the Government's model of attributing public functions to trade unions (and employers' organizations) in pursuit of the Government's political project, the establishment of institutions such as Workers' Production Boards poses the threat of the progressive erosion, distortion or even disappearance of the function of independently promoting and defending the interests of their members, enshrined in Convention No. 87 for workers' and employers' organizations.

492. The Commission adds that it did not enter into the examination of additional allegations of other forms of interference in the relations between employers and workers and anti-union practices, because they went beyond the purpose of the complaint. Several of these allegations have been dealt with by the ILO supervisory bodies,⁶⁴⁶ which have emphasized their concern about interference with and violations of the exercise of freedom of association.

* * *

493. The Commission's investigations have uncovered the existence of a complex institutional and informal web of interference in the freedom of association of employers' and workers' organizations in the country. This network of institutions and practices relies on a variety of elements outlined in the report (legal, political, institutional, social, etc.), some of which reflect systemic problems in the functioning of the rule of law in the country, the proper functioning of which is essential for the observance of the Conventions that are the subject of the complaint.⁶⁴⁷ As a result, the independent functioning of employers' and workers'

⁶⁴⁵ In this regard, it was alleged that in a State-owned company in the automobile sector, the Workers' Production Board wanted to abolish the operation of the union. A trade unionist objected, and was subsequently dismissed. Meeting in Caracas, 11 July 2019.

⁶⁴⁶ An example of how these issues affect both social partners is provided by Cases Nos 3178 (employers) and 3172 (workers) concerning interference in collective bargaining (including strike action) in the Polar industrial group (see chapter 2).

⁶⁴⁷ In particular, the information compiled by the Commission raises important questions about independence in relation to executive authority and the judiciary, especially the Supreme Court of Justice, as well as other branches and bodies of the State (including the Public Prosecutor's Office and the CNE). The Commission observes that this issue has been repeatedly highlighted in the reports of the Office of the United Nations High Commissioner for Human Rights (OHCHR). For example, in its 2018 report, the Office recommended the Government to "refrain from interfering in the independence of the judiciary" and "take measures to restore the independence of the justice system" (see Office of the United Nations High Commissioner for Human Rights: *Human rights violations in the Bolivarian Republic of Venezuela: A downward spiral with no end in sight*, June 2018, p. 54). Likewise, the Report of the United Nations High Commissioner for Human Rights on the situation of human rights in the Bolivarian Republic of Venezuela of 4 July 2019 concludes that, for over a decade, the Bolivarian Republic of Venezuela "has adopted and implemented a series of laws, policies and practices, which have restricted the democratic space, weakened public institutions, and affected the independence of the judiciary" (para. 76), and calls on the Government to "take effective measures to

organizations, their ability to defend the interests of their members and the independence of collective relations between employers and workers have been undermined. In the light of the foregoing conclusions, the Commission considers that the independence of employers' and workers' organizations has been violated and that this has seriously undermined the rights enshrined in Convention No. 87, in particular the right of employers and workers to establish and join organizations of their own choosing, the right of those organizations to elect their representatives in full freedom, to organize their administration and activities and to formulate their programmes.

494. In conclusion, the Commission condemns the mechanisms and practices that make up the reported web of measures and which involve serious violations of the Conventions covered by the complaint in the form of acts of violence, including murders, as well as impunity or lack of clarification of such acts; persecution and multiple forms of harassment of employers and trade unionists; practices of favouritism or promotion of parallel organizations and of discrimination against, replacement of and obstacles to the functioning of organizations that are not close to the Government; and the absence of tripartite consultation and exclusion from social dialogue.

restore the independence of the justice system and ensure the impartiality of the Attorney-General's Office and the Ombudsman" (para. 81). The issue of the independence of the judiciary has also been examined by the Inter-American Court of Human Rights (IACHR), which found that some of the norms and practices associated with the process of restructuring the judiciary, ongoing since April 1999, have had a very serious effect on the independence of the judiciary in the country (see IACHR case *Reverón Trujillo v. Venezuela*, 30 June 2009).

Chapter 8. Recommendations: Respect for freedom of association as a basis for tripartite dialogue with a view to national reconciliation, sustainable economic development and social justice

495. In accordance with the provisions of article 28 of the Constitution, the Commission is presenting its recommendations on the steps which should be taken in light of its conclusions and the time within which they should be taken. With a view to their implementation, the Commission is bound to emphasize the need to ensure the essential conditions and basic standards for effective social dialogue with full guarantees and genuine impact. This includes: the absence of any form of violence, aggression, harassment or intimidation; respect for the independence and autonomy of employers' and workers' organizations; recognition of the representative partners; mutual respect, including in the tone of the debate; the agreed determination of forms and timelines that allow for genuine and constructive participation and discussion; good faith and confidence building; and a genuine commitment to honour the agreements concluded.

