



Governing Body

310th Session, Geneva, March 2011

GB.310/7

FOR DECISION

SEVENTH ITEM ON THE AGENDA

Complaint concerning 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), made by delegates to the 92nd Session (2004) of the International Labour Conference under article 26 of the ILO Constitution

Overview

Issues covered

This document has been prepared at the request of the Governing Body in relation to the complaint presented under article 26 of the Constitution of the ILO against the Government of the Bolivarian Republic of Venezuela (GB.309/20/3).

Policy implications

Depending on the decision taken.

Financial implications

Depending on the decision taken. The cost of a Commission of Inquiry would need to be approved by the Programme, Financial and Administrative Committee.

Decision required

Paragraph 8.

References to other Governing Body documents and ILO instruments

Governing Body members may find it useful to refer to the annexes to this document, and in particular GB.310/8 (Report of the Committee on Freedom of Association, paragraphs 1177–1292).

1. In its November 2010 meeting, the Governing Body considered a report of the Officers of the Governing Body¹ on the complaint presented by a number of Employers' delegates during the 2004 session of the International Labour Conference, 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), presented under article 26 of the Constitution of the ILO to the Governing Body at its 291st Session (November 2004).² The complaint was based on, among other things, the conclusions of various ILO supervisory bodies, some of which concerned the continued and persistent failure to implement Convention No. 87. The complaint had been referred by the Governing Body to the Committee on Freedom of Association in November 2004 with a request, as in similar cases concerning other countries, for the Committee's recommendation as to whether the complaint should be forwarded to a Commission of Inquiry (see document GB.291/17, paragraph 7). The complaint and the Government's observations of 10 January 2005 are contained in Appendix I and were published in the 336th Report of the Committee on Freedom of Association (March 2005).
2. In March 2005, the Committee on Freedom of Association was not able to examine the complaint under article 26 of the Constitution because most of its Employer members had signed the complaint in question. Having taken note of the Government's observations on the complaint, the Governing Body decided that it should be resubmitted to the Committee on Freedom of Association following a change in its composition in June 2005. At its meeting in November 2005, the Committee on Freedom of Association, having examined the complaint and the Government's communications (10 January and 26 October 2005), recommended that the Governing Body send a direct contacts mission to the country with a view to obtaining an objective assessment of the situation.³ The Governing Body adopted the aforementioned decision of the Committee on Freedom of Association (document GB.294/PV, paragraph 188). Despite the fact that the Committee has asked the Government on a number of occasions since November 2005⁴ to agree to a direct contacts mission, the Government has not responded to that request.

¹ GB.309/20/3.

² GB.291/17.

³ "Taking into consideration the necessity to obtain an objective assessment of the actual situation, in particular, as concerns employers' organizations and their rights, and to obtain as much information as possible on all the questions at issue, the Committee recommends to the Governing Body to send a direct contacts mission to the country before deciding on the action to be taken on the complaint made under article 26 of the ILO Constitution." (see 338th Report, Nov. 2005, para. 1312).

⁴ See also the following reports: 340th Report, March 2006, para. 13; 342nd Report, June 2006, para. 13; 343rd Report, November 2006, para. 12; 344th Report, March 2007, para. 11; 346th Report, June 2007, para. 12; 348th Report, November 2007, para. 14; 349th Report, March 2008, para. 13; 350th Report, May-June 2008, para. 14; 351st Report, November 2008, para. 11; 353rd Report, March 2009, para. 14; 354th Report, June 2009, para. 11; 355th Report, November 2009, para. 12; 356th Report, March 2010, para. 13; 357th Report, June 2010, para. 11.

In its 358th Report (November 2010), the Committee stated the following: "As regards the article 26 complaint against the Government of the Bolivarian Republic of Venezuela, the Committee deeply regrets that the Government has still not given any follow-up to its recommendation made five years ago for a direct contacts mission to the country in order to obtain an objective assessment of the actual situation and urges the Government to accept this mission without delay" (see the 358th Report, November 2010, para. 11).

3. The report of the Officers of the Governing Body of November 2010 was written following a letter dated 10 November 2010 sent on behalf of the Employers' group of the Governing Body. It contained information concerning an armed attack carried out on 27 October 2010 against four officials of the Venezuelan Federation of Chambers of Commerce and Manufacturers' Associations (FEDECAMARAS), including one Venezuelan Employer member of the Governing Body. On that occasion, the Officers of the Governing Body decided, on their own initiative and in the light of the aforementioned letter, 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.
4. In communications dated 9 and 12 November 2010, the Government had already sent its reply concerning the questions referred to in Case No. 2254, as these allegations from the International Organisation of Employers (IOE) had also been submitted by that organization to the Committee on Freedom of Association (communications dated 3 November 2010). In essence, the Government indicates that it condemns the attack, that it has identified and arrested two of the suspected culprits (members of a criminal gang), that criminal proceedings are under way, and that the alleged acts cannot be attributed to the authorities and were not, as the employers claim, based on anti-employer motives.
5. In its meeting in November 2010, 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 information received so as to enable the Governing Body in its 310th Session (March 2010), in the light of the information provided, to consider the action it may 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, paragraph 4, of the Constitution. In accordance with the Governing Body's request, the communication of the Employers' group was forwarded on 24 November 2010 to the Government of the Bolivarian Republic of Venezuela, which was asked to send any additional comments on the situation.
6. In a communication dated 7 March 2011 (see Appendix II), the Government sent new observations referring to Office's letter of November 2010. The Government requests that these observations be transmitted to the Governing Body. In them, the Government refers to: failure to take into account the replies provided by the Government of the Bolivarian Republic of Venezuela; lack of impartiality; duplication of procedures; setting of conditions by the Employers' group linked to the recommendations of the Committee on Freedom of Association; the dual role played in these procedures by employers' representatives, who filed the complaint and have been adopting decisions relating to it that are unfavourable to the Government, as judge and party to the proceedings; irregular procedures during the 309th Session of the Governing Body in November 2010; and going beyond the scope of the principles set out in ILO Conventions Nos 87 and 98. The Government lastly refers to the facts relating to the abduction and violent assault against four FEDECAMARAS officials, reiterates that it has arrested two suspected culprits, and adds that exhaustive investigations are under way.
7. The Governing Body may wish to take note of the fact that the allegations concerning the abduction and acts of violence against FEDECAMARAS officials and the Government's observations have been examined by the Committee on Freedom of Association, whose conclusions and recommendations are contained in the Committee's report on Case No. 2254 (document GB.310/8; see Appendix III, and especially paragraphs 1182–1186, 1257–1266 and 1292). This report covers some of the issues raised in the article 26 complaint (legislation that is not compatible with Conventions Nos 87 and 98, lack of social dialogue, acts prejudicial to employers and their leaders including acts of violence

and intimidation against employers' leaders by parallel employers' organizations). At the same time, there has been no word from the Government as to its possible agreement to the direct contacts mission requested on a number of occasions by the Committee on Freedom of Association, as a result of which the Committee in its March 2011 meeting gave particular emphasis to this issue in the following terms:

As regards the article 26 complaint against the Government of the Bolivarian Republic of Venezuela, the Committee deeply regrets that the Government has still not given any follow-up to the recommendations the Committee has been consistently and repeatedly making for the past five years for a direct contacts mission to the country in order to obtain an objective assessment of the actual situation. Against this background, and in light of the observations, conclusions and recommendations issued by the ILO supervisory bodies, the Committee invites the Governing Body to take a decision in relation to this item on its agenda at its March 2011 meeting [see 359th Report, para. 11].

- 8. The Governing Body, in the light of the information provided, may wish to consider the action that is deemed necessary and to examine the question whether the complaint presented originally in 2004 should be referred in its entirety to a Commission of Inquiry, in accordance with article 26, paragraph 4, of the Constitution.***

Geneva, 15 March 2011

Point for decision: Paragraph 8

Appendix I

Complaint under article 26 of the Constitution and observations of the Government dated 10 January 2005

Geneva, 17 June 2004

Mr Juan Somavia
Secretary-General of the International Labour Conference
Palais des Nations
Geneva
Switzerland

Dear Secretary-General:

The undersigned Employers' delegates to the 92nd Session of the International Labour Conference 2004 wish here to launch a complaint under article 26 of the ILO Constitution against the Government of Venezuela for violations of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), which was ratified by the Government of Venezuela on 20 September 1982, and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), ratified by Venezuela on 19 December 1968.

Since 1999, Venezuela has repeatedly violated Conventions Nos 87 and 98 as recorded by the ILO supervisory bodies. During this period employers' and workers' groups have denounced the harassment they are going through in the Freedom of Association Committee of the Governing Body as well as in the Conference Committee on Application of Standards and Credentials Committee of the International Labour Conference. The policies of the Venezuelan Government have led to the closure of over 100,000 companies as well as the unemployment of several hundred thousand workers, resulting in the largest economic and social crisis in Venezuela.

Non-compliance of the application of ILO Convention No. 87 and national law and practice have been examined every year by the Conference Committee on Application of Conventions and Recommendations since 1999, leading in 2000 to the inclusion of its conclusions in a special paragraph of the Committee's report and, in 2002, in a special paragraph for the persistent and continued failure to comply.

Within the International Labour Conference, the Credentials Committee has, during recent years, regularly examined objections concerning the composition of the Venezuelan delegation attending the Conference.

