



## Governing Body

320th Session, Geneva, 13–27 March 2014

GB.320/INS/8

Institutional Section

INS

Date: 14 March 2014

Original: Spanish

### EIGHTH ITEM ON THE AGENDA

## Report of the high-level tripartite mission to the Bolivarian Republic of Venezuela (Caracas, 27–31 January 2014)

#### Purpose of the document

This document contains the report of the high-level tripartite mission to the Bolivarian Republic of Venezuela from 27 to 31 January 2014, regarding the examination of all pending issues before the Governing Body in relation to Case No. 2254 under consideration by the Committee on Freedom of Association, as well as all matters relating to technical cooperation.

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

**Policy implications:** This will depend on the decision taken.

**Legal implications:** None.

**Financial implications:** This will depend on the decision taken.

**Follow-up action required:** This will depend on the decision taken.

**Author unit:** International Labour Standards Department (NORMES).

**Related documents:** GB.318/INS/5/1 (368th Report of the Committee on Freedom of Association, paras 848–985) and GB.310/7.



## Background

1. In June 2004, various Employers' delegates to the International Labour Conference filed a complaint under article 26 of the ILO Constitution alleging non-observance by the Bolivarian Republic of Venezuela of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). In November 2004, the Governing Body referred the matter to the Committee on Freedom of Association, requesting it to provide a recommendation as to whether the complaint should be forwarded to a commission of inquiry (see document GB.291/17, paragraph 7).
2. In November 2005, the Committee on Freedom of Association recommended that the Governing Body send a direct contacts mission to the country with a view to obtaining an objective assessment of the situation. The Governing Body adopted the decision recommended by the Committee on Freedom of Association (document GB.294/PV, paragraph 188). Over the period 2006–10, the Committee requested the Government to accept the visit of a direct contacts mission. The Government did not respond to that request. In November 2010, the officers of the Governing Body decided, on their own initiative, to place the pending article 26 complaint, which had been presented in November 2004 and referred by the Governing Body to the Committee on Freedom of Association, on the agenda of the Governing Body. At its November 2010 session, the Governing Body requested the Director-General as a matter of urgency to transmit the letter dated 10 November 2010 from the Employers' group to the Government of the Bolivarian Republic of Venezuela with a view to soliciting additional observations from the Government and acknowledging receipt of the information so as to enable the Governing Body at its 310th Session (March 2011), in the light of the information provided, to consider the action it might deem necessary and decide whether the complaint first presented in 2004 should be referred in its entirety to a commission of inquiry in accordance with article 26(4) of the ILO Constitution.
3. At its 310th Session (March 2011), the Governing Body decided: (a) that the complaint presented originally in 2004 would not be referred to a Commission of Inquiry; (b) to request the Director-General to send a high-level tripartite mission to the Bolivarian Republic of Venezuela to address all the issues before the Governing Body related to Case No. 2254<sup>1</sup> as well as technical cooperation matters, and to provide a full report to the Governing Body at its 312th Session (November 2011); and (c) that, as a result of that decision, the procedure filed under article 26 of the ILO Constitution in June 2004 was closed.

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4. Since then, the mission had to be postponed for various reasons. At last, on the basis of a proposal made by the Government in June 2013, an agreement was reached in November of that same year to carry out the high-level tripartite mission from 27 to 31 January 2014.
5. The mission that visited the country was composed of Ms Victoria Marina Velásquez de Avilés, Ambassador of El Salvador in Geneva and Chairperson of the Governing Body of

<sup>1</sup> It should be recalled that Case No. 2254 before the Committee on Freedom of Association (a case based on a complaint submitted in March 2003 by the IOE and FEDECAMARAS) refers to a number of the issues raised by the complaint presented under article 26 of the Constitution (legislation violating Conventions Nos 87 and 98, lack of social dialogue and acts detrimental to employers and their officials, including acts of violence and intimidation against employer officials, and the authorities' promotion of parallel employers' organizations).

the ILO, accompanied by Ms Rosibel Menéndez, Minister Counsellor of the Permanent Mission of El Salvador to the United Nations, Mr Daniel Funes de Rioja, Employer Vice-Chairperson of the Governing Body of the ILO, accompanied by Mr Roberto Suárez, Deputy Secretary-General of the International Organisation of Employers (IOE) and Mr Luc Cortebeek, Worker Vice-Chairperson of the Governing Body, accompanied by Ms Raquel González, Director of the Geneva Office of the International Trade Union Confederation (ITUC). The mission was accompanied by Ms Cleopatra Doumbia-Henry, Director of the International Labour Standards Department of the ILO, alongside Mr Horacio Guido, Coordinator for Freedom of Association, and Mr Xavier Beaudonnet, Senior Legal Officer, of the same department.

6. The mission thanks the Government of the Bolivarian Republic of Venezuela for the assistance provided during its stay in the city of Caracas. All the representatives of state institutions who were interviewed provided a large amount of information regarding the issues pending. In observance of tripartism, the cornerstone of the ILO, the mission was able to meet with workers' and employers' federations, and with other Venezuelan organizations, and in particular with the national complainant organization in Case No. 2254, the Venezuelan Federation of Chambers of Commerce and Manufacturers' Associations (FEDECAMARAS). The mission appreciated the cooperation of all those with whom it spoke.
7. The mission recalls that the complaint originally brought before the Committee on Freedom of Association under Case No. 2254 was presented by the IOE and FEDECAMARAS in 2003, alleging the adoption of legislation violating Conventions Nos 87 and 98, lack of social dialogue and acts detrimental to employers and their officials, including acts of violence and intimidation against employer officials.
8. The mission recalls that the Committee on Freedom of Association examined Case No. 2254 on ten occasions, producing interim reports in 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012 and 2013. The mission observes that in June 2013, when it last examined the case, the Committee made the following recommendations (see 368th Report of the Committee on Freedom of Association, paragraph 985):

*The Committee's recommendations*

In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:

- (a) Regarding the abduction and maltreatment of the FEDECAMARAS leaders Noel Álvarez, Luis Villegas, Ernesto Villamil and Albis Muñoz (Employer member of the Governing Body of the ILO), the latter being wounded by three bullets, the Committee – which had taken note that two of the suspects had been arrested – deplores the offences that were committed, emphasizes their seriousness and requests the Government to take all the steps within its power to arrest the other three persons involved in the abductions and wounding, and to keep it informed of developments in the investigations. The Committee notes the Government's statements on developments in the proceedings and expresses the hope that the perpetrators of these crimes will soon be convicted and sentenced in a manner commensurate with the seriousness of the offences so that such incidents are not repeated, and requests the Government to keep it informed in this respect. At the same time, the Committee notes that the Government's observations are not conducive to dissipating the concern it had expressed in its previous examination of the case (according to the IOE the employers' leader Albis Muñoz asserted that neither of the suspects arrested by the Government (Antonio José Silva Moyega and Jason Manjares) were the instigators of the aggression).
- (b) Regarding the criminal investigation ordered by the Public Prosecutor's Office into the public declarations by the President of FEDECAMARAS, Noel Álvarez, the Committee wishes to state once again that, in the context described by the IOE, the declarations do not in its opinion appear to contain any criminal content and should not normally have

given rise to a criminal investigation. The Committee requests the Government to send it the decisions handed down by the authorities (Office of the Public Prosecutor, the judicial authority) in this case.