496. The following recommendations call for action to address the multiple elements of the web of measures described in the conclusions with a view to ensuring full respect for the freedom of association of employers and workers, including the essential underlying conditions, such as civil liberties, and other basic standards for social dialogue and tripartite consultation, in accordance with the Conventions covered in the complaint. The application of these recommendations cannot overlook the economic, political and social factors that shape the national labour relations context, such as the historic trends of clientelism and the predominance of the Government in tripartite relations, which have already been raised in previous ILO reports. While the responsibility for complying with international obligations lies with the State, as represented by the Government, many national actors are concerned. The recommendations are intended to lay the foundation for dialogue that can be a catalyst for the participation of all the tripartite constituents. In making its recommendations, the Commission urges the Government to translate into specific action the commitment that it has repeatedly made to compliance with the Conventions covered by the complaint and to social dialogue in general.

497. With regard to the time within which the recommendations set out below should be given effect, having observed with the deepest concern the absence of effect given to the previous recommendations of the ILO supervisory bodies on the issues raised, as well as the gravity of the current situation, the Commission considers that the competent authorities must give effect to these recommendations without further delay and complete their implementation by 1 September 2020 at the latest. The Commission urges the Government to avail itself of ILO technical assistance in relation to the implementation of these recommendations:

(1) Deeply regretting the persistent and serious harassment of the representative action of FEDECAMARAS and its members, as well as the trade union action of workers' organizations that are not close to the Government, the Commission recommends the Government to take the necessary measures to ensure the existence of a climate free from violence, threats, persecution, stigmatization, intimidation or any other form of aggression, in which the social partners are able to exercise their legitimate activities, including participation in social dialogue with full guarantees. In particular, the Commission recommends:

(i) the immediate cessation of all acts of violence, threats, persecution, stigmatization, intimidation or other forms of aggression against persons or organizations in relation to the exercise of legitimate employers' or trade union

activities, and the adoption of measures to ensure that such acts do not recur in future;

- (ii) cessation of the use of judicial proceedings and preventive and non-custodial measures, including the subjection of civilians to military jurisdiction, for the purpose of undermining freedom of association;*
 - (iii) the immediate release of any employer or trade unionist who is imprisoned in relation to the exercise of the legitimate activities of their organizations, as is the case of Rubén González and Rodney Álvarez;*
 - (iv) the independent investigation without delay of all allegations of violence, threats, persecution, stigmatization, intimidation and any other forms of aggression that have not been duly elucidated, with a view to clarifying responsibilities and identifying the perpetrators and instigators, while ensuring the adoption of appropriate protection, penalization and compensation measures;*
 - (v) the adoption of the necessary measures to ensure the rule of law, and particularly the independence from the executive authorities of the other branches of State authority; and*
 - (vi) the organization of training programmes with the ILO to promote freedom of association, tripartite consultation and social dialogue in general, including on full respect for its essential conditions and basic rules, in accordance with international labour standards. These programmes should respond to the specific needs of the various actors and be targeted in particular at public authorities and officials, as well as workers' and employers' organizations.*
- (2) Recalling that freedom of association presupposes the independence of the trade union and employers' movements and that dependence on political parties and the State have been recurrent problems in the country, exacerbated in recent years, the Commission recommends the adoption of the necessary measures to ensure full respect for the independence of employers' and workers' organizations, particularly in relation to the Government and political parties; and to suppress any interference and favouritism by State authorities. The Commission also encourages the social partners to take any measures at their disposal to preserve the independence of their organizations in defence of their members' interests. The Commission therefore specifically recommends, in consultation with the representative organizations:*
- (i) the adoption of the necessary measures to ensure in law and practice that registration is a mere administrative formality and that in no event can it imply previous authorization, and to proceed to the immediate registration of the ASI confederation;*
 - (ii) the elimination of "electoral abeyance" and the reform of the rules and procedures governing trade union elections, so that the intervention of the CNE is really optional, does not constitute a mechanism for interference in the life of organizations, the pre-eminence of trade union independence is guaranteed in election processes and delays are avoided in the exercise of the rights and activities of employers' and workers' organizations;*
 - (iii) the elimination of any other use of institutional machinery or types of action that interferes in the independence of employers' and workers' organizations and their mutual relations. In particular, the Commission recommends the adoption of any necessary measures to eliminate the imposition of control*

institutions or mechanisms, such as Workers' Production Boards, which may in law or in practice restrict the exercise of freedom of association;