Despite previous recommendations handed down by the ILO supervisory bodies (Conference Committee on Application of Standards, Committee of Experts on Application of Conventions and Recommendations and the Committee on Freedom of Association), the Government of Venezuela continues to carry out actions against the social partners. Regarding employers, these actions include:

- physical, economic and moral attacks by the Government on the Venezuelan independent business community, their organizations and their representatives;
- marginalization of most employers' organizations and their exclusion from social dialogue and tripartite consultations;
- actions and interferences by the Government to encourage the development of parallel employers' organizations for the purposes of bypassing and weakening their most

representative organizations, including the Federación de Cámaras y Asociaciones de Comercio y Producción de Venezuela (FEDECAMARAS);

- the creation of a hostile environment for independent employers resulting in orders to remove land and to stimulate the illegal occupation of productive farms; and
- the implementation of a discriminatory foreign exchange control system to companies affiliated to the most representative employers' organization, FEDECAMARAS, in retaliation of their membership.

In light of the foregoing, we the undersigned Employers' delegates at the 92nd Session of the International Labour Conference present this complaint under article 26 of the ILO Constitution for the non-observance by the Venezuelan Government of ILO Conventions Nos 87 and 98, and hereby request the ILO Office to initiate the appropriate action, including, but not limited to, the examination of all pending cases in the ILO to bring about the hearing of this complaint. We reserve the right to submit more detailed information at the appropriate time.

92nd Session of the International Labour Conference

Complaint under article 26 of the ILO Constitution presented against the Government of Venezuela by Employers' delegates to the 92nd Session of the International Labour Conference on 17 June 2004.

Argentina	(Signed) Mr Daniel Funes de Rioja Substitute delegate
Australia	(Signed) Mr Bryan Noakes Delegate
Austria	(Signed) Mr Peter Tomek Delegate
Brazil	(Signed) Mr Dagoberto Lima-Godoy Substitute delegate
Canada	(Signed) Mr Andrew Finlay Delegate
Cyprus	(Signed) Mr Costas Kapartis Substitute delegate
France	(Signed) Mr Bernad Boisson Delegate
Germany	(Signed) Ms Antje Gerstein Delegate
India	(Signed) Mr I. P. Anand Substitute delegate
Italy	(Signed) Ms Lucia Sasso-Mazzufferi Delegate
Jamaica	(Signed) Mr Herbert Lewis Delegate

Japan	(Signed) Mr Toshio Suzuki Substitute delegate
Mexico	(Signed) Mr Jorge de Regil Delegate
Norway	(Signed) Mr Vidar Lindefjeld Delegate
Saudi Arabia	(Signed) Mr Abdullah Dahlan Delegate
South Africa	(Signed) Mr Bokkie Botha Delegate
Spain	(Signed) Mr Javier Ferrer Dufol Delegate
Sweden	(Signed) Ms Göran Trogen Substitute delegate
Switzerland	(Signed) Mr Michel Barde Delegate
Tunisia	(Signed) Mr Ali M'Kaissi Substitute delegate
United Kingdom	(Signed) Mr Mel Lambert Delegate
United States	(Signed) Mr Edward Potter Delegate
Venezuela	(Signed) Mr Bingen de Arbeloa Delegate

Letter of the Government of the Bolivarian Republic of Venezuela of 10 January 2005

I. Introduction

In a communication addressed to the Director-General of the International Labour Office (ILO) dated 17 June 2004,¹ certain delegates from the Employers' group (hereinafter referred to as *the complainants*)² presented a complaint under article 26 of the ILO Constitution against the Government of the Bolivarian Republic of Venezuela concerning alleged violations 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 the first place, the Government notes the contradictory use by the complainants of terms such as "violation(s)", and by the Office itself of the expression "non-observance",³ when articles 24 and 26 of the Constitution in fact refer to failure "to secure [in any respect] the effective observance" of a Convention.

In their communication, the complainants refer to a number of situations – which date not from 1999, as they maintain, but from 1991 – referring expressly to cases already brought by employers and workers before the ILO's various supervisory bodies (the Committee on the Application of Standards, the Committee on Freedom of Association, and the Credentials Committee of the Conference) and erroneously take over complaints originally made by the workers, despite the fact that they have no right or authority to do so.

As regards the substance of the complaint, the Government rejects the complainants' arguments in their entirety, and reiterates all its own previous arguments before the ILO's supervisory bodies and the Governing Body in November 2004. It requests that the complaint be declared irreceivable and therefore closed on the grounds that the complainants' arguments are **without foundation**; that it would be **unnecessary** and **inappropriate** to set up a commission of inquiry in the context of the new conditions that have prevailed in since the presidential referendum of August 2004; that it would be **inappropriate** to allow the overlapping of procedures that have not been concluded yet and concern the same subjects or situations; and lastly, that using the complaints procedure for publicity and political purposes would be a distortion of the ILO's objectives.

II. Irreceivability of the complaint on the grounds that it is without foundation

The Government of the Bolivarian Republic of Venezuela rejects all the arguments and opinions presented by the complainants to substantiate an alleged *violation or non-observance* of ILO Conventions Nos 87 and 98.

¹ In the context of the 92nd Session of the International Labour Conference.

² A total of 23 delegates from the Employers' group, including regular and substitute members from Argentina, Australia, Austria, Brazil, Canada, Cyprus, France, Germany, India, Italy, Jamaica, Japan, Mexico, Norway, Saudi Arabia, South Africa, Spain, Sweden, Switzerland, Tunisia, the United Kingdom, the United States and the Bolivarian Republic of Venezuela.

³ Letter of 23 July 2004 from Mr K. Tapiola, Executive Director, Standards and Fundamental Principles and Rights at Work.

A. *The Government's policies are intended to promote continual and systematic measures to secure the observance of the Conventions*

According to article 26, paragraph 1, of the ILO Constitution, “Any of the Members shall have the right to file a complaint with the International Labour Office if it is not satisfied that any other Member **is securing the effective observance of** any Convention which both have ratified in accordance with the foregoing articles” (italics and bold type added).

Apart from the fact that the complainants do not indicate the specific provisions that are supposed to have been infringed by the Bolivarian Republic of Venezuela in a manner that would justify invoking article 26 of the ILO Constitution, the Government also wishes to point out that the complaint is more concerned with statements and criticisms concerning the country's social and economic policy than with the rights and freedoms protected by Conventions Nos 87 and 98.⁴ A number of complaints are currently before ILO supervisory bodies; these concern specific situations in connection with which the Government has taken the necessary investigative and corrective measures.

The country is not currently in an extreme situation so as to warrant or necessitate the establishment of a commission of inquiry. The policies adopted by the Government in direct and immediate implementation of the Constitution on which the people voted in the 1999 referendum, and in accordance with its leading role and commitment in efforts to combat poverty, have led to renewed economic growth,⁵ higher wages in real terms, and financial and monetary stability. At the same time, unemployment indicators have fallen⁶ as a result of action by traditional and newer enterprises, as have informal employment, inflation, interest rates and national risk indicators, a fact acknowledged by the international community (see the attached report).

Furthermore, as a result of the policies that have been adopted to combat poverty and exclusion, millions of Venezuelans are now covered by massive education, vocational training, health care and social security programmes; they now have institutions for financing and promoting small and medium-sized enterprises, and co-management models involving new forms of enterprise that are socially responsible and accountable to the workers, and committed to joint efforts to create and maintain decent employment.⁷

The Government of the Bolivarian Republic of Venezuela guarantees the rights to establish in full freedom any occupational organization deemed suitable for better defending its members' rights and interests, as well as the right to join or not to join such an organization, without interference. The State protects associations from any act of

⁴ Its defects are similar to those of Case No. 2254.

⁵ By the end of 2004, economic growth will increase by 18 per cent, according to the Economic Commission for Latin America and the Caribbean (ECLAC), with growth occurring in all sectors over the last five quarters. Employment levels and wages have also started to rise again.

⁶ From the highest ever recorded level resulting from the lockout of 2002–03 (20.7 per cent in February 2003), unemployment fell by almost 10 percentage points to 10.9 per cent in December 2004.

⁷ On 27 December 2004, the Nutrition of Workers Act (*Ley de Alimentación para los Trabajadores*) entered into force.

discrimination or interference contrary to the exercise of the rights provided for in the Conventions (see appendix).⁸

Given that the complaint does not specify the obligations which the State has failed to fulfil, the measures it has failed to adopt, or the standards or rights under the Convention that have been infringed, the Government of the Bolivarian Republic of Venezuela requests that the complaint be declared irreceivable.

B. *The complainants have no right or authority to take over cases originally presented by workers*

The complainants inappropriately rely on situations with regard to which they have no standing or legitimacy, as they refer to requests made by organizations of workers before the ILO supervisory bodies. Applications which present as one's own situations that have nothing to do with the complainant, should not be receivable. Under international law principles, the complainants would be justified in taking action only in cases in which they have a legitimate interest or a material connection with a dispute.

The only representation brought by the employers before the Committee on the Application of Standards was in 1991 and concerned the entry into force of the Organic Labour Act of 1990. The only government in more than a decade to comply with that Committee's recommendations has been the Government of President Chávez, through the Fifth Republic Movement which leads the National Assembly.

With regard to the Committee on Freedom of Association, the complainants refer to situations of which they have direct knowledge in relation to a single case (Case No. 2254).⁹ Lastly, the complainants claim that objections were brought before the Conference Credentials Committee concerning the Venezuela delegation during the 91st and 92nd Sessions of the International Labour Conference in 2003 and 2004, respectively.