- (c) Regarding the alleged bomb attack on FEDECAMARAS headquarters on 24 February 2008, concerning which the Government had stated that the persons charged (Juan Crisóstomo Montoya González and Mrs Ivonne Gioconda Márquez Burgos) confessed in full to the crimes of public intimidation and unlawful use of identity papers, the Committee notes the information sent by the Government on these developments in the criminal proceedings. The Committee emphasizes the importance that the guilty parties be punished in a manner commensurate with the seriousness of the crimes committed and that the employers' organization be compensated for the losses and damages sustained as a result of these illegal acts. The Committee is waiting to be informed of the sentence handed down.
- (d) Observing the various acts of violence committed against FEDECAMARAS and its officials, the Committee once again draws the attention of the Government to the fundamental principle that the rights of workers' and employers' organizations can be exercised only in a climate free of violence, intimidation and fear, as such situations of insecurity are incompatible with the requirements of Convention No. 87.
- (e) Regarding the Committee's recommendation that the Government restore the La Bureche farm to employers' leader Eduardo Gómez Sigala and compensate him fully for all the damage caused by the authorities in occupying the farm, the Committee notes that there is a contradiction between the allegations and the Government's reply to the effect that the expropriated farm of employers' leader Eduardo Gómez Sigala was idle. Be that as it may, the Committee observes that the Government does not deny the IOE's allegation that Eduardo Gómez Sigala has not received any compensation. The Committee looks forward to receiving the information that the Government says it will send and again calls on it to return the farm without delay to the employers' leader and to compensate him fully for all losses sustained as a result of the authorities' seizure of his farm.
- (f) Regarding the alleged confiscation ("rescue", according to the Government) of the farms owned by the employers' leaders Egildo Luján, Vicente Brito, Rafael Marcial Garmendia and Manuel Cipriano Heredia, the Committee considers that it is impossible to discount the possibility of discrimination and once again requests the Government to ensure that they are granted fair compensation without delay, to initiate a frank dialogue with those affected and with FEDECAMARAS on the confiscations/rescues referred to and to keep it informed of developments. The Committee requests the Government to indicate whether the payment of compensation has been decided.
- (g) Regarding the alleged lack of bipartite and tripartite social dialogue and of consultations with FEDECAMARAS, the Committee notes with concern the IOE's new allegations concerning the approval without tripartite consultation of numerous presidential legislative decrees and laws that affect the interests of employers and their organizations. Observing that serious shortcomings in social dialogue continue to exist and have even grown, the Committee reiterates its earlier recommendation, as follows:
  - deeply deploring that the Government has ignored its recommendations, the Committee urges the Government, with the assistance of the ILO, to establish a high-level joint national committee in the country to examine every one of the allegations and issues in this case so that the problems can be solved through direct dialogue. The Committee trusts that the Government will not postpone the adoption of the necessary measures any further and urges it to keep the Committee informed in this regard;
  - the Committee expects that a forum for social dialogue will be established in accordance with ILO principles, with a tripartite composition that duly respects the representativeness of workers' and employers' organizations. The Committee requests the Government to keep it informed in this regard and invites it to request technical assistance from the ILO. The Committee also requests it once again to convene the tripartite commission on minimum wages provided for in the Organic Labour Act;

- observing that there are still no structured bodies for tripartite social dialogue, the Committee emphasizes once more the importance that should be attached to full and frank consultation taking place on any questions or proposed legislation affecting trade union rights and that it is essential that the introduction of draft legislation affecting collective bargaining or conditions of employment be preceded by detailed consultations with the most representative independent workers' and employers' organizations. The Committee once again requests the Government to ensure that any legislation concerning labour, social and economic issues adopted in the context of the Enabling Act be first subjected to genuine, in-depth consultations with the most representative independent employers' and workers' organizations, while endeavouring to find shared solutions wherever possible;
- the Committee requests the Government to keep it informed with regard to social dialogue and any bipartite or tripartite consultations in sectors other than food and agriculture, and also with regard to social dialogue with FEDECAMARAS and its regional structures in connection with the various branches of activity, the formulation of economic and social policy and the drafting of laws that affect the interests of the employers and their organizations;
- the Committee requests the Government to ensure that as part of its policy of inclusive dialogue (including within the Legislative Assembly), FEDECAMARAS is duly consulted in the course of any legislative debate that may affect employers' interests, in a manner commensurate with its level of representativeness.

The Committee deeply deplores that the Government has once again ignored its recommendations despite the fact that the Committee has been insisting on them for years.

- (h) Finally, the Committee takes note of the Government's statement that the high-level tripartite mission approved in March 2011, which the Government had agreed could look into issues that were still pending with regard to Case No. 2254, has twice been postponed. The Committee is strongly of the view that the mission should take place in the near future and requests the Office to contact the Government to that effect. The Committee considers that the mission should be able to make a contribution to resolving the problems raised.
- (i) The Committee draws the special attention of the Governing Body to the extreme seriousness and urgent nature of the matters dealt with in this case.

## Information gathered during the mission

### Acts of violence in the country

9. The mission received information from senior representatives of public institutions regarding the measures adopted to combat common criminality, and in particular the launch of the national anti-violence programme with the coordinated participation of all state bodies and the civil society, seeking a change in to the situation of violence.<sup>2</sup> They added that the level of common violence, which has oscillated over the last 25 years, is not directed at the social partners and, therefore, in no way restricts the exercise of freedom of association. According to the Forensic, Penal and Criminal Investigations Unit (CICPC),

<sup>2</sup> In relation to acts of violence in the country resulting from common criminality, the newspaper *El Nacional*, reporting on events that took place during the mission's time in the country, stated that an armed confrontation between the criminals who had abducted him and CICPC officers had resulted in the death of John Machado Añez, a real estate professional who was the first chairperson of the Metropolitan Real Estate Chamber.

the measures taken over the last year have already resulted in a significant decrease in the number of murders and abductions.

### **Allegations of acts of violence and threats against the employers' organization FEDECAMARAS and its officials**

10. Regarding the abduction and maltreatment of the FEDECAMARAS officials, Mr Noel Álvarez, Mr Luis Villegas, Mr Ernesto Villamil and Ms Albis Muñoz (who was shot and seriously injured) in October 2010, the CICPC reported that within a week of the event, the police's part of the investigation had been completed, leading to the identification of the four perpetrators of the theft and assault (one of whom recently died in a confrontation with the police) who were part of a violent gang that had committed similar crimes prior to this event. The hearing in the proceedings against the accused had been postponed due to Ms Albis Muñoz's decision not to attend the proceedings. The authorities indicated that the case is pending trial and that another hearing has been scheduled for 17 March 2014.
11. In this respect, the mission noted that FEDECAMARAS reported that: (1) the Public Prosecutor's Office charged three individuals (Mr Andrius Hernández, Mr Antonio Silva Moyega and Mr Jaror Manjares) with the offence; (2) on 10 February 2011, the 35th preliminary proceedings court of Caracas held the first preliminary hearing and admitted the evidence provided; (3) on 23 December 2012, the prosecutor brought charges against two of the accused (Mr Hernández is reported to have died in a confrontation with the police); Ms Albis Muñoz did not identify the accused as the perpetrators; (4) the accused were charged with, inter alia, brief abduction, the attempted aggravated theft of a vehicle and criminal association; (5) on 13 April 2012, the date of the first trial hearing was announced, but it was deferred on a number of occasions and, although the preliminary proceedings court upheld the charges, it has not yet opened the trial; and (6) to date no one has been found responsible for the offence and the trial against the accused has not even been formally opened.
12. As regards the allegation that a criminal investigation was launched following the public declarations of the president of FEDECAMARAS, Mr Noel Álvarez, on 23 December 2010, the Public Prosecutor's Office reported that no such investigation exists and that Mr Noel Álvarez had been neither charged nor summoned as a witness.
13. Regarding the bomb attack on the FEDECAMARAS headquarters on 24 February 2008, the CICPC indicated that the person who threw the explosive (a grenade) died in this act of violence. Two other persons linked to the event were identified and proceedings against them are currently at the oral and public trial stage. The CICPC also indicated that it had not been able to determine the motives for the attack and it recalled that it had occurred at a time when similar attacks were being carried out on several embassies.
14. The mission noted that FEDECAMARAS reported that: (1) the person who planted the bomb (the police inspector, Mr Héctor Serrano) died as a result of the explosion; (2) on 26 February 2008, a complaint was filed with the Public Prosecutor's Office; (3) on 26 August 2009, the Public Prosecutor's Office issued a ruling ordering the case to be closed for lack of sufficient evidence to establish a guilty party, which was appealed by FEDECAMARAS; (4) on 6 May 2010, the CICPC announced the detention of a public official, police officer Mr Crisóstomo Montoya, for an act of terrorism in planting the explosive device (it is reported that this person would have been released) and Ms Ivonne Márquez was also implicated; (5) the 28th court of first instance scheduled the public hearing of the oral trial for 4 November 2011, which was deferred to 30 October 2013; and (6) to date no one has been found guilty of the attack.

