International Labour Organization

▶ GB.340/INS/13

Governing Body

340th Session, Geneva, October–November 2020

Institutional Section **INS**

Date: 7 October 2020
Original: Spanish

Thirteenth item on the agenda

Reply of the Government of the Bolivarian Republic of Venezuela to the report of the Commission of Inquiry appointed to consider the complaint alleging the 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)

1. At its 337th Session (October-November 2019) the Governing Body took note of the report of the Commission of Inquiry, as communicated to the Government of the Bolivarian Republic of Venezuela on 27 September 2019.

2. The Government replied to the report in a letter dated 27 December 2019 (reproduced in Appendix I).

3. In a letter of 31 January 2020, the Director-General acknowledged receipt of the reply and considered that it would be important for the Governing Body, in advance of its 338th Session, to receive the Government's stated position with regard to the two specific points set out in article 29, paragraph 2, of the Constitution, namely: whether or

not it accepted the recommendations contained in paragraph 497 of the report of the Commission; and if not, whether it proposed to refer the complaint to the International Court of Justice (the letter is reproduced in Appendix II).

4. In a communication dated 10 August 2020, the Government replied stating that "it does not accept the recommendations of the Commission of Inquiry because if it were to comply with them it would mean violating the Constitution, the separation of powers, rule of law, independence, sovereignty and self-determination of the Bolivarian Republic of Venezuela". Furthermore, in the same communication, the Government reiterated its commitment to broad and inclusive social dialogue and its willingness to improve compliance with the ILO Conventions ratified by the country on the basis of constructive suggestions issued by the ILO supervisory bodies, and to receive technical assistance from the ILO in the area of social dialogue, consultations, trade union representation and improvements in its practices, as far as may be required in the framework of Conventions Nos 26, 87 and 144. The Government also left open the possibility of making further progress on the basis of the recommendations it deems relevant and, that being so, it will continue to inform the ILO accordingly (the content of the communication is reproduced in Appendix III).

5. The Government also sent the ILO three other communications relating to certain elements of the recommendations contained in the Commission of Inquiry's report. In a communication dated 28 February 2020, the Government informed the ILO that on that date the Venezuelan Workers' Confederation, the Independent Trade Union Alliance (ASI), had been registered. The Government sent a copy of the registration form and pointed out that such official recognition was one of the recommendations made by the Commission of Inquiry. In a communication dated 2 March 2020, the Government stated that it was extremely important to be able to count on the assistance of the ILO in the near future in order to determine the representativeness of employers' and workers' organizations in the country. In a communication dated 4 September 2020, the Government informed the ILO that a pardon had been granted to Mr Rubén González, through a decree issued by the President of the Bolivarian Republic of Venezuela on 31 August 2020.

6. It should be recalled that the Commission of Inquiry's report stated that the competent authorities should give effect to its recommendations without further delay and complete their implementation by 1 September 2020 at the latest. In this regard, the report stated that the Government should submit to the Committee of Experts on the Application of Conventions and Recommendations the corresponding reports on the application of the Conventions covered by the complaint for examination at its session in November–December 2020.

▶ Draft decision

7. **The Governing Body took note of the Government's reply to the report of the Commission.**

▶ Appendix I

Initial reply of the Government of the Bolivarian Republic of Venezuela to the report of the Commission of Inquiry

Minister of Popular Power for
the Social Process of Labour

No. 2571

Caracas, 27 December 2019

Mr GUY RYDER
DIRECTOR-GENERAL
INTERNATIONAL LABOUR OFFICE (ILO)

Dear Mr Ryder,

Revolutionary greetings from the Government of the Bolivarian Republic of Venezuela.

I. We acknowledge receipt of your communication dated 27 September 2019, in which you sent to our Government the report of the Commission of Inquiry concerning our country, in accordance with article 29 of the ILO Constitution.

We note that the report in question relates to the complaint against our Government submitted by Employers' delegates under article 26 of the ILO Constitution, in respect 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).

II. In this regard, this is a timely opportunity to reaffirm our readiness to continue to cooperate with the different supervisory mechanisms of the ILO, to the extent that their actions are objective, impartial, transparent, consistent with the law and unconnected with political interests that are counter to the Government of the Bolivarian Republic of Venezuela.

It should be recalled that it was in this spirit of good faith that, in Communication No. 3251 of 16 November 2018, our Government decided to support the visit of the Commission of Inquiry, notwithstanding our previous extensive arguments rejecting such a mechanism, alleging and proving in law and in fact the procedural flaws and political considerations that compromised the objectivity, impartiality, transparency, ethics and strict observance of the law that must be present and must be respected in any supervisory mechanism.