- (iv) the establishment, with ILO assistance, of criteria that are objective, verifiable and fully in accordance with freedom of association to determine the representativeness of both employers' and workers' organizations; and*
 - (v) in general, the elimination in law and practice of any provisions or institutions that are incompatible with freedom of association, including the requirement to provide detailed information on members, taking into account the conclusions of the Commission and the comments of the ILO supervisory bodies.*
- (3) The Commission recommends the adoption of the necessary measures to ensure due and effective compliance with the consultation requirements set out in Conventions Nos 26 and 144, and the ending of the exclusion from social dialogue and consultation of FEDECAMARAS and trade union organizations that are not close to the Government. In particular, the Commission recommends, through tripartite dialogue with the representative organizations of employers and workers:*
- (i) the establishment of effective tripartite consultation procedures. In light of the serious deficiencies in social dialogue in the country, taking into consideration the recognition by the Government itself of the need to create mechanisms for social dialogue, the Commission advises the establishment in the very near future of bodies or other institutionalized procedures for social dialogue to facilitate compliance with the obligations set out in the Conventions covered by the complaint, in relation to both the fixing of the minimum wage and consultations to promote the application of international labour standards; and*
 - (ii) the institutionalization of dialogue and consultation covering the subjects envisaged in all ratified ILO Conventions or relating to their application. In this regard, the Commission recommends the submission to tripartite consultation of the revision of the laws and standards that give effect to Conventions, such as the Decree with the rank, power and force of the Basic Labour Act (LOTTT), which raise problems of compatibility with Conventions in light of the conclusions of the Commission and the comments of the ILO supervisory bodies.*
- (4) The Commission recommends the creation and convocation in the very near future of the following dialogue round-tables in support of the application of its recommendations: (i) a round-table for tripartite dialogue which includes all representative organizations; (ii) a round-table for dialogue between the authorities concerned and FEDECAMARAS on questions relating to that organization, such as land seizure; and (iii) another round-table for representative workers' organizations to address subjects that are of specific concern to them. The mandate of these ad hoc round-tables would be to facilitate and follow up the implementation of the present recommendations. Prior to the session of the ILO Governing Body in March 2020, the round-tables should have been established and have a schedule of meetings and an independent chair who enjoys the confidence of the tripartite constituents in the country, as well as, at the request of any of the constituents, the presence and assistance of the ILO. In light of the gravity of the issues raised, the Commission considers that the situation and the progress achieved on these recommendations should be the subject of active supervision by the ILO supervisory bodies concerned. In particular, the Government must submit to the CEACR the corresponding reports on the application of the Conventions covered by the complaint for examination at its session in November–December 2020.*

Concluding observations

498. It is not for the Commission to examine all the factors that have led to the current economic and political situation, but it is bound to observe that the country is today facing a very serious crisis. It also observes that for almost 20 years the Government has been carrying out its political programme without ensuring respect for freedom of association, the independence of employers' and workers' organizations, social dialogue and tripartite consultation. The Commission is bound to recall in the centenary year of the ILO two of the Organization's founding principles: (i) social dialogue, within the meaning of "the collaboration of workers and employers in the preparation and application of social and economic measures", which the ILO has the duty to further in accordance with its Constitution, embodies the methodology necessary to take steps towards the achievement of progress and social justice; and (ii) for social dialogue to be able to contribute to the achievement of such progress, it is essential to ensure full respect for freedom of association and collective bargaining in law and practice, as well as the existence of free and independent employers' and workers' organizations that can undertake their activities without interference (paragraphs I(b) and III(e) of the Declaration of Philadelphia). Social dialogue, and tripartite consultation as one of its expressions, is not dependent on any specific political tendency, nor any single economic model: its success has been noted in the most diverse national contexts, as shown by the experience of the ILO over its 100 years of existence. It is a methodology that is fully adaptable to labour, social, economic and political transformations, and is fundamental to the achievement of lasting progress without exclusion. Moreover, and particularly in the climate of polarization that has prevailed in the country in recent years, the achievement of effective dialogue between tripartite constituents with conflicting positions requires full respect for the rules of the game deriving from international labour standards, including the Conventions covered by the complaint. On this basis, in accordance with the recommendations outlined above, social dialogue serves as a tool both to address the transformations in the world of work and the needs of sustainable economic development, and to contribute to democracy, national reconciliation and social justice for lasting peace and prosperity. The ILO remains at the disposal of the tripartite constituents in the country to facilitate and accompany this process.