## New information concerning acts of intimidation and violence

15. The mission noted that FEDECAMARAS reported that the authorities accuse the organization of waging an “economic war” against the Government. Specifically, FEDECAMARAS reports that: (1) in the context of the country’s increasing economic problems, the Government developed a communication strategy in the run-up to the municipal elections of 8 December 2013 aimed at laying the blame for the crisis on the Venezuelan productive sector, and in particular on FEDECAMARAS, the National Commerce and Services Council (CONSECOMERCIO) and the Venezuelan–American Chamber of Commerce and Industry (VENAMCHAM), whom it accused of waging an “economic war” against the Government and raising the inflation rate through speculation and by hoarding products; (2) the Government first distributed a poster in the streets, also placing it in some public offices along with messages inciting hatred against various association leaders (the Presidents of FEDECAMARAS, CONSECOMERCIO, the National Association of Supermarkets (ANSA), the Venezuelan Food Industry Association (CAVIDEA), the National Federation of Stockbreeders of Venezuela (FEDENAGA), among others, accusing them of starving the people; (3) in November 2013, the President of the Republic appeared on national television personally attacking the current president of FEDECAMARAS and accusing him of leading the “economic war”;<sup>3</sup> (4) further attacks were carried out against the FEDECAMARAS headquarters: (i) on 25 October 2013, the Bolivarian Socialist Confederation of Workers of Venezuela sent out a press release calling for the seizure of the headquarters of FEDECAMARAS, CONSECOMERCIO and VENAMCHAM on 27 October; on 27 October, the state television channel VTV invited the public to join the demonstration; and (ii) on 20 November 2013, the “Tupamaro” Bolivarian armed community group took the FEDECAMARAS headquarters, carried out acts of violence, attacked the security guards and brought down the institution’s flag to burn it; (5) prior to the municipal elections, the Government initiated occupations of shops (mainly chains selling electrical appliances), denouncing surcharges of 1,000 per cent and inciting the population to go to the shops to “empty the shelves” in some kind of product clearance. Shop seizures were shown on national television, systematically featuring accusations against FEDECAMARAS, CONSECOMERCIO and VENAMCHAM as those responsible for the “economic war against the country”. Supermarkets, hardware, toy, textile and shoe shops, as well as shops selling car parts, were seized and the goods taken have not been replaced. FEDECAMARAS officials told the mission that for two years, and even during the Government’s offensive, it has continued to request dialogue to resolve the

<sup>3</sup> The mission received a video which, among a number of televised statements made against FEDECAMARAS, showed the President of the Republic saying the following: (1) “the country’s political way of life will continue but let us not try to influence its economic development. I am addressing myself to the leaders of FEDECAMARAS. Mr Jorge Roig, I know that you are involved in various schemes. Mr Jorge Roig, Mr Chairperson of CONSECOMERCIO, and the Director of the Board of VENAMCHAM, you three are once again actively conspiring against the Venezuelan economy. I call on you to put an end to your conspiracies against the Venezuelan economy”. (2) “And I don’t care what FEDECAMARAS, CONSECOMERCIO or the Democratic Unity Roundtable (MUD) may say about me, or us. They are the capital, capitalism, the speculators, the beginning of the end”. (3) “Jorge Roig, this also includes you, you irresponsible capitalist, you irresponsible oligarch”. The video also features the President of the National Assembly making the following public statements: (1) “The President of FEDECAMARAS has now taken the lead, he has taken the lead and is there leading the conspiracy, at the forefront of the conspiracy; at the forefront of the conspiracy against the nation, the President of FEDECAMARAS, Mr Jorge Roig”. (2) “Mr Jorge Roig, take note of what happened here to the enemies of the nation, do not go looking for trouble or you are going to find it”. (3) “I know who they are, what they do, where they live, and who they mix with. For example, I know that at the weekend, Jorge Roig was frantically looking for his passport and couldn’t find it; it was in the boot of a car. I know this and I know what they are doing.”



country's problems, but that the Government maintains its offensive against FEDECAMARAS, refusing to enter into dialogue with the institution. They added that the president of FEDECAMARAS has been threatened with imprisonment.

**Allegations regarding the seizure of estates belonging to employer officials (Mr Eduardo Gómez Sigala, Mr Egildo Luján, Mr Vicente Brito, Mr Rafael Marcial Garmendia and Mr Manuel Cipriano Heredia)**

16. The mission received information from the authorities of the Ministry of Labour and Social Security, and in particular of the Ministry of Agriculture and Land and of the National Land Institute (INTI) as well as from the Supreme Court of Justice in relation to three of the cases contained in Case No. 2254 (Mr Sigala, Mr Garmendia and Mr Heredia). They indicated that in those three cases the land was recovered on the grounds that it had been left idle, and that it was recovered rather than expropriated given that the occupants had not been able to demonstrate their ownership of the land.<sup>4</sup> In any event, the procedure defined by the Land Act was followed and the rules of due process observed. They indicated that in all cases of land recovery, where the persons who occupied the land are able to demonstrate that they have made improvements to it, they are entitled to compensation (according to the Government, in 2013, US\$60 million was paid out throughout the country in compensation for recovery procedures).<sup>5</sup> They also reported that

<sup>4</sup> The Land and Agrarian Development Act of 29 July 2010 refers to the procedure for land recovery in section 82, which establishes the following: *The National Land Institute (INTI) is entitled to recover land in its possession or at its disposal which is being illegally or illicitly occupied. To this end, it will initiate the appropriate recovery proceedings ex officio or by filing a complaint, without prejudice to the guarantees set forth in sections 17, 18 and 20 of this act. Furthermore, the National Land Institute (INTI) is entitled to recover land even in cases where ownership is attributed to private individuals, if upon an examination of the documents required of the person to whom ownership is attributed, that person is unable to provide the complete sequence of ownership or chain of title of the estate and other alleged rights, from the release duly authorized by the Venezuelan State until the duly registered title deeds in the name of the person claiming ownership. This shall in no event prejudice administrative appeals and legal proceedings available to the person concerned. The following constitute land that has been duly released by the Venezuelan State: (1) simple, complete and irrevocable sales by the former National Agrarian Institute (IAN) to private individuals (natural or legal persons) provided that they are in conformity with IAN resolutions; (2) allocations of land by the Ministries of Development, Agriculture and Husbandry, the Finance Department, and the Ministries of Agriculture, Industry and Commerce, to individuals or groups. For such allocations to take full legal effect, they must be registered in the records of the relevant ministry and in the Official State Journal. Land allocations by the Presidents of the states of the Federation in accordance with the resolution of 13 May 1891; (3) military property, these being allocations of uncultivated land or land confiscated from Spanish emigrants which were granted to patriot soldiers as a reward for their participation in the war of independence against the Spanish Empire, under a process of entitlement, in so far as they constituted a transfer of ownership rights over lands belonging to the State; (4) titles granted by the Spanish Crown, either as gifts, following the retroactive purchase of occupied land, or under royal charter. In the case of retroactive purchases, they must have been duly approved under the laws of the Republic; (5) court rulings on land recovery and on proceedings to establish ownership and acquisitive prescription, declared final, with the force of res judicata; and (6) sales transacted by state-financed government entities and duly approved by the Counsel-General of the Republic.* The Government informed the mission that a reform to the act is currently being considered in order to simplify the criteria for determining land productivity.