In accepting the visit, our Government expressly demonstrated that it was giving further formal expression to its commitment to broad and inclusive social dialogue, which is characteristic of the Bolivarian revolution, providing further evidence of the belief that it would be possible to move forward by strengthening compliance with the aforementioned ILO Conventions.

III. As a fundamental premise, we have always kept in mind that, in accordance with the ILO Constitution and the rules of procedure adopted for the Commission of Inquiry on the Bolivarian Republic of Venezuela, *the Commission would produce a report containing such recommendations as it might think proper as to the steps which should be taken to meet the complaint.*

Even though the Commission, in the context of its work, could accept information and statements of relevance to the complaint concerning the Conventions in question from both employers and workers, this did not have the effect of transforming the Workers into claimants, complainants or other aggrieved parties and, for that reason, their aspirations, regardless of how valid they might have been in some hypothetical scenario, are not and were not the substance of any conclusions and, even less, of any recommendations that the Commission might have put forward in its report.

Failure to file a complaint, or a joint complaint, cannot be remedied by any statements, documents or interviews that are produced in the context of a complaint filed by other parties.

Taking the contrary view would result in an absurd and totally unacceptable situation, confirming and accepting that delegates of the International Labour Conference – from both the Employers' and the Workers' benches – could in practice file complaints under article 26 of the Constitution to cater to their interests and later, in an irregular procedure applied by the Commission appointed for that purpose, other social partners from a sector different to that which filed the complaint could send documentation and information and submit statements and the Commission would also include in its recommendations a sector that had not filed a complaint and was therefore not specifically a party to the complaint procedure.

IV. It is clear that the remit of the Commission of Inquiry appointed in this case was limited to the arguments set out in the complaint duly filed by the Employers' delegates, which was considered receivable by the Governing Body, and in accordance with which the Commission was appointed to carry out the relevant investigations.

V. Our case must not be taken as a precedent that may be invoked with undesirable ramifications down the line in future cases that may arise with other ILO Member governments.

We place on record this clear and transparent position, expressed in a context of respect and dignity as a sovereign government that sets out its considerations in a timely manner, to ensure that bad experiences that further compound the unclear ILO doctrine on the subject are not overlooked. This could even be turned to constructive purpose to defend and repair the reputation of the ILO, which is something of concern to us.

The proper procedures under any worthwhile supervisory mechanism must be applied strictly within the mechanism's sphere of competence, or it will risk losing respect and credibility, and at the same time they must be flexible and able to accommodate other unforeseen interests. Going beyond the complaint that has been filed, and even worse, taking a position and issuing opinions or recommendations on matters that are neither referred to nor raised in the complaint concerning the Employers, constitutes what is known in law as *ultra petita* – or *extra petita* – in other words *going beyond that which has been sought*; this language is used in the legal field to describe the irregular situation that arises when a judicial or administrative decision grants more than what was requested by either party, insofar as a decision, whether judicial or administrative, must be in accordance with what is requested or sought.

By appearing to ignore all this throughout the whole process, while the Commission of Inquiry was carrying out its work, we have been able to demonstrate and to obtain written proof of the extent to which the ILO supervisory bodies have been exceeding their mandate, as we have always claimed.

In the report, the *principle of correspondence*, or *principle of consistency*, should have been respected, which prohibits a judge or decision-making body from issuing, granting or denying something other than or beyond what is requested in the submission.

In this case, the Commission of Inquiry should not have taken a position beyond what was raised in the complaint that had been filed purportedly in accordance with the Employers' interests. This, precisely, was its remit and sphere of competence.

The work carried out by the Commission and the information, allegations, complaints and documentation received that went beyond that remit and sphere of competence ought to have been submitted or directed to the ILO's other supervisory bodies with competence in the matter, depending on the matter in question.

VI. It should be made clear that, in the text of the complaint under article 26 of the ILO Constitution filed by the Employers' delegates in June 2015, no reference was made to the Workers, and neither did the Workers subscribe to or form part of this complaint.

By way of example only, both paragraph 125 and footnote 79 of the report plainly confirm that the Commission acted in an arbitrary way and exceeded its mandate and, as it bears repeating at every opportunity, we specifically let this stand so that we would have written proof of the extent to which a supervisory mechanism without operational rules is exceeding its mandate and demonstrating incompetence in dealing with and taking a position on matters that do not fall within its remit. This is highly regrettable for the ILO, because it is its reputation that is being tarnished, although it could be turned to constructive purpose by establishing the principles for what should not be repeated in the future by a commission of inquiry.