Apart from the particular situations referred to, the Government requests the dismissal of all the employers' arguments on which they have no standing or legitimacy, given that they cannot take over cases which are of no direct concern to them or even contradictory, and the majority of which has been resolved through democratic dialogue.

C. *The denunciations brought before the various ILO supervisory bodies are entirely without foundation*

The Government of the Bolivarian Republic of Venezuela thinks it appropriate to consider the arguments put forward by the complainants with regard to the alleged violations previously examined by ILO supervisory bodies, in particular, the Committee on Freedom of Association, the Credentials Committee and the Committee on the Application of Standards.

⁸ Constitution of the Bolivarian Republic of Venezuela, article 95. During the period 1999–2004, some 2,135 associations were established, an annual average of 356. During the period 1994–98 by contrast, only 1,275 were established (255 per year on average).

⁹ The text of the complaint to the Committee on Freedom of Association was presented in March 2003, a few days after the end of the 62-day lockout against the country's democratic institutions.

1. Cases examined by the Committee on Freedom of Association
 - (a) The arguments relating to the Committee's interim report are invalid and irreceivable because the report contains conclusions and recommendations that are contrary to international law

A number of the Committee's conclusions and recommendations¹⁰ cannot be implemented, are contrary to international law, and disregard certain fundamental aspects of life in the Bolivarian Republic of Venezuela.

- The Committee recommended that the Government set up an "independent" commission – endorsed by those responsible for the *coup d'état* and the oil industry lockout of 2002–03 – to "dismantle", proscribe or prohibit various social organizations that exercise the right to organize. These included the Fifth Republic Movement, the ruling party with a majority in the National Assembly as well as in 20 of the country's 22 districts and 270 out of 340 local authorities¹¹ and the Revolutionary Youth of the MVR. The party has won nine national, regional and local elections since 1998.¹² It is noteworthy that the Committee on Freedom of Association requested the "dismantling" of the Bolivarian Republic of Venezuela's main political party and other legitimately constituted social organizations, which apart from being legally impossible would not be practicable.
- The Committee describes the Government's political party as "violent", "paramilitary" and "armed", an assessment at variance with the reports of the international facilitating agencies (the Organization of American States and the Carter Center) that have observed recent elections in the country (see appendices). In the Bolivarian Republic of Venezuela, neither political parties and movements nor occupational organizations are prohibited, and the Committee's conclusion is therefore surprising, given that its implementation would have involved violations of fundamental civil and political rights.
- The Committee – without identifying the enterprises supposedly affected by discriminatory treatment – requests the Government to modify the current exchange controls system, thereby encroaching on areas of monetary and exchange policy. The system in question was adopted after a massive flight of capital that was intended to create political instability in 2002 and 2003. That flight of capital was also accompanied by shortages of basic foodstuffs and acts of sabotage against essential public services (especially domestic gasoline and natural gas supplies) which endangered the lives, health and safety of the population.

It is evident from the above that the interim conclusions and recommendations made previously have affected the principles of impartiality, balance and objectivity required of an ILO supervisory body. The result is a set of recommendations that contradict the principles and standards of international law in this area, including those established by the Committee itself with regard to strike action, acute national crisis and essential public services.

¹⁰ The recommendations of the Committee on Freedom of Association adopted by the Governing Body at its 290th Session.

¹¹ It won 97 per cent of the state or provincial government seats and 80 per cent of the local authorities.

¹² We refer to the position adopted by the Government of the Bolivarian Republic of Venezuela as reflected in the Minutes of the Governing Body's 290th Session in June 2004.

To conclude, these conclusions and recommendations, which cannot be implemented or are inconsistent with international law, cannot serve as the basis of a complaint against the Government of the Bolivarian Republic of Venezuela, and the complaint must therefore be declared irreceivable.

- (b) The arguments relating to economic and social policies are invalid and irreceivable because they have no relation to the rights enshrined in Conventions Nos 87 and 98

The complainants in their arguments draw attention to economic and social policies, in particular, exchange control and monetary measures, measures to promote small and medium-sized enterprises, inclusion in social dialogue of sectors hitherto excluded, and the development of uncultivated land, much of which had previously been occupied by individuals, despite being state property. These issues have no bearing at all on the provisions of Conventions Nos 87 and 98.

The Government of the Bolivarian Republic of Venezuela notes that the complainants refer to political issues, making generic allegations (without giving any specific, documented information corroborated by evidence) and vague assertions that were set out in the employers' communication to the Director-General of the ILO on 17 June 2004.¹³

The Government is surprised by the recommendation to modify the foreign exchange controls and administration system in the Bolivarian Republic of Venezuela, given that the complainants do not indicate the specific provision(s) on which their claim is based. Moreover, the interpretation of Convention No. 87 applied is a broad one.

This not only disregards the Vienna Convention on the Law of Treaties; a broad interpretation of a Convention could be regarded as tantamount to the creation of new standards, which is the exclusive prerogative of the International Labour Conference.

- (c) The arguments presented to the Committee on Freedom of Association with regard to Case No. 2254 are totally unfounded

The only case brought before the Committee on Freedom of Association by the complainants is known as Case No. 2254, on which an interim report has been published. The Government has rejected the complainants' arguments in their entirety, and is able now to present new allegations.

As regards the points raised in the complaint of 17 June 2004, which are also referred to in Case No. 2254, the Government draws attention to the following:

- With regard to the alleged discrimination in the **foreign exchange controls and administration system**, the measure in question was adopted by the Government in response to the massive and deliberate flight of capital which led to a reduction in international reserves and pushed the country into an inflationary spiral which adversely affected the population's access to basic foodstuffs and services. The employers are required to meet certain basic obligations (relating to tax and social security contributions), and where delays or other problems occur, they can have recourse to the administrative and judicial authorities. At any event, given the

¹³ The Committee has said that "Political matters which do not impair the exercise of freedom of association are outside the competence of the Committee. The Committee is not competent to deal with a complaint that is based on subversive acts, and it is likewise incompetent to deal with political matters that may be referred to in a government's reply" [see *Digest of decisions and principles of the Freedom of Association Committee*, 1985, para. 204]. It has also referred to abuses by representative organizations: "Trade union organizations should not engage in political activities in an abusive manner and go beyond their true functions by promoting essentially political interests" (*idem.*, para. 355).

non-specific and generic nature of the allegations, we believe that the complainants have confused the initial problems of implementing the foreign exchange controls and administration system with deliberate discrimination. Historically, similar problems led to similar measures in 1961, 1983 and 1994. The case for dismissing the complaint is supported by information contained in the appendices concerning the distribution of foreign currencies at the end of 2004 which affected all the productive sectors, including national and internationally owned enterprises.

- As regards the alleged harassment of employers, it should be emphasized that, despite the tense situations that occurred during this period, no officials of any trade union or employers' organization were detained and no organization's premises were broken into, except for isolated measures undertaken in accordance with decisions by the courts and the public prosecution service. These decisions are directly linked to investigations of those responsible for the *coup d'état* of April 2002 and the economic and oil industry sabotage of December 2002 and 2003.¹⁴ The Conventions do not authorize or legitimize unlawful action, and indeed require the social partners to respect the basic rules of democratic coexistence.¹⁵ The measures adopted by the police followed in all cases previous decisions by independent and autonomous public prosecution organs, and did not involve persecution or restrictions on the exercise of the rights flowing from freedom of association.
- Assertions made by the Committee regarding the supposed violation of due process exhibit certain weaknesses with regard to the principles of burden of proof and evaluation of evidence, and are not consistent with domestic or international law. The Government cannot make up arguments for the complainants, nor overlook the absence of hard evidence in the complainants' arguments, nor can it initiate inquiries into suppositions or vague allegations that are not supported by the facts.¹⁶ Similarly, the Government is required to abide by the decisions of the Public Prosecution Service and courts, which were challenged in the courts by some of those concerned until they finally fled the country.¹⁷ In other cases, the situations lack the systematic character and importance claimed, mistakenly, by the original complainants.¹⁸

¹⁴ Those implicated in acts against the Constitution and the country's democratic institutions include Pedro Carmona Estanga and Carlos Fernández, both former presidents of FEDECAMARAS. The former became President of the Republic for less than 24 hours on 12 April 2002. In both cases, the courts placed them under house arrest instead of sentencing them to imprisonment. They absconded and were subsequently granted asylum. The wife of Fernández even acknowledged publicly that he had been well treated.

¹⁵ Article 8, para. 1, of Convention No. 87 stipulates 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."

¹⁶ The complaints regarding the alleged ill-treatment of Carlos Fernández were never documented or corroborated by basic evidence. On the contrary, statements in the media by his wife were provided, confirming that he had been well treated. In view of this, it is inappropriate and indeed impossible to initiate inquiries which, instead of elucidating the truth, would seek to create suspicions regarding the actions of institutions that defend the rule of law.

¹⁷ Before fleeing the country, Carlos Fernández obtained some court rulings in his favour, as well as some that went against him. For example, some of the original charges brought against him were dropped, and the ruling of the Appeals Court was overruled by the Criminal Chamber of the Supreme Court of Justice, until the Constitutional Chamber of the Supreme Court made a final ruling ordering his arrest in August 2003.