<sup>5</sup> As regards the payment of compensation for improvements made to recovered lands, the mission considers it noteworthy that section 86 of the Land and Agrarian Development Act provides that: "Under this act, the illegal or illicit occupation of arable land does not create any rights; the agrarian

Venezuelan law does not recognize acquisitive prescription against the State (with the exception of indigenous peoples). They indicated that in recent years, a large number of recoveries have been carried out (approximately 1,500) and that those affecting the officials of FEDECAMARAS are only a minute proportion of the recoveries, which shows that neither employers' nor workers' organizations are being persecuted through the land recovery policy.

17. As regards the case of Mr Sigala (La Bureche farm), the INTI authorities reported that the following actions had been carried out: (1) the administrative courts declared the land idle and the recovery proceedings were initiated on 12 March 2008; Mr Sigala's authorized representatives filed an appeal for annulment before the High Agrarian Court of Lara State, which was rejected in a ruling of 2 April 2009; on 7 December 2010, the Special Agrarian Chamber rejected an appeal against that ruling. Furthermore, according to the information communicated by the Supreme Court of Justice, two appeals for annulment under case AA60-S, brought before the administrative courts by Mr Sigala, are still pending (in a ruling of 3 November 2011, the Supreme Court of Justice upheld one of the appeals for annulment submitted by Mr Sigala on grounds of procedural errors. The case was referred to a court of appeal.). The state representatives indicated that to date Mr Sigala's ownership of the estate has not been demonstrated in court. FEDECAMARAS representatives referred the mission back to the information submitted to the Committee on Freedom of Association, in particular highlighting that its recommendations regarding the return of land and the payment of compensation have not been carried out.
18. As regards the case of Mr Heredia, it was reported that the appeals that he filed were rejected and that he has not been able to demonstrate his ownership of the land. As regards the case of Mr Garmendia, the recovery carried out only affected part of the land that he occupied (2,777 hectares) and his ownership of 2,716 hectares was acknowledged. FEDECAMARAS informed the mission that Mr Garmendia has not received compensation for the recovery of his land.
19. As regards the estates of the employer officials Mr Egildo Luján and Mr Vicente Brito, the authorities reported that there is no information on file regarding any land recovery in respect of the mentioned names. FEDECAMARAS reported that the Government continues to disregard the recommendations of the Committee on Freedom of Association requesting it to restore the farm Las Misiones to Mr Vicente Brito and pay him fair compensation.

### **New information regarding the recovery, occupation and expropriation of land**

20. Furthermore, FEDECAMARAS informed the mission of new cases (10) of land recovery, occupation and expropriation (in relation to various expropriations, it alleges that neither the procedure established by the Act on expropriations, nor the payment of the evaluated property price was observed; other cases concern threats of expropriation of the land belonging to Mr Vicente Brito). In general, FEDECAMARAS informed the mission that the employer officials affected by recovery proceedings on their land hold valid ownership rights over those lands and that the criteria used to determine whether land is idle allow the State broad discretion.

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authorities are therefore not obliged to compensate the illegal or illicit occupants of arable land qualifying for recovery for improvements to that land.”

## **Allegations regarding the expropriation of enterprises**

21. The authorities and in particular the Office of the Attorney-General of the Republic reported that in cases affecting the general interest, the Council of Ministers can issue an expropriation decision explaining the public interests served by the expropriation. The Counsel-General's Office is responsible for enforcing the decision, firstly by exhausting all conciliatory remedies and, where necessary, by referring the matter to the courts. They indicated that in recent years 46 expropriations have been carried out and that these expropriations did respect the employers' and workers' freedom of association. The authorities referred to various cases of expropriation following collective disputes in enterprises where the employer had refused to enter into collective bargaining and to reach agreements.
22. As regards some of the specific cases contained in Case No. 2254, the authorities reported the following: (1) Agroisleña SA: this expropriation did not violate any international standards and the enterprise is currently managed by an ad hoc board which respects the workers' collective rights; (2) Illinois: this case is the subject of international arbitration proceedings; (3) Orinoco iron and steel: the case is closed. The enterprise was sold following an agreement with the owners. It currently operates with 17,000 workers; and (4) Turbio iron and steel: the enterprise was declared of public utility following a labour dispute which brought the enterprise to a standstill for several months. No agreement was reached regarding its liabilities and an appeal is still pending in this regard. The national complainant organization referred to some of the cases within this case in the last allegations it submitted to the Committee on Freedom of Association, indicating that it would send further information in this regard.

## **Allegations regarding the lack of social dialogue and tripartite consultations**

### ***The practice of social dialogue in the country***

23. The Government representatives, the President of the Comprehensive Social Development Committee of the National Assembly, as well as various Members of Parliament from the governing party who are part of that Commission, indicated that under the 1999 Constitution of the Bolivarian Republic of Venezuela (hereinafter the Constitution), the public authorities systematically engage in inclusive social dialogue that is open to all members of Venezuelan society prior to the adoption of any law. They indicated that such dialogue, which does not exclude any sector, does not make any distinction and is not limited to the leaders of organizations but also reaches out to the real actors. Accordingly, enterprises, employers and their organizations are frequently consulted on issues relevant to them. This includes the various contacts made between the public authorities and sectoral associations that are members of FEDECAMARAS. The Deputy Minister for Labour indicated that he meets with these associations on a monthly basis. He explained that all organizations are invited to participate in dialogue proceedings and that this is why FEDECAMARAS does not receive an exclusive invitation.
24. The Government representatives also indicated that following the coup in 2002, the President of the Republic had promoted widespread dialogue. However, the opposition reacted by sabotaging the oil industry, acts for which FEDECAMARAS never provided a public apology. They also indicated that some sectors still refuse to recognize the legitimacy of the President of the Republic and that FEDECAMARAS still seeks to impose dialogue where, as before, it acted as an exclusive representative. Nevertheless, the Deputy Minister for Labour said that, on the basis of existing widespread social dialogue, the Government was prepared to work to continue improving dialogue with employers'

and workers' organizations, provided that such dialogue was based on respect, mutual recognition and was consistent with the Constitution.

- 25.** The representatives of FEDECAMARAS stated that their organization is made up of 300 associations, which are present in the 14 most important production and business sectors of the Venezuelan economy (agriculture, banking, trade, construction, energy, industry, social media, mining, livestock, insurance, telecommunications, transport, tourism and property). These associations have regional chapters in each state and have more than 150,000 member enterprises. The representatives also referred to the difficult economic situation that the country is going through, which is characterized by shortages of basic products, which, in turn, causes the price of these products to rise. In this regard, they indicated that the Bolivarian Republic of Venezuela has one of the highest rates of inflation in the world (56 per cent in 2013). Furthermore, they regretted that the Government continues to refer to the events of 2002 to justify the exclusion of their organization from dialogue and consultations with the public authorities. They stated that at no point did their organization exclude itself from dialogue or consultations and that it continues to request to participate therein, explaining that while FEDECAMARAS is the most representative employers' organization in the country, it is not requesting exclusive dialogue. In this regard, a recording containing a series of public statements in which the leaders of FEDECAMARAS express their desire to be included in dialogue and consultations was provided to the mission. The representatives of FEDECAMARAS added that the Government claims to fulfil its obligation to consult employers by promoting parallel organizations attached to the Government that are not sufficiently representative, namely EMPREVEN, COBOIEM and CONFAGAN.
- 26.** Referring to specific examples of the lack of consultation on social and labour matters, the representatives of FEDECAMARAS stated that the minimum wage review is being carried out in the absence of genuine tripartite consultations. They stated that, until May 2012, the provisions of the Basic Act on Labour, which required a tripartite committee composed of representatives of the Government, employers and workers to meet in order to discuss increasing the minimum wage, had not been respected. With the enactment of the Basic Act on labour and male and female workers in May 2012, reference to the tripartite committee was removed and replaced with "broad consultations with social organizations and institutions on socio-economic matters".<sup>6</sup> They expressed the opinion that this provision gives the Government greater discretion as to who is consulted and that, in practice, the Ministry for Labour and Social Security does not consult FEDECAMARAS on increases to the minimum wage. On the few occasions when the Ministry solicited the organization's opinion, it gave it only a limited number of hours in which to reply, thereby claiming to fulfil its obligation to hold tripartite consultations. As to the consultations held with the member associations of FEDECAMARAS, the representatives of the organization indicated that these consultations take place on an ad hoc basis when specific needs arise that require the Government to seek the collaboration of the private sector (for example, recently in the automotive and pharmaceutical sectors).
- 27.** The representatives of FEDEINDUSTRIAS, CONFAGAN, EMPREVEN and COBOIEM (organizations which represent micro, small and medium-sized enterprises in particular) who were interviewed by the mission stated that a model of participatory democracy based on very broad dialogue with a large number of actors (for example, communal councils) had been in place since 1999. They indicated that, in these conditions, social dialogue has become more complex but also more inclusive, which has allowed the limits of the monopolistic system of representation that was in place before the current Constitution to be overcome. The representatives of the abovementioned organizations indicated that they