As our Government has maintained and continues to maintain at every opportunity when it has been or is necessary to make this clear, when the Employers have made reference in documentation submitted after the complaint to "workers' organizations that are not close to the Government", this actually means, by contrast and based on attested experience at the national level, workers' organizations that are close to or controlled by the employers and that, from a political point of view, serve as the implementing arm for employers' actions, as these organizations are under the political sway of Venezuelan and international employers that are opposed to the Government of the Bolivarian Republic of Venezuela, and whose actions are always characterized by their interest in undermining through undemocratic means the legitimate and constitutional representative status of our Government.

VII. Without going into detail, these are what are known internationally as "yellow" trade unions, which are created and controlled by employers and as a result cater to their interests, thereby undermining the genuine and noble objective of workers' unions.

VIII. At the risk of being repetitive, we reaffirm that, in the Bolivarian Republic of Venezuela, the trade unions that the employers refer to as *workers' organizations that are not close to the Government*, and which are mentioned in the report, are actually no more than extensions of the employers, known in legal terms as *yellow trade unions* that are controlled and financed and which openly and blatantly serve the political and non-democratic interests of national and international employers' organizations that are opposed to the Government of the Bolivarian Republic of Venezuela.

IX. Without wishing to draw attention away from the subject, we recall a specific example that recently arose at the 337th Session of the Governing Body, in November 2019, when the Employers' group wanted consultative status to be granted to an organization that purportedly represented the interests of workers, and the Workers' group had to take a firm stance and even expressed its great concern in that regard; in its deliberations, the Governing Body decided not to grant the consultative status in question, in the face of the unwavering and shameless

arguments put forward by the Employers in favour of that so-called organization, which would serve their interests and by no means those of the Workers. [1]

X. It should be kept in mind that, in order to avoid this response being extremely lengthy, we do not intend at this stage to refute in detail, paragraph by paragraph, each of the considerations that we do not accept in the above-mentioned report, as they will be the subject of further clarifications, if deemed necessary, that we will submit at an appropriate time.

That detailed and comprehensive response, which we will submit in due course, will be provided out of respect for the ILO as an organization with the noblest of aims and objectives, which in practice must be preserved for the sake of making the ILO respectable and making its seriousness, objectivity, transparency and non-politicization overall become tangible and demonstrable values. We, the respected Members of the ILO, look forward to the day when we can actually realize these values, which today remain ideals.

XI. Having clarified that important position, we are obliged to inform you of our regret that, based on a number of superficial and biased assessments by the Commission of Inquiry, it has been asserted that our Government has violated the Constitution and the separation of powers, rule of law, independence, sovereignty and self-determination of the Bolivarian Republic of Venezuela, among other claims that we have been able to discern, which have already been addressed in the various arguments duly put forward by our Government.

XII. We reiterate all the arguments that we made in our defence during the proceedings of the Commission of Inquiry. However, we would like to make some observations that provide evidence of the troubling and regrettable way in which the Commission of Inquiry exceeded its mandate, which, with all due respect, clearly arises from a lack of knowledge among the members of the Commission concerning the scope of their activities and the supervisory mechanism as such and from a lack of experience in this regard, rather than from a deliberate intent to be arbitrary.

Worse than that, we would rather not mention and draw attention to various actions of a political nature by some of its members, to whom we have always shown respect and consideration on account of the independence to which they were committed and which they were obliged to demonstrate in all their actions, by not making contacts or private visits of a political or ideological nature that were not scheduled in the framework of this complaint.

XIII. Obviously, by commenting on this occasion on the report of the Commission of Inquiry in some detail, we are guided by our interest in fully and legitimately defending the Government of the Bolivarian Republic of Venezuela.

At the risk of being repetitive, we now wish to specify for the record the overstepping of mandate, confusions and misinterpretations in the report, so as not to let stand the brash opinions and recommendations which, if not contradicted, will be claimed by the various ILO organs or bodies, tomorrow or the day after, as is usual in their poor or misguided practice, as equivalent to norms of the doctrine of the Organization that may subsequently be applied as presumably valid precedents against other sovereign member governments of the ILO, which in the future will be equally affected by the perverse assessments and arbitrary and politicized use of the ILO's supervisory mechanisms. Progress remains to be made towards achieving the desired objectivity and transparency that should prevail in these supervisory mechanisms:

[1] See document GB.337/INS/13/8 and the draft minutes of the discussion held during that session of the Governing Body, Institutional Section, paras 535–570, published on the ILO website.

1. As the Employer representative has stated before the Governing Body of the ILO, in repeated statements published in national and international social media, the Commission of Inquiry issued its final report containing *arguments extending beyond labour matters and delving, as the judges considered it appropriate, into republican aspects of the democratic life of our country*. [2]

2. Although our Government naturally continued to provide responses and to attend to all requests for information made by the Commission of Inquiry as a sign of our openness towards the various supervisory mechanisms of the ILO, the content of the report goes too far, as the fact remains that the Commission of Inquiry established under article 26 of the ILO Constitution on the basis of a complaint submitted only by Employers' delegates had a clear scope and mandate to observe.