¹⁸ In the case of the former president of CONSECOMERCIO (Julio Brazón) and the president of the Bejuma Chamber of Commerce in Carabobo State, the complainants refer to isolated situations

- As regards the alleged establishment of a parallel employers' organization to weaken the more representative existing organization, the Government reiterates that the complaint makes use of generic, imprecise and unfounded arguments. At any event, the Government notes that the federation representing craftsmen, micro, small and medium-sized manufacturers in the Bolivarian Republic of Venezuela (FEDEINDUSTRIA) was established in 1973 and has thus been in existence for 32 years; its involvement in economic policy is crucial to the creation and preservation of jobs, and furthermore is consistent with ILO guidelines including the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189). Other employers' organizations have also been founded through the exercise of the rights of participation and association in defence of the interests of micro-enterprises and entrepreneurs, in towns and in the countryside, without any threat to the existence of other associations and their members, unless the latter claim exclusive or monopolistic rights of representation.
- The complainants allege the "marginalization" of most of the existing employers' organizations and their exclusion from social dialogue and tripartite consultation. In this regard, consultations by correspondence have been taking place since 2002 on minimum wages with FEDECAMARAS and its regional and sectoral affiliated organizations.¹⁹ Such consultations were identical in form to those applied to the other employers' organizations, and there was no preferential treatment. Since September 2004, these consultations, as well as covering wages, have been extended at various levels to cover areas such as immunity from dismissal.²⁰
- With regard to more integrated social dialogue, always in a framework of a strategy for sustainable development and combating poverty and unemployment, the Government, after the failed coup d'état of 2002, activated social dialogue processes at the national and sectoral levels, involving employers' organizations affiliated to FEDECAMARAS, FEDEINDUSTRIA, CONFAGAN and EMPREVEN. These led to 170 agreements in sectors such as automobiles, textiles and clothing, tourism, the social economy and small and medium-sized enterprises.
- As regards the adoption of legislation as part of an "Enabling Act" in 2000, consultations took place, in particular in August 2001, with all the sectors, in particular FEDECAMARAS and its affiliated organizations, with common timetables and methods.²¹ Nevertheless, the State, having consulted various sectors with a view to ascertaining their specific interests, adopted measures which gave priority to the general public interest, especially the interests of excluded segments of the urban or rural population, and thereby demonstrated its political will to act in accordance with the wishes of the majority of the electorate which elected it. In any event, any disputes concerning the substance of the legislation in question were examined and

arising from the actions of individuals, not the authorities, in a context of political strife, including within the opposition. Neither of these two cases involves official institutions, and they do not reflect any recurrent pattern of conduct in a country characterized by political and trade union participation and pluralism.

¹⁹ The last of these communications was sent on 16 April 2004 and was answered on 21 April by the President of FEDECAMARAS.

²⁰ Communication of 24 September 2004 from the Deputy Minister of Labour to the President of FEDECAMARAS.

²¹ See the Committee's conclusion in para. 1062 of its 334th Report.

decided upon by the Supreme Court of Justice, which made the necessary adjustments, including by declaring certain specific provisions null and void.²²

- Following the presidential referendum of August 2004 and the regional and municipal elections in October 2004, a positive change was noted in the FEDECAMARAS leadership – from disregard of the will of the people, reflected at first in voices that claimed “electronic fraud”, towards an appreciation of the Government’s efforts to re-establish a climate for social dialogue with the active participation of the Executive Vice-President of the Republic and of various ministries including the Ministry of Labour.²³ In the last of these cases, we have already reported in writing on the initiatives to promote progress in consultations on the reform of the Organic Labour Act and social security legislation.²⁴ As a result, the leadership of FEDECAMARAS has become involved in the intensive democratic dialogue that has been taking place in the country since 1999, first on the constitutional process and then the transformation of the country’s political, economic and social model.
- In addition, the complainants add another argument, to the effect that 100,000 enterprises have been closed and jobs have been lost. Both of these are consequences of the destabilization that has occurred since December 2001, the culmination of which was the economic sabotage and oil industry lockout of 2002–03 which FEDECAMARAS actively instigated.²⁵ In particular, the closure of small and medium-sized enterprises as a result of this economic strangulation, and the refusal to supply raw materials and intermediate products, were deplorable occurrences.

In the Bolivarian Republic of Venezuela, there is no government policy of repression directed against workers or employers. The situations referred to confirm the will of the Government to pursue anti-monopolistic and anti-oligopolistic policies and restore the public-spirited and humanistic dimension of economic and social relations. The structure of the Venezuelan State, and its institutions and mechanisms for regulating the power of the State by encouraging direct citizens’ participation as an indispensable element, preclude any policy of repression of the fundamental rights and freedoms.

2. Objections brought before the Credentials Committee

At the same time, the complainants indicate that the Credentials Committee of the Conference has regularly examined objections concerning the composition of the Venezuelan delegation, but make no reference to the substance or outcome of those representations, and fail to indicate that the Committee has never denied accreditation to a delegation proposed by the Government.

²² On 20 November 2002, the Supreme Court of Justice (Constitutional Chamber) declared null and void sections 89 and 90 of the Act respecting land and agrarian development, following an application from the National Federation of Stockbreeders of Venezuela (FEDENAGA).

²³ This evolution in the position of the executive board of FEDECAMARAS can be traced from the communiqué *El Manifiesto* of 30 August 2004 to the document entitled *Los Caminos del Diálogo Social* produced by the National Council on 29 November 2004. The reader is invited to explore the site www.fedecamaras.org.ve. Press notes on the dialogue initiative are attached, as well as a copy of the communication of 8 November 2004 (invitation to a meeting on the reform of the Organic Labour Act).

²⁴ See attached copy of the communication of 8 November 2004 from the Deputy Minister of Labour to the President of FEDECAMARAS.

²⁵ In December 2001, when the political destabilization formally began with a one-day employers’ stoppage, unemployment stood at 11 per cent. By the end of the employers’ lockout directed by FEDECAMARAS in February 2003, unemployment had risen to 20.7 per cent, i.e. almost 10 percentage points more.

These representations have been intended to secure a degree of exclusivity in Venezuelan representation at the ILO, to the exclusion of other workers' and employers' associations, without even complying with basic legal requirements regarding accreditation of representative status, as the Supreme Court of Justice has indicated. Such a claim to be exclusively representative purports to exclude employers' organizations that have existed for decades and play an important role in the life of the country.

3. Complaints to the Conference Committee on the Application of Standards

The complainants also refer to situations brought *by workers* to the attention of the Committee on the Application of Standards. These cases have already been or are in the process of being resolved,²⁶ and the Government of the Bolivarian Republic of Venezuela has shown its willingness to collaborate in the implementation of the Committee's recommendations.

It should be borne in mind here that the last direct contacts mission took place between 13 and 15 October 2004 and was the second such mission in only 29 months. Until such time as a first report is submitted to the Committee of Experts, and later to the Committee on the Application of Standards at the next session of the Conference which instigated the mission, the examination procedures under way before the supervisory bodies should be suspended in accordance with paragraph 86(d) of the *Handbook of procedures relating to international labour Conventions and Recommendations*,²⁷ as was stated at the last session of the Governing Body and endorsed by the Group of Latin American and Caribbean States (GRULAC) (see appendix).

The National Assembly has the political will to ensure that the proposed amendments to the Organic Labour Act are adopted within the current six-month period, and to make progress with other legislative reforms to ensure that the majority of the population will enjoy the benefits of democratic and participative development.

(d) A commission of inquiry is unnecessary and irrelevant because the context and situation of Venezuela have changed since the employers presented the complaint in June 2004

The application was made by a number of delegates at the last session of the Conference before the direct contacts mission took place, in a political context that did not reckon with the presidential referendum demanded by the political opposition, of which the FEDECAMARAS leadership was an active part.

Nevertheless, President Hugo Chávez Frías, who is committed to the popular process of democratic change which he leads, consulted the voters on his mandate through the referendum. The results – the President won a 20 per cent margin over the opposition (60 per cent versus 40 per cent of the votes) – were observed by the international community, in particular the Organization of American States, the Carter Center, representatives of individual countries, human rights NGOs and workers' organizations, all of whom rejected allegations of “electronic fraud” as unfounded and false. Two and a half

²⁶ Questions relating to the sworn statement of assets by trade union officials have been resolved, and draft legislation on trade union rights and guarantees and the democratization of trade union organizations has been shelved. The substantive issue still outstanding concerns labour law reform and dates from 1991.

²⁷ “While direct contacts are taking place, the supervisory bodies will suspend their examination of the matters in question for a period not normally exceeding one year, so as to be able to take account of the outcome.”

months later, on 31 October 2004, in a similar process at the regional and municipal levels, the President's policies won even greater support, winning 20 out of 22 districts and 270 out of 340 municipal or local authorities. The broad support that has grown out of the plebiscites of 2004 has confirmed the results obtained since 1998, a year which marked the beginning of a period of successive victories for the President over an opposition that chose violence and a non-democratic path.

In this context of peace and democratic encounter, those who had once distanced themselves from the constructive and broad-based dialogue promoted by the Government and its institutions are now actively getting involved in it, and this is a positive development. That is why the Government, after its resounding victory in the constitutional referendum of 15 August 2004, which confirmed the President's legitimacy,²⁸ immediately set about broadening social dialogue to include all representative employers' associations including FEDECAMARAS and its affiliated organizations (see information in the appendix), despite the fact that the current President of FEDECAMARAS initially tried to direct that dialogue and was prevented from doing so by the other members of the employers' umbrella organization. This initiative has been promoted, as previously indicated, by the Executive Vice-President of the Republic, with the participation of the Ministries of Labour and Finance.