<sup>6</sup> Section 129 of the Basic Act on labour and male and female workers.

fully respected FEDECAMARAS's right to participate in social dialogue mechanisms, provided that this did not lead to the exclusion of the other existing autonomous organizations.

### ***Consultations held prior to the adoption of the Basic Act on labour and male and female workers***

28. The representatives of the Government, the chairperson of the Comprehensive Social Development Committee of the National Assembly, as well as other Members of Parliament from the governing party who are members of the Committee, recalled that the Basic Act on labour and male and female workers was adopted in May 2012 pursuant to a constitutional mandate.<sup>7</sup> They indicated that, following several years of debate within the National Assembly, the President of the Republic was requested by means of a popular initiative to adopt the reform by decree within the framework of the Enabling Act that was in force at that time. They stated that the drafting of the text of the Basic Act gave rise to a broad and intense consultation process in which workers, employers and their respective organizations participated, the main stages of which were the following: in December 2011, the President of the Republic appointed a presidential committee of 15 persons composed of representatives of all sectors (workers, farmers, employers, Government, the judiciary and the legislature) to draft the text of the bill; thousands of meetings were held throughout the country, which allowed direct dialogue to take place with workers and employers on the content of the future law; during the six months preceding the adoption of the Act, more than 19,000 proposals were sent directly to the committee and were examined and debated publicly.
29. During its meeting with the Social Development Committee of the National Assembly, the mission also sought the opinion of two Members of Parliament from the Democratic Unity Round Table, who stated that the adoption of the Basic Act on labour and male and female workers had not been preceded by genuine tripartite dialogue, given that only workers' and employers' organizations sympathetic to the Government had been able to participate therein. They added that the collection and discretionary use of the 19,000 proposals by the Government could not be equated to serious and in-depth dialogue with representative workers' and employers' organizations. One of the members added that history should no longer be used as an excuse for postponing dialogue based on mutual recognition between the Government and certain employers' organizations.
30. The representatives of FEDECAMARAS informed the mission that the Basic Act on labour and male and female workers was adopted in the absence of the requisite formal tripartite consultations. They indicated that the 15 members of the presidential committee appointed to draft the text of the bill were representatives of the public authorities or close to the governing party, and that the only employer representative was a leader of FEDEINDUSTRIAS, an organization that is also pro-Government. They added that the 19,000 proposals referred to by the Government were never publicly disseminated. Lastly, they stated that the same lack of tripartite consultation on the Basic Act also applied to the adoption of the regulations and resolutions developing the provisions thereof, such as the resolution creating a single registry for trade union organizations, despite the fact that the content of the resolution substantially affects the rights and interests of workers' and employers' organizations.

<sup>7</sup> The fourth transitory provision of the Constitution provides for the reform of the basic Act on Labour within a period of one year.

31. During its meeting with the mission, the representatives of the organizations FEDEINDUSTRIAS, CONFAGAN, EMPREVEN and COBOIEM stated that the Basic Act on Labour and Workers had been the subject of broad consultations and pointed out that several member associations of FEDECAMARAS had participated in that process.
32. The mission was informed that, on 12 December 2013, various trade union organizations filed a class-action motion petitioning the Constitutional Chamber of the Supreme Court of Justice to declare the Basic Act on labour and male and female workers partially unconstitutional. The complainants alleged that the impugned decree-law is incompatible with ILO Convention No. 87.<sup>8</sup> The motion seeks the adoption of an interim protection measure to suspend the provisions of the basic act that violate the Convention in question. The members of the Constitutional Chamber of the Supreme Court of Justice informed the

<sup>8</sup> The excerpts relating to the Basic Act on labour and male and female workers from the last observation addressed by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) to the Bolivarian Republic of Venezuela in relation to the application of Convention No. 87 (CEACR, annual report 2013) have been reproduced below for information:

*The Committee notes the Government's indications concerning the enactment of the Basic Act on labour and male and female workers (LOTTT) of April 2012. The Committee welcomes the fact that the new Act takes into account a number of the observations made during the technical assistance provided by the ILO and as requested by the Committee. For example, foreign nationals are no longer required to be resident for ten years to hold trade union office, the functions of the CNE [National Electoral Council] are limited in relation to the previous situation, and the number of workers required to establish a union is reduced.*

*However, the Committee notes that the minimum number of employers (ten) required to establish an employers' organization (section 380) has not been reduced, the enumeration of the objectives of trade unions and employers' organizations continues to be too extensive (sections 367 and 368), including for example the objectives according to which employers' organizations need to guarantee the production and distribution of goods and services at the correct price in accordance with the law, undertaking studies on the characteristics of the respective industrial branch, providing reports as requested by the authorities in conformity with the law, conducting campaigns to combat corruption actively, etc.*

*The Committee observes that the new Act provides, as indicated above, that the logistical support of the CNE for the organization of elections is only provided at the request of the trade union executive boards. Nevertheless, the Committee notes that the CNE (which is not a judicial body) continues to be competent to examine any complaints which may be made by members. Furthermore, in breach of the principle of trade union independence, the text of the Act also maintains the principle that delays in the electoral process (including when complaints are lodged with the CNE) prevent the trade unions concerned from engaging in collective bargaining. The Act also imposes a system of ballots which includes the election of the executive board by single vote and proportional representation (section 403), while the Act continues to require trade unions to provide to the authorities the complete list of their members, and to supply the competent officials with the information that they request on their statutory obligations (section 388). The Act also interferes in numerous matters that should be regulated by union statutes, for example, by indicating that the purpose of collective bargaining is to achieve the objectives of the State (section 43), the eligibility of trade union leaders is subject to them having called trade union elections within the time limits when they were leaders of other organizations (387), and a referendum is required to be held to revoke those holding trade union office (section 410).*

*The Committee further notes that, in the event of a strike, it is the competence of the People's Minister responsible for Labour (and not the judicial authorities or an independent body, particularly in the case of strikes in public enterprises or institutions) to determine the areas or activities which cannot be paralyzed during the strike on the grounds that they would affect the production of goods or essential services, the stoppage of which would harm the population (section 484). The Committee notes the Government's statement that referring this to the judicial authorities would delay the right to strike. The Committee emphasizes that in the public sector the administrative authorities are an interested party in relation to the determination of minimum services. Furthermore, the system for the appointment of the members of arbitration boards in the event of strikes in essential services does not guarantee the confidence of the parties in the system since, where agreement is not reached by the parties, they are appointed by the labour inspector (section 494). The Act also recognizes workers' councils, although their functions are not determined clearly, even though it is provided in the Act that they may not encroach upon the functions of trade unions. The Committee requests the Government to provide additional information on this subject.*

mission that the proceedings initiated when a class-action motion is filed may be lengthy, as a general call for evidence supporting or opposing the motion must be issued, and that the Office of the Attorney-General of the Republic is also involved.