   It is hard to believe that the Commission of Inquiry was of the view that, in the context of this complaint, the Employers could represent the interests of the workers' organizations under their control (who did not even sign the complaint submitted by the Employers) unless the Commission considered the actions of the employers and the yellow trade unions – whose common interests make them indistinguishable – to be valid.

3. The Commission of Inquiry must have been aware that our Government's willingness to collaborate and provide all relevant information requested of it so that the Commission was duly informed and the information was transmitted to the competent ILO supervisory mechanisms in no way broadened the remit and the competence granted to the Commission of Inquiry solely on the basis of the Employers' complaint.

4. In this respect, **we note with concern that many of the aspects in relation to which the Commission of Inquiry exceeded its mandate are covered in the complaint submitted under article 26 of the ILO Constitution by Workers' delegates that was closed in accordance with the decision adopted by the Governing Body at its 329th Session (March 2017)**, on the basis of document GB.329/INS/16(Rev.).

5. The Commission of Inquiry had no authority to express opinions and make recommendations in relation to the issues raised in that complaint that was closed by the Governing Body, as all matters related to Convention No. 87, to which the Workers' complaint referred, fall within the competence of the Committee on Freedom of Association (CFA). The CFA's examination of the matters raised by the Workers is contained in Case No. 3277, in relation to which it has yet to make a decision, and is linked to the follow-up before that supervisory body of Cases Nos 2763, 2827, 2917, 3006, 3016, 3036, 3059, 3082 and 3187.

6. It is common knowledge that Case No. 2254, which is currently before the CFA, is the only case linked to the article 26 complaint submitted by the Employers' delegates. The Office, the Employers' group and even the Workers' group are all aware of this. It is so stated in the text of the complaint, in all other communications from the

[2] See the press release published on 18 November 2019 by the granaldea.com portal, which was copied and redistributed by, among others, lapatilla.com and venezuelaunida.com (19 November 2019), with the headline "Venezuela en el banquillo de los acusados de la OIT" [Venezuela in the dock before the ILO], by Jorge Roig Navarro – Venezuela Unida (we will not begin to analyse the full text on this occasion so as not to exhaust ourselves from once again refuting the false assertions levied at our Government, which are plagued by proven political interests in support of a coup to destabilize peace and democracy in Venezuela).

Employers and even in the documents issued or adopted by the Governing Body concerning that complaint, and has always been stated in the reports of the CFA. Any other matters are extraneous to the Employers' complaint.

7. Having given this brief and crucial clarification, we also note that, despite the information provided, documented and proven by our Government, it is regrettable and extremely concerning that the Commission of Inquiry ignored offences committed under Venezuelan law referred to during this procedure, arbitrarily disregarding the principle of lawfulness that is expressly stipulated by ILO Convention No. 87, whose clear and fundamental provisions require no interpretation in that they categorically establish that:

> *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* (Convention No. 87, Article 8(1)).

8. Continuing in the same order as the report in question, we recall that in accordance with Article 2(2) of ILO Convention No. 144, the nature and form of the procedures referred for tripartite consultations on international labour standards shall be determined in each country in accordance with national practice.

   There is no predetermined model for consultation nor any model structure to follow. Moreover, it must be noted that the only matters that are subject to consultations are specified strictly and categorically by that Convention, namely: (1) items on the agenda of the International Labour Conference; (2) proposals to be made to the national authorities in connection with new Conventions and Recommendations adopted by the ILO with a view to their potential ratification and/or application; (3) re-examination of unratified Conventions and of Recommendations; (4) reports to be made to the ILO on ratified Conventions; and (5) proposals for the denunciation of ratified Conventions.

   Under no circumstance or loose interpretation can it be acceptable to require tripartite consultation on any other matter on the basis of a purported predetermined or recommended structure, still less on matters related to a country's social or economic policy. Consequently, the Commission's overstepping of its mandate, the ambiguity of the report and the confused assessments it contains are concerning.

9. We recall that the complaint lodged by the Employers' delegates made no mention of the purported violations of tripartite consultation on international labour standards, which the Commission of Inquiry acknowledged in its report. During this supervisory procedure, with a view to collaborating and in the expectation that the framework of Convention No. 144 would be respected, our Government emphasized – including for pedagogical, academic and guidance purposes – that the Employers are confusing this tripartite consultation on international labour standards with social dialogue, with which our Government also complies.