Geneva, 17 September 2019

(Signed) Manuel Herrera Carbuccia
(President)

María Emilia Casas Baamonde

Santiago Pérez del Castillo

The members of the Commission wish to thank the members of the secretariat, Mr Jordi Agustí-Panareda, Ms Carola Sajem and Ms Johanna Ruefli, for the assistance they have provided throughout its work. We wish, in particular, to express our appreciation of their extensive research, valuable insights and administrative, organizational and secretarial support. The Commission also wishes to offer special thanks for the valuable support and contributions of the Director of the International Standards Department, Ms Corinne Vargha. It also expresses its appreciation for the support provided by Ms Karen Curtis, Chief of the Freedom of Association Branch (LIBSYND), and Mr Horacio Guido, Chief of the Application of Standards Branch (APPL); as well as that of the security coordinator, Mr Jean-Louis Domínguez, during the country visit.

M.H.C.

M.E.C.B.

S.P.d C.

Appendix I

Provisions of the Constitution of the International Labour Organisation with respect to complaints concerning failure to observe ratified Conventions

Article 26

1. Any of the Members shall have the right to file a complaint with the International Labour Office if it is not satisfied that any other Member is securing the effective observance of any Convention which both have ratified in accordance with the foregoing articles.

2. The Governing Body may, if it thinks fit, before referring such a complaint to a Commission of Inquiry, as hereinafter provided for, communicate with the government in question in the manner described in article 24.

3. If the Governing Body does not think it necessary to communicate the complaint to the government in question, or if, when it has made such communication, no statement in reply has been received within a reasonable time which the Governing Body considers to be satisfactory, the Governing Body may appoint a Commission of Inquiry to consider the complaint and to report thereon.

4. The Governing Body may adopt the same procedure either of its own motion or on receipt of a complaint from a delegate to the Conference.

5. When any matter arising out of article 25 or 26 is being considered by the Governing Body, the government in question shall, if not already represented thereon, be entitled to send a representative to take part in the proceedings of the Governing Body while the matter is under consideration. Adequate notice of the date on which the matter will be considered shall be given to the government in question.

Article 27

1. The Members agree that, in the event of the reference of a complaint to a Commission of Inquiry under article 26, they will each, whether directly concerned in the complaint or not, place at the disposal of the Commission all the information in their possession which bears upon the subject-matter of the complaint.

Article 28

1. When the Commission of Inquiry has fully considered the complaint, it shall prepare a report embodying its findings on all questions of fact relevant to determining the issue between the parties and containing such recommendations as it may think proper as to the steps which should be taken to meet the complaint and the time within which they should be taken.

Article 29

1. The Director-General of the International Labour Office shall communicate the report of the Commission of Inquiry to the Governing Body and to each of the governments concerned in the complaint, and shall cause it to be published.

2. Each of these governments shall within three months inform the Director-General of the International Labour Office whether or not it accepts the recommendations contained in the report of the Commission; and if not, whether it proposes to refer the complaint to the International Court of Justice.

...

Article 31

1. The decision of the International Court of Justice in regard to a complaint or matter which has been referred to it in pursuance of article 29 shall be final.

Article 32

1. The International Court of Justice may affirm, vary or reverse any of the findings or recommendations of the Commission of Inquiry, if any.

Article 33

1. In the event of any Member failing to carry out within the time specified the recommendations, if any, contained in the report of the Commission of Inquiry, or in the decision of the International Court of Justice, as the case may be, the Governing Body may recommend to the Conference such action as it may deem wise and expedient to secure compliance therewith.

Article 34

1. The defaulting government may at any time inform the Governing Body that it has taken the steps necessary to comply with the recommendations of the Commission of Inquiry or with those in the decision of the International Court of Justice, as the case may be, and may request it to constitute a Commission of Inquiry to verify its contention. In this case the provisions of articles 27, 28, 29, 31 and 32 shall apply, and if the report of the Commission of Inquiry or the decision of the International Court of Justice is in favour of the defaulting government, the Governing Body shall forthwith recommend the discontinuance of any action taken in pursuance of article 33.