There is thus no policy of persecution directed against leaders of workers' or employers' organizations or against the exercise of freedom of association and collective bargaining. On the contrary, the Bolivarian Republic of Venezuela has shown that it wishes to solve its domestic political problems in an exemplary manner, peacefully, democratically and through the ballot box, especially those problems that have resulted from the *coup d'état* and the lockouts of 2002 and 2003 instigated by the opposition, including the leadership of FEDECAMARAS.

This new and favourable climate in political and social relations was attested by the members of the direct contacts mission who visited the country last October, although they have not yet published their report.

- (e) It would be inappropriate to set up a commission of inquiry because it would lead to procedural duplication and adversely affect the efficiency of the ILO's working methods

The Government has constantly kept the Committee on Freedom of Association informed with regard to current cases, and many of its arguments have yet to be examined and assessed by the Committee. It has also repeatedly asked to be informed of procedural criteria applied unilaterally (regarding mutually exclusive complaints and representations, failure to assess information, etc.). No reply on these has ever been received according to officials of the Ministry of Labour, as was recently recalled by the Minister of Foreign Affairs in connection with the lack of any response from the ILO's Legal Adviser to a number of previous requests.

In all cases in which the Committee invites the Governing Body to adopt certain recommendations addressed to a government, the Committee invites the Government in question to indicate, once a period deemed reasonable in the light of circumstances has elapsed, the effect it has been able to give to any of the recommendations.

In Case No. 2254, the Committee published an interim, non-definitive report in June 2004 (seven months ago). The preliminary nature of its conclusions was confirmed by the

²⁸ See appendix containing the results of the referendum held in accordance with the agreement concluded on 29 May 2003 between the political and economic opposition including FEDECAMARAS and the legitimate Government facilitated by the Carter Center, the Organization of American States (OAS) and the United Nations Development Programme (UNDP).

request for information from the Government [see 335th Report of the Committee on Freedom of Association, para. 6, adopted on 16 November 2004 by the Governing Body]. This acknowledges the Government's right to present new information regarding the interim conclusions and recommendations.

Furthermore, as already indicated, a direct contacts mission is under way and its report has not yet been made available to the Government. This also makes any additional procedure unnecessary.

- (f) Setting up a commission of inquiry would be a distortion of the ILO's objectives and would serve only political and publicity purposes

In view of the technical assistance procedures that are currently under way, as well as the sustained improvements that have taken place in the Bolivarian Republic of Venezuela's political climate, it would be inappropriate for the ILO to remain a political forum for resolving domestic problems that have already been resolved through the electoral process – the presidential referendum and regional and local elections.

The IOE adopted, in the past, a position regarding the use of the representation and complaints procedures under the ILO Constitution in order to achieve publicity and political ends. The complainants, in the FEDECAMARAS complaint, contradict the IOE statement in 2000, that “Articles 24 and 26 of the ILO Constitution are sometimes abused in that conflicts are brought to an international forum for publicity reasons. Means to limit this practice, perhaps by limiting the receivability criteria or introducing a filter mechanism, should be considered to prevent automatic discussion of a receivable complaint. The way in which articles 24 and 26 procedures complement the regular supervisory machinery should also be considered in order to prevent overlapping and provide more coherence.”

For all these reasons, the complaint should be ruled irreceivable, as the procedure would be disproportionate by comparison with other situations elsewhere in the world that are deemed by the international community to be very serious.

III. Conclusions

1. The complainants' allegations have been shown to be **without foundation**. No complaints currently before the ILO supervisory bodies would warrant the establishment of a commission of inquiry under the terms of article 26 of the ILO Constitution.
2. It has been shown that it would be **unnecessary** and inappropriate to set up a commission of inquiry, in view of the changed conditions that have prevailed in the Bolivarian Republic of Venezuela since the presidential referendum in August 2004.
3. It has been shown that overlapping and duplication with procedures still under way in relation to the same subjects or situations would be **inappropriate**.
4. Lastly, it has been shown that using the complaints procedure for publicity and political ends would be a **distortion** of the ILO's objectives.

IV. Petition

The Government of the Bolivarian Republic of Venezuela requests that the complaint be declared irreceivable and closed.

Appendix II

Letter from the Government dated 7 March 2011

**Government of the Bolivarian Republic of Venezuela
Peoples' Ministry for Labour and Social Security**

200 Bicentenary

No. 054/2011

Caracas, 7 March 2011

Mr Juan Somavia

Director-General of the International Labour Office (ILO)
Director-General's Office
Geneva
Switzerland

I am writing to you with regard to the communication dated 24 November 2010, signed by Mr Guy Ryder, Executive Director, Standards and Fundamental Principles and Rights at Work Sector of the ILO, which was received by our Permanent Mission in Geneva on 7 January 2011, in which he requests additional comments from our Government concerning the situation described by the Employers' group of the Governing Body in a communication dated 10 November 2010. My Government had already provided ample information to the ILO in this regard at its own initiative and in an effective and timely manner in communications dated 9 and 12 of November 2010, and therefore well before it was informed of the communication of the Employers' group/International Organisation of Employers (IOE). It should be noted that the Office harmed our interests and the legitimate right of defence by hiding these replies and therefore failing to bring them to the attention of the Governing Body within the framework of the discussion of this case which took place during the 309th Session of the Governing Body in November 2010.

To that effect, the present reply is based on the decision adopted at the 309th Session of the Governing Body of the ILO on 18 November 2010 (GB.309/20/3), in accordance with which, following the provision of the additional information by our Government at the 310th Session of the Governing Body, it was to be decided whether the complaint made initially in 2004 should be referred to a Commission of Inquiry in accordance with article 26, paragraph 4, of the ILO Constitution.

Under these circumstances, the Government of the Bolivarian Republic of Venezuela wishes to make the following observations.

Background

- (1) Failure to take into account the replies provided by the Government of the Bolivarian Republic of Venezuela/Lack of impartiality/Duplication of procedures/Setting of conditions by the Employers' group linked to the recommendations of the Committee on Freedom of Association (CFA)/Dual role played by the Employers' representatives in these procedures as judge and party, as they made the complaint and have been taking decisions in that regard against our Government.

At its session in November 2004, the Governing Body examined the document on the complaint made against our country by the Venezuelan Chambers of Commerce and Manufacturers' Associations (FEDECAMARAS) and various Employers' delegates to the 92nd Session of the International Labour Conference (ILC), 2004: Daniel Funes de Rioja (Argentina); Bryan Noakes (Australia); Peter Tomek (Austria); Dagoberto Lima-Godoy (Brazil); Andrew Finlay (Canada); Costas Kapartis (Cyprus); Bernard Boisson (France); Antje Gerstein (Germany); I.P. Anand (India); Lucia Sasso-Mazzufferi (Italy); Herbert Lewis (Jamaica); Toshio Suzuki (Japan); Jorge de Regil (Mexico); Vidar Lindefjeld (Norway); Abdullah Dahlan (Saudi Arabia); Bokkie Botha (South Africa); Javier Ferrer Dufol (Spain); Göran Trogen (Sweden); Michel Barde (Switzerland); Ali M'Kaissi (Tunisia); Mel Lambert (United Kingdom); Edward Potter (United States); Bingen de Arbeloa (Bolivarian Republic of Venezuela).

On that occasion, the Governing Body requested the Government to communicate its observations no later than January 2005. Accordingly, on 10 January 2005, the Government of the Bolivarian Republic of Venezuela presented its observations, complying with the Governing Body's requests and duly responding to each of the allegations contained in the complaint presented by the Employers' delegates, while also providing various annexes and evidence in rebuttal of the claims made by the complainants.

At its session in March 2005, the Governing Body decided that the complaint should be submitted to the CFA for examination at its meeting in November of that year. Since 2005, including in the latest report in November 2010, the CFA has recommended that a direct contacts mission should be sent to our country.

The replies and observations provided by the Government in compliance with the requests of the Governing Body were never examined or considered by the Governing Body, which has constituted from the outset of the procedure a violation of the right of defence of my Government and, consequently, of the due process which must prevail when examining any complaint.

Our Government does not understand the failure to examine its reply, nor why a complaint which should have been examined by the Governing Body was referred to the CFA, bearing in mind the fact that the CFA is not competent to examine complaints under article 26 of the ILO Constitution.

Furthermore, in view of the fact that the Governing Body referred the complaint to the CFA, and as the CFA is not competent to examine complaints under article 26 of the Constitution, our Government also does not understand why, in its 338th Report of November 2005, the CFA did not assess the Government's reply, and merely stated that "Taking into consideration the necessity to obtain an objective assessment of the actual situation ... recommends to the Governing Body to send a direct contacts mission to the country before deciding on the action to be taken on the complaint made under article 26 of the ILO Constitution".

Our Government has the following questions to which it wishes and trusts that the respective replies can be provided:

- On what grounds would examination of the reply and evidence provided by us entail bias?
- Why would the examination of our reply involve a lack of objectivity, with such objectivity only being achieved through a direct contacts mission?