### ***The Higher Labour Council***

33. The representatives of the Government highlighted the existence of the tripartite Higher Labour Council, the creation and mandate of which are referred to in the seventh transitory provision of the Basic Act on labour and male and female workers, which provides that, over a period of three years, the Higher Labour Council, which is appointed by the President of the Republic, “shall be directly responsible for coordinating all actions aimed at ensuring the full development of the basic act on labour and workers”. The mission met with various members of the Higher Labour Council, who explained that the tripartite body in question is composed of 18 persons who were individually appointed in a presidential decree dated 22 May 2012. Of the 18 members, nine are from the executive, one is from the legislature, two are from the judiciary, four are trade union representatives (three officials of the Bolivarian Socialist Workers’ Confederation of Venezuela and one public sector worker representative), one is an employer representative (the president of FEDEINDUSTRIA) and one is a labour lawyer. The members of the Higher Labour Council stated that the worker and employer members of the Council were elected by the President of the Republic from a list prepared by the presidential committee responsible for drafting the text of the Basic Act, a list which contained the names of representatives of the organizations that had been the most active in the drafting process. The members of the Higher Labour Council also indicated that, if required, the Council could suggest amendments to the text of the Basic Act. Lastly, they explained that while the basic act refers to a period of three years, the Council will become a permanent institution once its initial mandate expires in May 2015.
34. The representatives of FEDECAMARAS with whom the mission met stated that the Higher Labour Council is not a genuine tripartite body, as only one employer member participates and that member is from a pro-Government organization.

### ***Representativeness***

35. The Deputy Labour Minister informed the mission that since the adoption of the labour legislation of 1936, workers’ and employers’ organizations must submit a list of their members each year and that the authorities trust the information submitted to them. The authorities indicated that, notwithstanding the legislation in force, employers’ organizations, including FEDECAMARAS, do not transmit the details of their members to the Ministry for Labour and Social Security. They also stated that, when it comes to determining collective bargaining participants, a distinction should be drawn between standard-setting negotiations on the one hand, which are of a sectoral nature and in which all the representative organizations from the sector participate, and negotiations within an enterprise, in which the most representative trade union participates. In the latter case, when there are doubts over which is the most representative organization, the workers are consulted within the framework of a referendum organized by public officials from the Ministry for Labour and Social Security.<sup>9</sup> In this regard, the public officials of the Ministry informed the mission that 448 collective agreements had been registered in 2013.

\* \* \*

<sup>9</sup> Section 438 of the Basic Act on labour and male and female workers.

## Meeting with workers' organizations

36. The Confederation of Workers of Venezuela (CTV), the National Union of Workers of Venezuela (UNETE), the Confederation of Autonomous Trade Unions (CODESA), the General Confederation of Labour (CGT), Public Services International (PSI) – Venezuelan Chapter, the National Federation of Retired Persons and Pensioners of Venezuela, the Federation of University Professors (FAPUV), the Medical Federation of Venezuela (FMV), the Autonomous Employment, Salary and Trade Union Defence Front (FADESS), the Basic Trade Union Movement (MOBASE) and the Independent Trade Union Alliance (ASI) met with the mission and submitted a single document in which they state, inter alia, that: (1) the country urgently needs to remedy the polarization that has caused so much damage to the working class; (2) they are genuinely willing to engage in dialogue with employers and the Government; this, as well as their respect for differences, is demonstrated by the fact that the single document submitted is the result of a process of rapprochement between the different trade union organizations and of united action based on the defence of the universal principles of trade unionism; (3) the Government has not honoured the commitments it made to the ILO to align the legislation with Convention No. 87, particularly with regard to the powers attributed to the National Electoral Council and the thorough regulation of the internal workings of trade union organizations; (4) the adoption of the Basic Act on Labour and Workers (in particular, its provisions relating to both the functions and objectives of trade union organizations, and to the regulation of the electoral process by trade union statutes) and the subsequent creation of the National Register of Trade Union Organizations have exacerbated the serious violations of the autonomy and independence of trade union organizations; (5) there is a state strategy to criminalize protests, as is demonstrated by the adoption of the Basic Act on the Security of the Nation of 2002, the reform of the Criminal Code of 2005, the Act for the defence of persons in accessing goods and services of 2010, and the 2007 Special Act to defend against hoarding, boycotting and any other conduct that affects the consumption of food or products subject to price controls; (6) a number of these laws have been relied on to take legal action against trade union leaders for exercising their legitimate right to strike, the most prominent case being that of Mr Rubén González; (7) a number of trade union officials (some mentioned by name) have been dismissed because they dared to question the Government's actions; (8) as part of the hostility towards trade unions that take issue with the actions of the Government, the premises of several trade unions were expropriated and converted into government offices; (9) the framework agreement protecting all public sector workers has not been negotiated since 2004; and (10) the calls of the ILO supervisory bodies for the Government to recognize representative organizations and for it to initiate constructive dialogue with them have been ignored on countless occasions, and two flagrant violations of Convention No. 144, have been noted, namely the way in which the Basic Act on Labour and Workers was adopted and the way in which the minimum wage has been fixed from 2001 to the present. The mission heard numerous testimonies from trade union officials and union members in which they reported dismissals and anti-union persecution, obstacles to collective bargaining, the arrest of workers for having attempted to establish a trade union, physical attacks and unpunished murders of trade union officials in the construction sector.
37. The mission conveyed the concerns expressed by several workers' organizations and their leaders to the representatives of the Government. The representatives of the authorities mentioned that those matters fall outside the framework of Case No. 2254, but indicated that many of the cases mentioned by the workers are being resolved (they referred to collective bargaining that had allegedly taken place recently, and to ongoing legal proceedings concerning criminal and not union-related acts) and that complainants should avoid bringing matters that are political and not trade union-related before the ILO. The authorities also stated that trade union leaders do not suffer persecution but that, if they file a complaint, it will be investigated. As to the National Register of Trade Union



Organizations, created under Resolution No. 8248 of 12 April 2013, the representatives of the Government stated that there has been a trade union register in the Bolivarian Republic of Venezuela since 1936, the only difference being that, prior to the adoption of the Basic Act on Labour and Workers and the said Resolution, there had been a register for each of the country's 24 states. Therefore, the only change was in the amalgamation of those registers, during which no new substantive requirements were introduced.

- 38.** The representatives of the United Federation of Workers of Venezuela (CUTV) stated that: (1) CUTV has approximately 15 member confederations with representation in the 24 states of the Bolivarian Republic of Venezuela; (2) the complaint that prompted the mission's visit to the country is from the employers, and they do not believe the acts mentioned in the complaint to be true; (3) the complaints originate from a sector that participated in a coup d'état and carried out an act of sabotage, and that is now opposed to policies that favour workers; (4) laws favourable to workers have been adopted; and (5) there are some problems related to the negotiation of collective agreements, but these are being resolved (they mentioned that agreements had allegedly been reached in both the oil and construction sectors). The representatives of the Bolivarian Socialist Confederation of Workers (CSBT) indicated that: (1) it has 1,700,000 worker members (18 federations, ten national trade unions and more than 3,000 primary trade unions and 24 confederations throughout the national territory); (2) in the country, trade unions enjoy full freedom and policies that benefit workers are being adopted (they mentioned that workers have received more than 500,000 dwellings and that they receive food in the workplace); (3) some workers' organizations have not held elections, which is against the law; (4) the 17 most representative workers' federations which were members of CTV are now members of CSBT, as CTV participated in the coup d'état of 2002; (5) between 1999 and 2009, 4,029 collective agreements were negotiated in the public and private sectors: for example, the professional association for teachers has obtained a 95 per cent pay rise; (6) workers were consulted prior to the adoption of the Basic Act on Labour and Workers (unlike in the past) and it was the same workers who requested the President of the Republic to use the Enabling Act to expedite its adoption; (7) representativeness is ensured through the participation of the organizations in each sector; (8) all Venezuelan citizens are consulted; (9) the economic crisis was caused by sectors such as FEDECAMARAS, CONSECOMERCIO and VENAMCHAN adopting the same approach as during the sabotage of the oil sector; and (10) the inflation is a consequence of the global crisis and, in the Bolivarian Republic of Venezuela, 70 per cent of the budget is allocated to social issues. Inflation should be combated with production.