Appendix II

Substantive provisions 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)

Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) *(ratification: 1944)*

Article 1

1. Each Member of the International Labour Organisation which ratifies this Convention undertakes to create or maintain machinery whereby minimum rates of wages can be fixed for workers employed in certain of the trades or parts of trades (and in particular in home working trades) in which no arrangements exist for the effective regulation of wages by collective agreement or otherwise and wages are exceptionally low.

2. For the purpose of this Convention, the term “trades” includes manufacture and commerce.

Article 2

Each Member which ratifies this Convention shall be free to decide, after consultation with the organisations, if any, of workers and employers in the trade or part of trade concerned, in which trades or parts of trades, and in particular in which home working trades or parts of such trades, the minimum wage-fixing machinery referred to in Article 1 shall be applied.

Article 3

1. 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:

2. Provided that –

- (1) before the machinery is applied in a trade or part of trade, representatives of the employers and workers concerned, including representatives of their respective organisations, if any, shall be consulted as well as any other persons, being specially qualified for the purpose by their trade or functions, whom the competent authority deems it expedient to consult;
- (2) the employers and workers concerned shall be associated in the operation of the machinery, in such manner and to such extent, but in any case in equal numbers and on equal terms, as may be determined by national laws or regulations;
- (3) minimum rates of wages which have been fixed shall be binding on the employers and workers concerned so as not to be subject to abatement by them by individual agreement, nor, except with general or particular authorisation of the competent authority, by collective agreement.

Article 4

1. Each Member which ratifies this Convention shall take the necessary measures, by way of a system of supervision and sanctions, to ensure that the employers and workers concerned are informed of the minimum rates of wages in force and that wages are not paid at less than these rates in cases where they are applicable.

2. A worker to whom the minimum rates are applicable and who has been paid wages at less than these rates shall be entitled to recover, by judicial or other legalised proceedings, the amount by which he has been underpaid, subject to such limitation of time as may be determined by national laws or regulations.

Article 5

Each Member which ratifies this Convention shall communicate annually to the International Labour Office a general statement giving a list of the trades or parts of trades in which the minimum wage-fixing machinery has been applied, indicating the methods as well as the results of the application of the machinery and, in summary form, the approximate numbers of workers covered, the minimum rates of wages fixed, and the more important of the other conditions, if any, established relevant to the minimum rates.

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
(ratification: 1982)

Article 2

Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

Article 3

1. Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.

2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

Article 4

Workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority.

Article 5

Workers' and employers' organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers.

Article 6

The provisions of Articles 2, 3 and 4 hereof apply to federations and confederations of workers' and employers' organisations.

Article 7

The acquisition of legal personality by workers' and employers' organisations, federations and confederations shall not be made subject to conditions of such a character as to restrict the application of the provisions of Articles 2, 3 and 4 hereof.

Article 8

1. In exercising the rights provided for in this Convention workers and employers and their respective organisations, like other persons or organised collectivities, shall respect the law of the land.

2. The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention.

Article 9

1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

2. In accordance with the principle set forth in paragraph 8 of article 19 of the Constitution of the International Labour Organisation the ratification of this Convention by any Member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention.

Article 10

In this Convention the term "organisation" means any organisation of workers or of employers for furthering and defending the interests of workers or of employers.

Article 11

Each Member of the International Labour Organisation for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise.

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)
(ratification: 1983)

Article 1

In this Convention the term "representative organisations" means the most representative organisations of employers and workers enjoying the right of freedom of association.

Article 2

1. Each Member of the International Labour Organisation which ratifies this Convention undertakes to operate procedures which ensure effective consultations, with respect to the matters concerning the activities of the International Labour Organisation set out in Article 5, paragraph 1, below, between representatives of the government, of employers and of workers.

2. The nature and form of the procedures provided for in paragraph 1 of this Article shall be determined in each country in accordance with national practice, after consultation with the representative organisations, where such organisations exist and such procedures have not yet been established.

Article 3

1. The representatives of employers and workers for the purposes of the procedures provided for in this Convention shall be freely chosen by their representative organisations, where such organisations exist.

2. Employers and workers shall be represented on an equal footing on any bodies through which consultations are undertaken.

Article 4

1. The competent authority shall assume responsibility for the administrative support of the procedures provided for in this Convention.

2. Appropriate arrangements shall be made between the competent authority and the representative organisations, where such organisations exist, for the financing of any necessary training of participants in these procedures.