   The Employers and their supporters claim that the subject of consultation and tripartite social dialogue is the embodiment of their political aspirations. It is regrettable and surprising that the same confusion persists in the report of the Commission of Inquiry.

10. Furthermore, the machinery for fixing the minimum wage and the methods to be followed in its operation are open to participation by the employers and workers concerned, in such manner and to such extent as may be determined by national laws or regulations (Article 3 of ILO Convention No. 26); in other words, in accordance with

that Convention, there is no predetermined consultation model that must be applied. Nevertheless, as we have stated, there is always room to perfect its operation and we will continue working on it in practice.

11. It should be borne in mind that Venezuelan labour law and practice has always been advanced, and there can be no claim that what is not provided for in the ILO Conventions, which are international instruments providing minimum standards in that area, cannot be provided or developed for workers in national legislation, especially when such national legislation is clear and categorical.

    This is the case in point with Workers' Production Boards, given that section 17 of the Constitutional Act on Workers' Production Boards provides unambiguously that *Workers' Production Boards are not by their nature trade unions and in the exercise of their functions shall not carry out trade union activities, nor impede or interfere in the exercise of the right to freedom of association and collective bargaining* (Act published in *Official Gazette* No. 41.336 of 6 February 2018).

    It is worth emphasizing that, as we explained in detail to the Commission of Inquiry, Workers' Production Boards are not supervisory mechanisms, nor do they undermine the exercise of freedom of association.

12. As it is referred to in the report, special mention should be made of the Government's regret at the slowness observed in the Venezuelan justice system. It should be clearly understood that the lack of swifter progress in no way implies that there is any kind of impunity, given that investigations are, and continue to be, carried out with a view to ensuring that the appropriate judicial ruling is handed down.

13. The Executive Branch that we represent is always responsive, collaborating whenever appropriate and urging the Venezuelan judiciary to expedite the different cases and issue rulings where applicable. Moreover, whenever we have had any rulings, we have immediately referred them to the various relevant ILO supervisory bodies interested in hearing the facts of the cases.

    Summonses and preventive detentions, issued under Venezuelan legislation for the purpose of conducting investigations and taking statements, are intended precisely to clarify the facts of each case so that the relevant judicial body can issue the corresponding decision in accordance with the law.

    None of this can be interpreted as harassment, threats, intimidation or persecution, which is the subterfuge used by those who intend to subvert the Venezuelan order and the peace of the country through the purportedly legitimate activities of employers or trade union organizations backed by employers opposed to the democracy and constitutional legitimacy of our Government.

    The provisions of Article 8(1) of Convention No. 87, referred to above, should not be overlooked, bearing in mind that respect for lawfulness also underpins the foundations of social justice.

14. By the same token, we reaffirm that the judicial proceedings and preventive and non-custodial measures provided for in the Venezuelan legal system are under no circumstances used to undermine freedom of association or any other right. This is something to which our Government is committed by virtue of the fact that in our country the State governs by the rule of law, following robust legal and constitutional rules.

15. In our country, any person who commits an offence provided for and sanctioned in criminal legislation is subject to the jurisdiction of the natural judge competent in the

matter. Ordinarily, civilians are not subject to military jurisdiction, unless they commit any of the offences specified in the Organic Military Justice Code, and there is no discussion or interpretation to the contrary, because judges of the ordinary criminal courts are not competent to hear or rule on such cases.

In the Bolivarian Republic of Venezuela, no person who commits a military offence can avoid trial by a natural judge of the military courts, otherwise trial by a civil judge or ordinary criminal court would be encroaching on military jurisdiction. Our Government would never support such action because it forms the basis of our judicial system. We regret the confusing findings on the matter contained in the report of the Commission of Inquiry.

16. It is worth clarifying that the lawful activities of employers' and workers' organizations and their officials do not constitute criminal offences in our country and are therefore not punishable or subject to any proceedings that carry a prison sentence. By contrast, however, all unlawful activities fall within the purview of Article 8(1) of Convention No. 87, like any offences defined as such in Venezuelan law.

17. Our Government has emphasized the need for, and continues to urge, all security agencies and national justice bodies to conduct investigations and proceedings within the framework of the law without delay and, above all, in an independent, objective and transparent manner, in line with their mandates. This is to ensure that the perpetrators and instigators are held accountable where applicable, while at the same time ensuring that any corresponding protection, sanction and compensation measures that may be required are adopted.

It is important to highlight once more that, in the Bolivarian Republic of Venezuela, these potential measures to secure financial compensation or the payment of damages are not automatic and are only referred to the judicial authorities at the request of the interested party. In other words, only the interested party can take the necessary prior action. No one, not even the Commission of Inquiry, can attempt to lodge a claim of this nature, or even agree on a claim, in favour of third parties who did not refer to the competent authorities in good time to claim the compensation anticipated.