We await the replies, with the legal grounds, which may be provided to those questions, given that objectivity must prevail in all the procedures of the ILO supervisory bodies.

In any case, it should be borne in mind that, under the procedure for article 26 of the ILO Constitution, there is no indication that a direct contacts mission is a necessary step prior to the examination of the replies of a government concerned.

It is clear that the failure by the Governing Body, or, by default, the CFA, to examine the replies provided in a timely manner by the Government of the Bolivarian Republic of Venezuela in 2005 has placed and continues to keep us in a state of complete defencelessness and legal insecurity in respect of the Government's rights and interests.

It should not be forgotten that the substance of this case is highly political and that it has been kept open since 2004 only at the insistence of the Employers' group.

It should be recalled that, at the 294th Session of the Governing Body (November 2005), the spokesperson of the Employers' group, Mr Daniel Funes de Rioja, who was one of the employers who made this complaint under article 26 of the ILO Constitution, simultaneously took a decision as a member of the Governing Body, acting as interested party and judge, against the Government of the Bolivarian Republic of Venezuela, and made the following statement: "Regarding the article 26 complaint lodged against the Bolivarian Republic of Venezuela, the Employers agreed to a proposal for a direct contacts mission to the country, but on condition that the possibility of a commission of inquiry remained on the agenda." (direct quote, paragraph 157, Minutes of the 294th Session of the Governing Body, GB.294/PV).

We have never before encountered such a condition in any case, except in that of the Bolivarian Republic of Venezuela in which, as has been seen, the Employers' group set as a condition a recommendation made by the CFA, thereby claiming a condition that has been followed since then (2005) without any legal basis.

Moreover, it will be recalled that a complaint, presented by the IOE and FEDECAMARAS, Case No. 2254, is before the CFA, and that the allegations are identical to those set out in the complaint made under article 26 of the Constitution of the ILO. We are therefore confronted with a situation in which the same ILO supervisory body is engaged in analysing, considering, issuing conclusions and recommendations on two complaints for which the authors are identical (Employers–FEDECAMARAS–IOE) and the issues raised and the purpose are the same. This demonstrates the duplication of procedures.

All of these procedures lack a logical and legal basis, and are also in violation of the procedures of the International Labour Organization.

Our Government therefore denounces a flagrant violation of existing procedures, in the sense that, without any legal basis, an atypical and special procedure has been created and introduced de facto for this case concerning the Bolivarian Republic of Venezuela. For this reason, without doubting the impartiality and objectivity of the Governing Body, we call for the immediate closure of the present case, as it would be difficult to make recommendations and considerations on this complaint when it is recalled that the CFA has been issuing conclusions and recommendations concerning the complaint examined in Case No. 2254 which, as indicated above, and should be reiterated, was presented and has been supported by the same parties (Employers–IOE–FEDECAMARAS) and concerns the same questions as those raised in the complaint under article 26 of the Constitution of the ILO. This is explicitly and unequivocally admitted by the CFA in paragraph 1311 of its 338th Report (November 2005).

In any event, we emphasize, and it should not be forgotten, that the conclusions and recommendations issued by the CFA on Case No. 2254 were developed with the active participation, opinions, conclusions and recommendations of the members of the Employers' group of the Governing Body, Mr J. de Regil (Mexico) and Mr T. Suzuki (Japan), among others, who also presented the complaint in 2004, which we have now been addressing continuously for six years. Ms J. Mugo (Kenya) is also a member of the CFA and participated actively in issuing opinions, conclusions and recommendations on Case No. 2254.

All those referred to above, respected members of the CFA when it came out against our Government in Case No. 2254, participated in the same sessions of the Governing Body for the approval and/or adoption of the numerous reports of the CFA containing conclusions and recommendations that they themselves proposed on Case No. 2254 which, as recalled above, covers the same questions as those raised in the complaint against our Government under article 26 of the Constitution of the ILO.

It is clear that the current Governing Body, which has been considering both cases (the article 26 complaint and CFA Case No. 2254), contains in its Employers' group several respected members who also signed the complaint against the Government of the Bolivarian Republic of Venezuela, namely Mr D. Funes de Rioja (Argentina), Mr J. de Regil (Mexico), Mr A. Dahlan (Saudi Arabia), Mr D. Lima Godoy (Brazil), Ms A. M'Kaissi (Tunisia) and Mr M. Barde (Switzerland).

Moreover, bearing in mind the recommendation of the CFA concerning the need for a direct contacts mission to our country, it will be recalled that the Government of the Bolivarian Republic of Venezuela accepted and broadly collaborated with two direct contacts missions and a high-level technical assistance mission in 2002, 2004 and 2006, respectively, giving effect to observations and recommendations made by the International Labour Organization on those occasions.

Furthermore, in 2009, in accordance with the request of the Committee on the Application of Standards, the Government provided detailed information on the follow-up to the high-level mission carried out in the country in 2006.

We have also complied for nine consecutive years with the invitations made by the Committee on the Application of Standards of the International Labour Conference. On each occasion, explanations were provided on compliance with Conventions Nos 87 and 98, with reference to the same questions raised by employers, most recently during the last International Labour Conference held in June 2010.

In relation to this stubborn and partisan action by the employers, we recall that the Bolivarian Republic of Venezuela has, as noted above, been included for nine consecutive years in the list of countries invited to appear before the Conference Committee on the Application of Standards, solely at the bidding of the Employers' group. Indeed, The Employer spokesperson, Mr E. Potter (United States), who was also one of those who presented the 2004 complaint under article 26 of the Constitution of the ILO, in the session of the Committee on the Application of Standards of the International Labour Conference held in 2008, clearly and categorically indicated that there would be no meeting of the Committee on the Application of Standards unless on each occasion the Bolivarian Republic of Venezuela featured on the list of countries which had to appear each year, as recorded in the respective records.

In accordance with the conclusions of the Committee on the Application of Standards, for two consecutive years, in 2009 and 2010, my Government provided full and detailed reports on Convention No. 87, as requested by the Committee, the most recent of which was provided together with the report for Convention No. 98.

All of this shows that the Government of the Bolivarian Republic of Venezuela, despite all the legal flaws indicated, has duly and repeatedly collaborated with the ILO and its supervisory bodies, providing the replies requested and giving effect to the various recommendations that are legally founded.

For the reasons respectfully set out, we reiterate that it would be prudent, honest, ethical and transparent for the honourable Governing Body to close the procedure concerning this complaint made under article 26 of the Constitution of the ILO. This would enhance the objectivity, ethical practice and impartiality which, as we know, has to be followed in the decisions of the Governing Body and all of the ILO supervisory bodies, as otherwise the International Labour Organization would be seriously affected by criticisms which would undermine its image as a respected international organization with clearly defined objectives and goals, which have to be kept well separate from partisan political involvement.

We must not allow the ILO's vocation to be undermined, nor its supervisory bodies to be used as forums to satisfy the specific political interests of employers (FEDECAMARAS), whose continuous and broadly demonstrated action against the Government of the Bolivarian Republic of Venezuela will be addressed below.

(2) Irregular proceedings at the 309th Session of the ILO Governing Body (November 2010).

During the course of the 309th Session of the Governing Body (November 2010), the Employers' group (represented by its spokesperson, the Vice-Chairperson of the Governing Body/Executive Vice-President of the IOE, Mr Daniel Funes de Rioja), submitted to the Chairperson of the Governing Body, in the context of the complaint under article 26 of the Constitution of the ILO, a communication containing information on the events affecting the leaders of FEDECAMARAS on 27 October 2010.

It should be emphasized that, in breach of our legitimate right of defence, we were left without knowledge of the contents of the communication presented by the Employers' group throughout the 309th Session of the Governing Body. It was only on 7 January 2011 that it was communicated to our Permanent Mission based in Geneva, through a letter sent by Mr Guy Ryder, Executive Director, Standards and Fundamental Principles and Rights at Work Sector of the ILO, who attached a copy of the communication and requested additional comments from our Government on the situation described therein. It is that request that has given rise to the present response.

As one of the many aspects to which we are drawing attention, it should not be forgotten that Mr Daniel Funes de Rioja was also one of the employers who made the complaint under article 26 of the Constitution of the ILO. He was also the person who, as Vice-Chairperson of the Governing Body and Executive Vice-President of the IOE, submitted to the Chairperson of the Governing Body, in the context of the complaint under article 26 of the Constitution of the ILO, a communication containing information on the events affecting the leaders of FEDECAMARAS on 27 October 2010.

The Officers of the Governing Body, who include the same Mr Daniel Funes de Rioja, in his capacity as Vice-Chairperson for the Employers' group, decided, "Considering this matter to be of urgent importance", to add at the last minute (on the same day on which it was discussed and a decision adopted) the issue to the agenda of the plenary of the 309th Session of the Governing Body under the title "Additional information concerning the situation in the Bolivarian Republic of Venezuela", in the context of which the facts are linked to the complaint under article 26 of the Constitution of the ILO (GB.309/20/3).

The last minute document referred to above was distributed in the Governing Body Room on the same day as it was discussed, without any official prior indication being provided to our Government, as a result of which we were unaware at the time, and throughout the meeting of the Governing Body, of the terms of the communication sent to the Chairperson of the Governing Body by the Employers' group, which was considered by the Officers of the Governing Body to be a matter of urgent importance. The other members of the Governing Body had even less knowledge of the whole matter. Yet, despite the lack of knowledge of all the members of the Governing Body, the matter was submitted without warning for decision by the Governing Body in plenary.