Article 5

1. The purpose of the procedures provided for in this Convention shall be consultations on –

- (a) government replies to questionnaires concerning items on the agenda of the International Labour Conference and government comments on proposed texts to be discussed by the Conference;
- (b) the proposals to be made to the competent authority or authorities in connection with the submission of Conventions and Recommendations pursuant to article 19 of the Constitution of the International Labour Organisation;
- (c) the re-examination at appropriate intervals of unratified Conventions and of Recommendations to which effect has not yet been given, to consider what measures might be taken to promote their implementation and ratification as appropriate;
- (d) questions arising out of reports to be made to the International Labour Office under article 22 of the Constitution of the International Labour Organisation;
- (e) proposals for the denunciation of ratified Conventions.

2. In order to ensure adequate consideration of the matters referred to in paragraph 1 of this Article, consultation shall be undertaken at appropriate intervals fixed by agreement, but at least once a year.

Article 6

When this is considered appropriate after consultation with the representative organisations, where such organisations exist, the competent authority shall issue an annual report on the working of the procedures provided for in this Convention.

Appendix III

Rules of procedure

Commission of Inquiry on the Bolivarian Republic of Venezuela

In accordance with article 28 of the Constitution of the ILO, the Commission shall produce a report embodying its findings on all questions of fact relevant to determining the issue between the parties and containing such recommendations as it may think proper as to the steps which should be taken to meet the complaint and the time within which they should be taken. Under article 27 of the Constitution, all Members of the ILO, whether directly concerned in the complaint or not, shall place at the disposal of the Commission all the information in their possession which bears upon the subject matter of the complaint. In order to ensure that the procedure is conducted with full guarantees and, in particular, to ensure its full objectivity, impartiality and independence, the Commission has adopted the following rules:

1. *The Government of the Bolivarian Republic of Venezuela and the complainants shall each designate a representative to act on their behalf in relation to the Commission. Each representative shall designate a substitute or substitutes to act on their behalf. The representatives shall remain at the disposal of the Commission until it has adopted its report.*
2. *The proceedings of the Commission shall be private and confidential, except in so far as the Director-General of the International Labour Office communicates the report of the Commission of Inquiry to the Governing Body and the Government concerned and proceeds with its publication.*
3. *The purpose of the Commission is to examine as completely and objectively as possible the information it considers necessary (not limited to the information provided by the parties) to ascertain the matters submitted to it for investigation by the Governing Body of the International Labour Organization, and to express its view thereon. It shall therefore only accept information and statements of relevance to the complaints concerning Conventions Nos 26, 87 and 144 from both the workers' and the employers' organizations. Any questions regarding the admissibility of the information or statements shall be determined by the Commission.*
4. *During any meetings that the Commission may hold, it will decide who may be present. During any mission undertaken by the Commission, it shall determine its schedule and meet freely with all the parties involved, as well as any bodies or persons it deems relevant, to ensure that it may be fully and objectively informed on all aspects of the case.*
5. *The hearings set by the Commission shall be held in accordance with the following rules:*
 - (i) *the representatives designated by the Government of the Bolivarian Republic of Venezuela and the complainants shall be expected to be responsible for the general presentation of their cases and to be present throughout the hearings of witnesses held by the Commission;*
 - (ii) *the Commission shall hear the representatives of the parties and all witnesses in private sittings and the information and evidence presented to the Commission therein is to be treated as fully confidential by all persons whom the Commission permits to be present;*
 - (iii) *the Commission reserves the right to consult the representatives in the course of, or upon the completion of, the hearings in respect of any matter on which it considers their special cooperation to be necessary;*
 - (iv) *each representative may, if she or he so chooses, designate witnesses to present evidence to the Commission at its formal hearing;*
 - (v) *any member of the Commission may question the representatives of the parties or the witnesses at any stage in the hearing;*
 - (vi) *the Commission shall require each witness to make a solemn declaration identical to that provided for in the Rules of the Court of the International Court of Justice. This declaration reads: "I solemnly declare upon my honour and conscience that I will speak the truth, the whole truth and nothing but the truth";*

-
- (vii) all statements by witnesses and questioning of witnesses shall be subject to control by the Commission;*
 - (viii) except with the leave of the Commission, witnesses may not be present except when giving evidence;*
 - (ix) all witnesses shall be given an opportunity to make a statement before questions are put to him or her. If a witness reads his or her statement, the Commission shall receive a copy;*
 - (x) with the leave of the Commission, the representatives may be permitted to put questions to the witnesses, in an order to be determined by the Commission;*
 - (xi) the Commission reserves the right to recall witnesses, if necessary; and*
 - (xii) the Commission may authorize representatives to question one another.*
6. *The Commission shall adopt any further rules or decisions it considers necessary with regard to its procedures.*