The actions we take as the executive authority with regard to the judiciary are made on the basis of the *Principle of the Separation of Powers*, of joint collaboration and the independence maintained by the five branches of this country: Legislative, Executive, Judicial, Citizens' and Electoral.

18. Furthermore, it is not our Government's responsibility to ensure that employers' and workers' organizations are independent from a political or political party point of view, as we would otherwise run the risk of impeding their free development. As is well known, trade union activity that involves political activity is not prohibited.

For this reason, we have been unable to take any action even when FEDECAMARAS and certain workers' organizations have been aligning themselves with, supporting and openly participating in political forums and meetings with representatives of the National Assembly who are publicly opposed to the Government of the Bolivarian Republic of Venezuela. In this respect, if we cannot prevent such practices, then neither can we take any action when trade union organizations align themselves with political parties supportive of our Government.

19. Our Government has taken note of the suggestions for legislative reforms that might be relevant to efforts to improve Venezuelan legislation. Although those suggestions

could be presented in due course to the National Assembly, which is the competent body on the matter, at this point in time we are not in a position to do so.

The various ILO supervisory bodies have sufficient information provided by us in a timely manner regarding the contempt of the Legislative Power in our country, as upheld by the Supreme Court of Justice in repeated judgments. While the National Assembly remains in contempt, any actions taken by it are null and it is therefore not appropriate for the time being for us to proceed with any suggestion or possible draft reform of our laws.

20. It is worth reiterating again that, as we informed the Commission of Inquiry, we are always ready to improve our practices with respect to compliance with the various ILO Conventions ratified by our country.

Every mechanism, procedure and consultation can count on our full cooperation to work with it on the basis of constructive suggestions issued by the ILO supervisory bodies, but it should not be assumed that we must therefore accept the imposition of predetermined structures or models that are not provided for in the Conventions. Each country has its own particular circumstances and it is on that basis that best practices should be established, on compliance in particular.

21. Our Government will continue to strengthen social dialogue in a comprehensive manner, without exclusions, always encouraging the most representative workers' and employers' organizations to participate, without favouring any of them, to the extent that they wish to do so and comply with the laws of our country.

22. Our Government appreciates and has never objected to the specialized technical assistance offered by the ILO in the area of social dialogue, consultation, trade union representation and improvements in our practices, as far as may be required in the framework of Conventions Nos 26, 87 and 144, because we are interested in improving those areas in order to further our full compliance with those Conventions.

23. Furthermore, we clearly and categorically reject the superficial assessments of the Commission of Inquiry regarding the judgments issued by the courts of our country. It should be clear that the judgments are intended to be complied with, not to be interpreted, least of all by the Commission of Inquiry, which has no competence in this regard.

24. It is not appropriate that, notwithstanding the text of the judgments, the Commission should wrongly refer to other elements that were not raised at the respective trial but were alleged to have been submitted to the members of the Commission after the deadline, leading the Commission to *presume* the opposite of what was decided by the corresponding court. Such presumptions, which are biased and subjective, have no basis in fact, and we therefore depart unequivocally from the superficial considerations set out in its conclusions.

25. We note with regret that the Commission suffers from the misapprehension that it has become an appeal body for the national courts, which – we wish to make this absolutely clear – is not acceptable under any circumstances; especially given that the Commission is attempting in this way to make up for the fact that the interested party did not exercise the appropriate appeal to the respective superior court in the event that it did not agree with the findings of the corresponding judgment.

Our Government respects and adheres to the findings of the judgments of the evidence lodged in the respective depositaries, which are national courts, and it

rejects the opinions, superficial presumptions and unsubstantiated evidence on the basis of which the Commission has argued the contrary.

26. Furthermore, we do not accept the Commission's contrary opinions with regard to the "criminal charges" established in our legislation, as they are applied universally and without discrimination.

There is no possibility for distinctions in the rigorous application of these "criminal charges" on any person who commits such offences in our country, or for their non-enforcement or their limited or privileged enforcement on trade union leaders (employers or workers).

27. There is only one law and we must all come to terms with it. At the risk of being repetitive, we recall once again what the Commission seems to have persistently forgotten in its report:

> *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* (Convention No. 87, Article 8(1)).

28. Although there is no need to give a lesson in law to those who presumably know it, it should be emphasized that, in the Bolivarian Republic of Venezuela, in criminal matters, the process is not based on a necessary contradiction between the allegations made by the Public Prosecutor's Office and the findings later made by the judge hearing the case.

It cannot be an indication that a court decision or judgment can be criticized, as the Commission of Inquiry has arbitrarily done in this report by finding that a decision or judgment is not sound or independent because the supervisory judge has not contradicted the prosecutor's allegations.