This underhand procedure, in violation of the spirit of all ILO procedures, which need to be clear, objective, ethical and transparent, resulted in another violation of the right of defence of the Government of the Bolivarian Republic of Venezuela and prevented the Governing Body from being provided with full and prior information on the case.

What is worse, in the last-minute paper circulated by the Office (GB.309/20/3), no reference was made to the information provided by our Government on these matters. It should be recalled that this information, as indicated above and recorded by the Office, was provided at our own initiative immediately, effectively and in a timely manner, only a few days prior to the regrettable events, in letters dated 9 and 12 November 2010, delivered and duly received by the Office of the Director-General of the ILO, the International Labour Standards Department and the secretariat of the Committee on Freedom of Association.

Despite that, in flagrant breach of the interests and legitimate right of defence of the Government of the Bolivarian Republic of Venezuela, the Office mislaid or failed to reveal the information that we provided in the letters of 9 and 12 November 2010 referred to above. Moreover, despite our repeated calls in the room, there was no representative of the ILO to communicate that information objectively and impartially to the Governing Body in the context of the discussion on the case during the 309th Session of the Governing Body in November 2010.

Such a questionable procedure, as a minimum, would merit explanations from the Office with a view to safeguarding the reputation of the International Labour Organization, which has clearly defined and transparent objectives and goals, which need to be kept separate from underhand and partisan involvement.

The Government of the Bolivarian Republic of Venezuela demands to be informed of the reasons for this underhand and partisan procedure in breach of the equality of the parties which must prevail in the Organization, all of which is disruptive and disconcerting in respect of our Government.

On the occasion of the 309th Session of the Governing Body in November 2010, the Government of the Bolivarian Republic of Venezuela spoke several times to oppose the approval of the point. Interventions were also made in our favour by the group of Latin American and Caribbean Countries (GRULAC) and by the Government representatives of China, Russian Federation, Cuba, Nigeria, El Salvador and Viet Nam, who categorically opposed the point for decision.

Nevertheless, the decision that the matter should be discussed at the next session of the Governing Body in March 2011 was adopted WITHOUT TRIPARTITE CONSENSUS, after opposition had been expressed not only by our Government, which provided all the pertinent factual and legal reasons, but also by a full regional group (GRULAC) and other Government members (as indicated above) of the Governing Body. Not one single country indicated that it supported the approval of this point, and even so it was adopted, in violation of the rules respecting the Governing Body of the ILO.

It should be recalled that, as we indicated during the discussion of this case at the 309th Session of the Governing Body, such approval WITHOUT TRIPARTITE CONSENSUS was in flagrant breach of the rule set out in paragraph 24 of the Compendium of Rules applicable to the Governing Body of the ILO, which had been respected up to then, with the exception of the 309th Session of the Governing Body (18 November 2010), during which the rule was violated to the prejudice of the Bolivarian Republic of Venezuela. The rule provides that:

The Governing Body, whether meeting in plenary or in committees, takes decisions usually by consensus. The term “consensus” refers to an established practice under which every effort is made to reach without vote an agreement that is generally accepted. Those dissenting from the general trend are prepared simply to make their position or reservations known and placed on the record. **Consensus is characterized by the absence of any objection presented by a Governing Body member as an impediment to the adoption of the decision in question. It is for the Chairperson, in agreement with the Vice-Chairpersons, to note the existence of a consensus** (emphasis added).

Regrettably, in this case concerning the Bolivarian Republic of Venezuela, it would have been difficult for the Governing Body “to note the existence of a consensus”, as stated in the above rule, if we bear in mind and do not overlook the fact that one of the Officers of the Governing Body (the Employer Vice-Chairperson) is an interested party in this case against the Government of the Bolivarian Republic of Venezuela, but nevertheless has taken and continues to take decisions which are detrimental to our Government, arrogating authority (without any legal basis) which enables him to act as interested party and ruling judge at the same time.

We reiterate that the said Vice-Chairperson of the Governing Body was also one of the employers who made the complaint under article 26 of the ILO Constitution. It was also he who, acting simultaneously as Vice-Chairperson of the Governing Body and Executive Vice-President of the IOE, submitted to the Chairperson of the Governing Body, in the context of the complaint under article 26 of the ILO Constitution, the communication containing information on the attacks against the leaders of FEDECAMARAS on 27 October 2010. This communication was concealed from the Government of the Bolivarian Republic of Venezuela throughout the discussion on this case at the 309th Session (November 2010) of the Governing Body. It was also he who, as one of the Officers of the Governing Body, considered that this matter, which he himself had communicated to the Governing Body, was of urgent importance and should be examined by the Governing Body in an impromptu manner. This duly occurred, as indicated in GB.309/20/3.

It should be recalled that Mr Daniel Funes de Rioja has played a leading role in relation to this case, as follows:

- He is one of the Officers of the Governing Body (Employer Vice-Chairperson);
- He was one of the employers who made the complaint against our Government under article 26 of the ILO Constitution in 2004;
- He represents the IOE in his capacity as Executive Vice-President of the organization which, in conjunction with FEDECAMARAS, presented the complaint against our Government examined by the CFA in Case No. 2254, which deals with the same issues raised in the complaint made under article 26 of the ILO Constitution;
- He submitted to the Chairperson of the 309th Session (November 2010) of the Governing Body, in the context of the complaint under article 26 of the ILO Constitution, the communication containing information on the attacks against the leaders of FEDECAMARAS on 27 October 2010. Subsequently, acting as one of the

Officers of the Governing Body, he considered this matter to be “of urgent importance”, giving rise to this chain of dubious unlawful events which lack any legal foundation, while calling insistently for a Commission of Inquiry prejudicial to the legitimate rights and interests of the Bolivarian Republic of Venezuela.

In view of the obscure circumstances surrounding this case, the Government of the Bolivarian Republic of Venezuela is seeking answers to the following questions:

- Given the structure of the various ILO supervisory bodies, can their members be both interested party and judge at the same time?
- Can those who make a complaint simultaneously be members of a supervisory or decision-making body, such as the Governing Body, and in that capacity adopt a decision on the very complaint that they have made?
- Should the principle governing the CFA, set out in paragraph 12 of its Special Procedures, under which “No representative or national of the State against which a complaint has been made, or person occupying an official position in the national organization of employers or workers which has made the complaint, may participate in the Committee’s deliberations or even be present during the hearing of the complaint in question”, not apply, *mutatis mutandis*, to the Governing Body?
- Would it not be beneficial, with a view to safeguarding the reputation of the ILO Governing Body, to uphold the principles of objective and transparent ethics and justice by ensuring that in such circumstances anyone involved in these interests would be automatically barred, thus preventing the contentious situation from arising of being both interested party and judge?
- As regards the question of tripartite consensus, and on the basis of the unlawful situation referred to at the 309th Session of the Governing Body, what comments or replies could the Office or the Governing Body itself make on this specific case, in which several governments of countries that are members of the Governing Body indicated their opposition and therefore objected to the point for decision contained in GB.309/20/3, despite which the decision was adopted WITHOUT TRIPARTITE CONSENSUS, in breach of the rule set out in paragraph 24 of the Compendium of rules applicable to the Governing Body of the ILO?
- What is the legal course to be followed when a point has been adopted by the Governing Body WITHOUT TRIPARTITE CONSENSUS in breach of the rule set out in paragraph 24 of the Compendium of rules applicable to the Governing Body of the ILO?
- To what authority could our Government have recourse in order to review this case in respect of which the decision of the 309th Session of the Governing Body was adopted WITHOUT TRIPARTITE CONSENSUS in breach of the rule set out in paragraph 24 of the Compendium of rules applicable to the Governing Body of the ILO?
- What legal recommendation could be communicated to the Governing Body at its 310th Session (March 2011) with regard to this point which was clearly adopted WITHOUT TRIPARTITE CONSENSUS at the 309th Session (November 2010) of the Governing Body, in breach of the rule set out in paragraph 24 of the Compendium of rules applicable to the Governing Body of the ILO?

We look forward to receiving the replies, with their legal grounds, that can be provided to these questions, bearing in mind that such legality, equity, objectivity, impartiality and transparency must prevail in all ILO procedures.

Our Government once again rejects the constant violations of the right to defence and rules of the ILO, and expressly and categorically denounces the lack of legality, transparency, equity and objectivity that is being demonstrated by the Organization. All of this is recorded in detail, as described above, and in general has been seen constantly in each of the current cases and proceedings before the ILO supervisory bodies, the Governing Body and the International Labour Conference, of which the prejudicial decisions against the Government of the Bolivarian Republic of Venezuela are completely devoid of the impartiality and transparency which supposedly ensure the prestige of the International Labour Organization.

We have no doubt that the reputation of the ILO can be saved and we put ourselves forward as Members of this Organization to collaborate and take remedial action so that its transparent goals and objectives, clearly defined in its Constitution, are kept separate from partisan political involvement prejudicial to democratically instituted governments, such as that of the Bolivarian Republic of Venezuela.

(3) Parties involved in the complaint. What is FEDECAMARAS?

FEDECAMARAS is an industrial organization composed of a sector of employers which enjoyed substantial privileges for years to the detriment of the majority and which, with the arrival of the Bolivarian Government led by President Hugo Chávez Frías, felt its interests to be affected. Since then it has converted itself into an active member of the political opposition, persistently carrying out destabilizing actions including, among many others, the breaking of national laws in public and the repeated broadcasting of such actions on television.