\* \* \*

## Final meeting with the authorities

- 39.** During the mission's last meeting, representatives of the Government stated that: (1) certain additional allegations submitted within the framework of Case No. 2254 to the Committee on Freedom of Association were based on fictitious or distorted facts; and the attacks against Ms Albis Muñoz and various officials of FEDECAMARAS were dealt with by the police in five days; (2) they are open to reviewing all the complaints and allegations concerning the violation of trade union and bargaining rights; (3) they are not infallible and, given that the Government is a defender of freedom of association, it is prepared to take action to remedy possible violations of that right; (4) they are prepared to work to continue improving dialogue with employers' and workers' organizations, and do not rule out the possibility of availing themselves of technical cooperation programmes, if necessary; and (5) such dialogue must, however, be transparent and honest, and be based on respect and mutual recognition.

## **The mission's conclusions**

40. Firstly, the mission recalls that the mandate given to it by the Governing Body of the ILO was to examine all matters pending in relation to Case No. 2254 before the Committee on Freedom of Association of the Governing Body, as well as all matters relating to technical cooperation.
41. The mission thanks the Government of the Bolivarian Republic of Venezuela for the assistance provided to it during its stay in the city of Caracas, as well as all the representatives of state institutions who were interviewed for having provided information relating to the matters pending. The mission also interviewed workers' and employers' confederations and other Venezuelan organizations, and in particular the complainant organization in Case No. 2254, FEDECAMARAS, and thanks them for their collaboration.

## **Acts of violence in the country**

42. The mission noted with concern that, according to the testimonies given to the mission and to press reports during its visit, there is a very large number of acts of violence that stem from common criminality in the country. In this regard, the mission is grateful for the information communicated by the Government according to which measures have been taken to launch a national anti-violence action plan in which all state institutions and citizens will participate in a coordinated manner to seek a change in the situation of violence; according to the authorities, the measures adopted over the last year have led to a significant decline in the number of murders and abductions.
43. The mission received information on the acts of violence denounced in Case No. 2254 which affect employer leaders and the headquarters of FEDECAMARAS, which will be examined and assessed by the Committee on Freedom of Association. The mission noted that although, according to the Government, the investigations into some of the acts were concluded very quickly – for example, in the case of the attack against Ms Albis Muñoz and the temporary abduction of other employer leaders, where the police investigation was concluded in five days – the judicial proceedings are still ongoing and that the corresponding verdicts have therefore not been handed down, despite the fact that the events occurred in 2008 and 2010. The Government states that the hearing in the proceedings against the persons accused of attacking Ms Albis Muñoz was postponed owing to the latter's failure to appear. The judicial delay resulting from this and other serious acts that took place several years ago is a cause for concern for FEDECAMARAS. While it notes that the hearing in the case of the attack against Ms Albis Muñoz is scheduled to take place on 17 March 2014, the mission emphasizes the importance of concluding the legal proceedings resulting from the various acts of violence mentioned above in the very near future in order to determine responsibilities and to issue severe punishments to the culprits.
44. The mission noted with concern, firstly, the information recently received on the use of the media to make serious personal allegations against leaders of FEDECAMARAS, CONSECOMERCIO and VENAMCHAM to the effect that they are waging an "economic war" against the Government, and, secondly, the fresh allegations of acts of violence against the headquarters of FEDECAMARAS by certain Bolivarian organizations and the Government's incitement to vandalism and to the sacking of supermarkets and businesses. In this regard, the mission highlights the seriousness of these acts and that a climate free from intimidation, threats and excessive language is essential for the effective exercise of

trade union rights and freedom of association. This is the only way to achieve normality in the organizations' activities and solid and stable industrial relations.

45. The mission also takes note of the information according to which no criminal investigation exists in relation to the public statements made by the president of FEDECAMARAS, Mr Noel Álvarez, on 23 December 2010.

## **Recovery of land – Expropriation of enterprises**

46. The mission received numerous pieces of information relating to the cases mentioned in Case No. 2254 and took particular note of the authorities' statement to the effect that employers' and workers' organizations and their officials and members are not persecuted as a result of the policy for the recovery and expropriation of land. The mission notes that judicial and administrative proceedings are still ongoing in a number of cases; while it draws attention to the delay in those proceedings, it firmly expects that they will be concluded in the near future. The mission also noted that, according to FEDECAMARAS, the criteria for determining the idleness of the land that is recovered give the State considerable discretion and that, contrary to the request made by the Committee on Freedom of Association, the employer officials have not been compensated. The Government informed the mission that a legal reform aimed at simplifying the criteria for determining the productivity of land was under examination. Furthermore, the mission noted with concern the information on new acts of recovery, occupation and expropriation of properties belonging to an employer official of FEDECAMARAS.
47. The mission highlights 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, and trusts that the bill to amend the law governing land announced by the Government will be the subject of full consultations with representative workers' and employers' organizations and that it will be adopted in the near future.

## **Social dialogue**

48. The mission notes that FEDECAMARAS continues to state that there are serious deficiencies in terms of social dialogue and that it is not consulted except on rare occasions and in relation to minimum wage fixing, when it is not given sufficient time to reply. The mission also notes that FEDECAMARAS and the Government concur that some associations that are members of FEDCAMARAS are consulted on occasion.
49. The mission notes that the Government continues to state that, within the framework of the Constitution of the Bolivarian Republic of Venezuela of 1999, it engages in "inclusive dialogue" on a massive scale. The mission also notes that the Government continues to make frequent references to the coup d'état of 2002 and to the involvement of representatives of FEDECAMARAS therein, who it considers should make a public apology for their actions. Moreover, the mission took note of the Government's statement to the effect that it was prepared to work to continue improving dialogue with workers' and employers' organizations, provided that the dialogue is based on respect and mutual recognition and that it takes place within the framework of the Constitution of the Bolivarian Republic of Venezuela. In view of the time that has elapsed and the change in the leadership of FEDECAMARAS, as well as its statements of respect for the Constitution, the mission considers that social dialogue should be established with this organization.

50. In this regard, the mission states that it is logical for FEDECAMARAS, as an institution that has member associations in every region of the country and in the 14 most important production and business sectors of the Venezuelan economy (agriculture, banking, trade, construction, energy, industry, social media, mining, livestock, insurance, telecommunications, transport, tourism and property), to be consulted on the drafting of all legislation concerning industrial relations and on economic or social measures that affect its members. In this regard, the mission noted that, for example, FEDECAMARAS is not represented on the Higher Labour Council while FEDEINDUSTRIA is, which constitutes discrimination against FEDECAMARAS.
51. The mission highlights the fact that the trade union organizations also expressed their commitment to tripartite social dialogue and their willingness to be consulted on matters relating to labour legislation and to social and economic matters.
52. In this regard, the mission recalls the importance of creating the conditions necessary for 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 and independence of the parties, in-depth discussions over a reasonable period, and efforts to find, as far as possible, shared solutions that will, to a certain extent, attenuate the polarization afflicting Venezuelan society. The mission highlights 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.
53. In keeping with the conclusions of the Committee on Freedom of Association, the mission reminded the Government that it can avail itself of the technical assistance of the International Labour Office, not only in matters concerning social dialogue and structured bodies, but also in the adoption of criteria and procedures to measure the representativeness of workers' and employers' organizations. The mission noted that the Government made a general statement to the effect that it does not rule out the possibility of availing itself of technical cooperation programmes, if necessary. The mission considers that the Government needs to convey its willingness to do so in more specific terms. In keeping with the concern expressed above, the mission strongly invites the Government to consider the following recommendations.