It should be kept in mind that a court's decision or judgment is based on the evidence lodged in the respective file, which is assessed by the judge hearing the case, and without knowledge of the file the contrary view cannot be maintained.

Many of the allegations or claims of which the Commission of Inquiry has been made aware are false, were argued without evidence and in every instance were never asserted in the corresponding trial or case; in other words, they are extrajudicial and extemporaneous allegations that provide no valid basis for the Commission to erroneously contradict and call into question the independence of Venezuelan judges.

29. Nor can we ignore the fact that, in some paragraphs and footnotes of the report, we have observed references to new allegations that the interested parties made to the Commission of Inquiry during its visit to our country without providing further details or evidence, to which the Commission alluded, yet these new allegations were never communicated to our Government to give us the opportunity to make the appropriate response.

In other words, it seems that the Commission considered those new allegations against our Government to be valid, according to its own scale of justice, with little or no regard for what it should have communicated to us, in the interests of objective and transparent procedure, so that we could give an official response. This is equivalent, as is often the customary practice of the ILO supervisory mechanisms, to a violation of the legitimate right to defence of the Bolivarian Republic of Venezuela.

30. Once again, we must emphasize the falsehood of many of the allegations made by employer or worker leaders who are recognized political opponents of our Government.

    These assertions made without any evidence before the various ILO supervisory bodies, including at meetings with the Commission of Inquiry – to which they did not submit evidence because their claims are false – only seek notoriety and news coverage in the mainstream national and international media, since that is what they live by, politically speaking.

    Unfortunately, it is well known that, in the Venezuelan business and union environment – with some honest exceptions – there is an abundance of incompetent officials who do not carry out the genuine union functions of employers and workers in favour of their members, and instead content themselves with fomenting political opposition to our Government, thus subsisting in their erratic and mythomaniacal world without fulfilling union objectives but giving priority to their political-partisan aspirations.

In view of all these considerations, which are by no means the only ones that could be put forward, the Government of the Bolivarian Republic of Venezuela reserves the right to continue to respond responsibly to the above-mentioned report of the Commission of Inquiry, which deserves a fuller and clearer assessment, with due respect and in a constructive manner, and it is not our intention to exhaust that assessment on this occasion.

The Government of the Bolivarian Republic of Venezuela, bearing in mind that the assessments contained in the report refer to actions by the five branches of the National State Authority, **will continue to analyse** the recommendations contained therein. We note with regret the many assertions, assessments, criticisms and conclusions that seem to be insuperable and opprobrious judgments against the branches of the National State Authority, on which the recommendations issued by the Commission of Inquiry are based, and on this occasion we have provided only a brief outline of our position. We leave open the possibility of making further progress on the basis of the recommendations we deem relevant and will inform the ILO accordingly.

We are always prepared to continue improving and perfecting compliance with the Conventions in question, in the context of any broad and inclusive social dialogue and consultations that may take place in the interests of the industrial peace that we are called upon to preserve in the Bolivarian Republic of Venezuela.

As always, we continue to be committed to full compliance with the above-mentioned Conventions and all those ratified by our country, and in this regard we will continue to submit reports and provide replies for follow-up by the Committee of Experts on the Application of Conventions and Recommendations, under article 22 of the ILO Constitution, and we will also provide the replies that must continue to be provided to the Committee on Freedom of Association and other supervisory organs and bodies that so require.

Finally, on behalf of the Government of the Bolivarian Republic of Venezuela, we once again convey to the Director-General the assurances of our highest consideration.

Yours sincerely,

(signed)
GERMÁN EDUARDO PIÑATE RODRÍGUEZ
Minister of Popular Power for
the Social Process of Labour

▶ Appendix II

The Director-General's letter to the Government of the Bolivarian Republic of Venezuela

Monsieur Guy Ryder
Directeur général
Bureau international du Travail (BIT)

31 January 2020

Mr Germán Eduardo Piñate Rodríguez
Minister of Popular Power for
the Social Process of Labour
Centro Simón Bolivar
Torre Sur, Piso 5
CARACAS

Dear Minister,

Thank you for your letter of 27 December 2019 which contains your Government's reply to the report of the Commission of Inquiry set up to examine the complaint lodged against the Bolivarian Republic of Venezuela for non-compliance with Conventions Nos 87, 144 and 26.

According to the applicable rules and procedures, the Commission's report and the Government's reply will be considered by the Governing Body at its forthcoming 338th Session taking place from 12 to 26 March 2020. To this end, I wish to draw your attention to the fact that under article 29, paragraph 2, of the ILO Constitution, your Government is expected at this stage to inform the Director-General whether it accepts the recommendations of the Commission of Inquiry, and if not, whether it wishes to refer the complaint to the International Court of Justice.

After careful examination of your communication of 27 December 2019, I believe that it would be important for the Governing Body, before its 338th Session in March, to be able to benefit from a clear statement of your Government's position in respect of the two specific points referred to in article 29, paragraph 2, of the Constitution, namely whether it accepts the recommendations of the Commission of Inquiry set out in paragraph 497 of its report, and if not, whether it intends to refer the complaint to the International Court of Justice for decision. I would, therefore, be grateful if your Government could inform me as soon as possible, and in accordance with the clear terms of the applicable constitutional provisions, whether it accepts the recommendations of the Commission of Inquiry, and if not, whether it intends to refer the complaint to the International Court of Justice.

Thank you for your urgent attention to this matter.

Yours sincerely,

(Signed) Guy Ryder

▶ Appendix III

Letter from the Government of the Bolivarian Republic of Venezuela (August 2020)

Minister of Popular Power for
the Social Process of Labour

No. 296

Caracas, 10 August 2020

Mr GUY RYDER
DIRECTOR-GENERAL
INTERNATIONAL LABOUR OFFICE (ILO)

Dear Mr Ryder,

Revolutionary and fraternal greetings from the Government of the Bolivarian Republic of Venezuela at a very difficult time for the whole world due to the COVID-19 pandemic, which is having regrettable consequences for all and a direct impact on the world of work, among other sectors, that we must confront.

From the Bolivarian Republic of Venezuela, we hope that each of the stakeholders involved, in accordance with their position and in keeping with their responsibility, will continue to contribute to the fight against this pandemic and to rebuilding a better world for current and future generations.

Director-General, this communication is to acknowledge receipt of your esteemed communication dated 31 January 2020, acknowledging receipt of our reply dated 27 December 2019 concerning the report of the Commission of Inquiry set up to examine the complaint submitted by Employers' delegates against the Bolivarian Republic of Venezuela, in accordance with article 26 of the ILO Constitution, with respect to ILO Conventions Nos 26, 87 and 144, to which we have been unable to reply sooner due to the abovementioned circumstances, which have also prevented us from acknowledging receipt of your communication dated 8 April 2020.

In this regard, our Government reiterates the reply contained in communication No. 2571 of 27 December 2019, reaffirming its commitment to broad and inclusive social dialogue, which is characteristic of the Bolivarian revolution, without exclusions, always encouraging the participation of all the most representative organizations of workers and employers, without privileging either the workers' or the employers' organizations, to the extent that they so wish and that they comply with the law of our country, as has been the case in the current difficult circumstances.

From a perspective of breadth and respect, and at the risk of being repetitive, we once again state that we are ready to improve our practices regarding compliance with the various ILO Conventions ratified by our country, with the understanding that every mechanism, procedure and consultation can count

on our full cooperation to refine it on the basis of constructive suggestions issued by the ILO supervisory bodies. Under no circumstances do we accept the imposition of predetermined structures or models that are not provided for in the Conventions. Each country has its own particular circumstances and it is on this basis that best practices should be established, on compliance in particular.

Furthermore, as we have repeatedly stated, our Government appreciates and has never objected to the possibility of seeking ILO specialized technical assistance in the areas of social dialogue, consultation, trade union representation and improvements in our practices, as far as may be required in the framework of Conventions Nos 26, 87 and 144, because, as we have said, we are interested in improving those areas in order to further our full compliance with those Conventions.

In this connection, it is worth keeping in mind the respect trade union organizations deserve from us and the attention they receive from our Government. We recall our communication No. 20/2020 of 28 February 2020, addressed to the Director of the International Labour Standards Department. In this same context, our express request for technical assistance, addressed to your Office in a timely manner by way of communications Nos 22/2020 of 28 February 2020 and 344 of 2 March 2020, is of the utmost importance.

With regard to the clarifications based on article 29(2) of the ILO Constitution, in general terms, as we stated in our reply dated 27 December 2019, the Government of the Bolivarian Republic of Venezuela does not accept the recommendations of the Commission of Inquiry, since compliance with them would entail the violation of the Constitution of the Republic, the separation of powers, the law, the independence, the sovereignty and the self-determination of the Bolivarian Republic of Venezuela. We have left open the possibility of making progress on the recommendations that we consider relevant, and, if so, we will inform the ILO in a timely manner, as we have done up to now.

With no further points to raise, I once again convey to the Director-General the assurances of my highest consideration.

Yours sincerely,

(signed)
GERMÁN EDUARDO PIÑATE RODRÍGUEZ
Minister of Popular Power for
the Social Process of Labour