## **Technical cooperation**

54. Recalling, in keeping with the views expressed by the Committee on Freedom of Association, the need for and the importance of establishing structured bodies for tripartite social dialogue in the country and noting that no tangible progress has been made in that regard, the mission considers it essential for immediate action to be taken to build a climate of trust based on respect for employers' and trade union organizations with a view to promoting solid and stable industrial relations. The mission considers that it is necessary for the Government to devise a plan of action that includes stages and specific time frames for its implementation, and which provides for:
- (1) The establishment of a round table between the Government and FEDECAMARAS, with the presence of the ILO, to deal with all pending matters relating to the recovery of estates and the expropriation of enterprises (including the new information communicated to the mission) and other related problems arising or that may arise in the future.

- (2) The establishment of a tripartite dialogue round table, with the participation of the ILO, that is presided over by an independent chairperson who has the trust of all the sectors, that duly respects the representativeness of employers' and workers' organizations in its composition, that meets periodically to deal with all matters relating to industrial relations decided upon by the parties, and that includes the holding of consultations on new legislation to be adopted concerning labour, social or economic matters (including within the framework of the Enabling Act) among its main objectives. The criteria used to determine the representativeness of workers' and employers' organizations must be based on objective procedures that fully respect the principles set out by the ILO. Therefore, the mission believes that it is important for the Government to be able to avail itself of the technical assistance of the ILO to that end.
- (3) The discussion of laws, bills, other regulations and socio-economic policy at the tripartite dialogue round table, with a view to bringing domestic legislation into conformity with the Conventions concerning freedom of association and collective bargaining ratified by the Bolivarian Republic of Venezuela.
- (4) The identification of the causes of the problems related to administrative and judicial proceedings that affect workers' and employers' organizations and their representatives, with a view to finding solutions that will settle all matters pending in Case No. 2254.



## Appendix I

### The mission's agenda (27–31 January 2014)

#### **Monday, 27 January**

##### Morning

- Meeting with the Minister of Popular Power for Labour and Social Security

##### Afternoon

- Meeting with the Supreme Court of Justice
- Meeting with the Public Prosecutor's Office
- Meeting with the Investigative and Criminal Police Corps (CICPC )

#### **Tuesday, 28 January**

##### Morning

- Meeting with the National Assembly (Permanent Social Development Committee)
- Meeting with the Ministry of Popular Power for Agriculture and Land and the National Land Institute

##### Afternoon

- Meeting with the Office of the Attorney-General of the Republic

#### **Wednesday, 29 January**

##### Morning

- Meeting with the Venezuelan Federation of Chambers of Commerce and Manufacturers' Associations (FEDECAMARAS)

##### Afternoon

- Meeting with the federation representing artisans, micro, small and medium-sized manufacturers (FEDEINDUSTRIA), the National Confederation of Farmers and Stockbreeders (CONFAGAN), Entrepreneurs for Venezuela (EMPREVEN) and the Bolivarian Council of Industrialists, Entrepreneurs and Micro-entrepreneurs (COBOIEM)
- Meeting with the United Confederation of Workers of Venezuela (CUTV) and the Bolivarian Socialist Confederation of Workers (CSBT)
- Meeting with the National Union of Workers of Venezuela (UNETE), the Confederation of Autonomous Trade Unions (CODESA), the General Confederation of Workers (CGT), Public Services International (PSI) – Venezuelan Chapter, the National Federation of Retired Persons and Pensioners of Venezuela, the Federation of University Professors (FAPUV), the Medical Federation of Venezuela (FMV), the Autonomous Employment, Salary and Trade Union Defence Front (FADESS), the Basic Trade Union Movement (MOSBASE), and the Independent Trade Union Alliance (ASI)

#### **Thursday, 30 January**

##### Morning

- Meeting with the Foreign Exchange Administration Commission (CADIVI) and the Ministry of Popular Power for Trade
- Meeting with the Ministry of Popular Power for Industry

Afternoon

- Visit to an enterprise which was recovered for productive activity
- Meeting with the High Labour Council

**Friday, 31 January**

Morning

- Final meeting with the Ministry of Popular Power for Labour and Social Security and the Ministry of Popular Power for Foreign Affairs
- Final meeting with the Executive Vice-President of the Republic



## Appendix II

### The mission's interviews

- **Executive Vice-President of the Bolivarian Republic of Venezuela**
- **Ministry of Popular Power for Labour and Social Security**
  - Minister of Popular Power for Labour and Social Security
  - Deputy Minister of Labour Rights and Industrial Relations
  - Director of the National Inspectorate for the Private Sector
  - Director of Inspections and Working Conditions; Director of International Relations and the ILO Liaison Office
- **Ministry of Popular Power for Foreign Affairs**
  - Ambassador, Permanent Representative of the Bolivarian Republic of Venezuela in Geneva, Switzerland
  - Alternate Ambassador of the Bolivarian Republic of Venezuela in Geneva, Switzerland
  - Director-General of the Office of Multilateral Affairs and Integration
  - Labour attaché of the Permanent Mission in Geneva, Switzerland
- **Ministry of Popular Power for Agriculture and Land**
  - Deputy Minister of Agricultural Production and Animal Husbandry
  - President of the National Land Institute
  - Director-General of the Legal Advisory Office
  - Director of the International Relations Bureau
- **Ministry of Popular Power for Industry**
  - Deputy Minister of Medium and Light Industries
  - Deputy Minister of Basic Industries
  - Director of the Office of the Ministry
- **Foreign Exchange Administration Commission (CADIVI)**
  - President of CADIVI and of the National Centre for Foreign Trade
- **Public Prosecutor's Office**
  - Deputy Public Prosecutor
  - Director-General of Legal Support
  - Director-General of Proceedings
- **Investigative and Criminal Police Corps (CICPC )**
  - Sub-Director of the CICPC
  - Legal Adviser of the CICPC
  - National Coordinator of Criminal Investigations of the CICPC

- **Office of the Attorney-General of the Republic**
  - Attorney-General of the Republic
  - Assistant Director of the Office of the Attorney-General
  - Director of International Affairs of the Office of the Attorney-General
- **Supreme Court of Justice**
  - President of the Supreme Court of Justice
  - First Vice-President and President of the Electoral Chamber
  - President of the Social Appeals Chamber
  - Judge of the Social Appeals Chamber
- **National Assembly (Permanent Social Development Committee)**
  - President of the Committee (United Socialist Party of Venezuela)
  - Coordinator of the Women and Gender Equality Subcommittee (United Socialist Party of Venezuela)
  - Coordinator of the Social Security and Health Subcommittee (United Socialist Party of Venezuela)
  - Coordinator of the Trade Union Subcommittee (Venezuelan Communist Party)
  - Two Coordinators of the Social Committee (Democratic Unity Roundtable)
- **High Labour Council**
- **Social partners**
  - Venezuelan Federation of Chambers of Commerce and Manufacturers' Associations (FEDECAMARAS)
  - Federation of Artisans, Micro, Small and Medium-Sized Business Associations (FEDEINDUSTRIA)
  - National Confederation of Farmers and Stockbreeders (CONFAGAN)
  - Entrepreneurs for Venezuela (EMPREVEN)
  - Bolivarian Council of Industrialists, Entrepreneurs and Micro-entrepreneurs (COBOIEM)
  - United Confederation of Workers of Venezuela (CUTV)
  - Bolivarian Socialist Confederation of Workers
  - Inter-Union Assembly of Workers – Workers' National Convention (PIT–CNT)
  - National Union of Workers of Venezuela (UNETE)
  - Confederation of Autonomous Trade Unions (CODESA)
  - General Confederation of Workers (CGT)
  - Public Services International (PSI) – Venezuela Chapter
  - National Federation of Retired Persons and Pensioners of Venezuela
  - Federation of University Professors (FAPUV)
  - Medical Federation of Venezuela (FMV)
  - Autonomous Employment, Salary and Trade Union Defence Front (FADESS)
  - Basic Trade Union Movement (MOSBASE); Independent Trade Union Alliance (ASI)