The subversive and conspiratorial actions of FEDECAMARAS intensified in April 2002 when, in conjunction with the Venezuelan Workers' Confederation (CTV), it led a coup d'état against President Hugo Chávez. The de facto government lasted 48 hours and was headed by Pedro Carmona Estanga, the then President of the employers' organization FEDECAMARAS.

In December 2002, without any decision having been taken by a workers' assembly, the managers and directors of the state-run oil company PDVSA, with the backing of FEDECAMARAS (of which Mr Carlos Fernández was President) and the CTV, carried out an illegal work stoppage, which was an operation aimed at sabotaging the country's principal source of income, resulting in the bankruptcy of thousands of small and medium-sized enterprises and a catastrophic drop in gross domestic product (GDP), leaving the population without access to basic health services, essential foodstuffs or fuel, with unemployment at its highest historical level of 21 per cent.

FEDECAMARAS and the CTV have been misusing the ILO supervisory bodies (Committee on Freedom of Association, Conference Committee on the Application of Standards and Committee of Experts on the Application of Conventions and Recommendations) in order to make political attacks on the Government of the Bolivarian Republic of Venezuela.

FEDECAMARAS–CTV are seeking to quash legal proceedings in progress against some of their members for common crimes and thereby avoid the penalties that might be imposed by the courts, alleging that the warrants for the arrest of Carlos Ortega (former President of the CTV) and Carlos Fernández (former President of FEDECAMARAS) are in violation of freedom of association. Such allegations are unfounded, since participation

in a coup d'état and in acts of sabotage against the national oil industry are criminal offences under Venezuelan law and have nothing to do with Convention No. 87, Article 8 of which states as follows: "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"

FEDECAMARAS is maintaining its own interests as a party which opposes the Government of the Bolivarian Republic of Venezuela, and some of its members, such as José Manuel González (former President of FEDECAMARAS) and Eduardo Gómez Sigala (former President of Conindustria, a member of FEDECAMARAS) were even elected as deputies to the National Assembly (the legislature) on the basis of their political opposition to the Government.

Furthermore, it is important that the ILO does not forget that many leaders of the employers' organization (FEDECAMARAS) participated directly in the COUP D'ÉTAT of 2002, IN BREACH OF THE CONSTITUTION of our country, as follows:

- *Mr Pedro Carmona Estanga.* During his term of office as president of FEDECAMARAS, he proclaimed himself President of the Republic during the COUP D'ÉTAT of 2002. By means of a dictatorial decree he abolished the National Constitution, dismissed the deputies of the National Assembly, the judges of the Supreme Court of Justice, the Ombudsperson, the Attorney-General and representatives of the state authorities.
 - *Mr Carlos Fernández.* Leader of the COUP D'ÉTAT of 2002 and of the work stoppages in the oil industry in April 2002, December 2002 and January 2003. Signatory to the dictatorial decree issued by Pedro Carmona Estanga and a fugitive from Venezuelan justice for the criminal offences of civil rebellion, incitement to crime, conspiracy and criminal damage.
 - *Ms Albis Muñoz.* Former President of FEDECAMARAS, who participated in the COUP D'ÉTAT of 2002 and signed the dictatorial decree issued by Pedro Carmona Estanga. She benefited from a decree of amnesty signed by President Hugo Chávez Frías in January 2008.
 - *Mr Noel Álvarez.* Current President of FEDECAMARAS. Participated in the COUP D'ÉTAT of 2002 and signed the dictatorial decree issued by Pedro Carmona Estanga. On 22 December 2010, during an interview conducted by journalist and current National Assembly deputy Miguel Ángel Rodríguez, he issued an appeal to the Venezuelan armed forces, declaring that "a way out for the country, in view of the hegemonic aspirations of the Government to control the means of production, would be a military solution".
- (4) Failure to remain within the scope of the principles contained in ILO Conventions Nos 87 and 98.

We recall that this complaint under article 26 of the ILO Constitution was made on the grounds of an alleged violation of ILO Conventions Nos 87 and 98, which have been ratified by the Bolivarian Republic of Venezuela and which set forth rights and principles of freedom of association and collective bargaining.

As already indicated, the allegations made in this complaint are also contained in Case No. 2254 presented by FEDECAMARAS and the IOE and examined by the CFA, and go beyond the scope of freedom of association and collective bargaining, encroaching on political or merely economic matters.

The political claims and contentions and those concerning economic policy are unrelated to the rights established in Conventions Nos 87 and 98. A broad interpretation is made of these Conventions which is not only contrary to the provisions of the Vienna Convention on the Law of Treaties, but as we know a broad interpretation of a Convention may be deemed to amount to the creation of new standards under Conventions or treaties, when only the International Labour Conference, and no other ILO body, is competent to create such standards. For this reason, before considering and issuing opinions and recommendations on some of the allegations made in this complaint, it is necessary to determine whether they lie within trade union rights, and therefore whether or not they fall within the scope of an investigation of an alleged violation of the above Conventions.

Our Government once again expresses its consternation and concern regarding the failure to take into consideration the arguments, replies and evidence which we have presented to the ILO. We are particularly alarmed, disconcerted and preoccupied when we see the credibility that the organs and bodies of the Organization attach to the allegations and statements made by the complainants (Employers–IOE–FEDECAMARAS), even though most of them are unsubstantiated and unfounded.

Regardless of the foregoing, the Government of the Bolivarian Republic of Venezuela, once again demonstrating its goodwill towards this international body in the hope that this time its reply will be treated with the objectivity, impartiality, equity and transparency which every Member of this esteemed organization expects, again replies to the fresh allegations and assertions added to this complaint as of November 2010.

(1) Attacks against the leaders of FEDECAMARAS.

As stated above, these attacks gave rise to an impromptu and very controversial discussion of a document presented at the last minute at the 309th Session of the Governing Body (November 2010, GB.309/20/3). This reactivated the complaint lodged six years earlier, in 2004, against our Government under article 26 of the ILO Constitution. More than five years have elapsed since our Government presented its reply, but the latter has not been considered and it must now be emphasized that the context of the 2005 reply may differ from the current reality of 2011.

With regard to the specific acts mentioned by the Employers' group at the Governing Body meeting on 18 November 2010, we recall that the national Government, acting on its own initiative, had already informed the ILO on 9 November 2010 that, once the competent Venezuelan authorities learnt of these acts, they immediately opened an investigation to clarify them, identify those responsible and bring them to justice.

We repeat that the events took place on 27 October 2010 and that on 9 November of the same year our Government duly notified the ILO of the authorities' action to ascertain what had happened.

We take this opportunity to state that the Government rejects and investigates any act of violence committed against persons living in our country. We therefore once again regret and condemn what happened on 27 October to Ms Albis Muñoz and the leaders of FEDECAMARAS. This is our firm position.

Three days later, on 12 November 2010, our Government submitted a communication informing the ILO that on 10 November 2010 two persons had been detained¹ for their direct participation in these acts. They were members of a criminal gang of thieves and were detained so that the relevant judicial proceedings could take place.

¹ Antonio José Silva Moyega and Jaron Manjares.

In those communications, the Government also categorically refuted the unfounded contentions that these violent acts were linked with public institutions and senior representatives of the Venezuelan State. We consider that prejudiced and rash speculation should have been avoided, not least because the claim was not the true explanation of the violence which had occurred, but manipulation of the facts.

Once again, our Government regrets the self-seeking use of the complaint mechanism as a political stratagem to discredit the institutions of the Bolivarian Republic of Venezuela, to generate adverse currents of opinion and to try to manipulate the ILO supervisory bodies.

All this information was sent to the Office of the Director-General of the ILO, the International Labour Standards Department and the secretariat of the CFA on the dates indicated above (9 and 12 November 2010), and yet this information was ignored and not divulged by the Office when the item against our country was presented to the Governing Body on 18 November 2010 (GB.309/20/3).

By a communication of 1 December 2010, addressed to the International Labour Standards Department of the ILO, a reply was also sent to a letter from the IOE containing comments relating to Conventions Nos 87 and 98 and referring to the above attacks on FEDECAMARAS leaders.

In our reply of 1 December 2010, the Government also confirmed the information about these acts contained in the communications of 9 and 12 November 2010 and stated that, on 26 November 2010, members of our country's Investigative and Criminal Police Corps (CICPC) had found another person suspected of committing the attacks (Andrius Ramón Hernández Velásquez), who was fatally wounded after a clash with CICPC officers.

It is clear that the Venezuelan authorities conducted a thorough investigation and used all the means at their disposal to find the suspected authors of the crimes committed against the leaders of the FEDECAMARAS employers' organization.

It is our hope and our wish that the Organization take account of these replies.

Allegations contained in the initial complaint made in June 2004

(2) Alleged harassment of and attacks on Venezuelan employers.

Over the last 11 years, the Government of the Bolivarian Republic of Venezuela has fostered the growth of Venezuelan industry; bodies have been set up to increase national production and assist micro-, small and medium-sized enterprises, and institutions and funds have been created to finance schemes in all sectors. Over the past 11 years, this has resulted in the creation of some 400,000 enterprises in the Bolivarian Republic of Venezuela. This is an outcome of government policies designed to encourage business activity, including that of small and medium-sized enterprises.

The Bicentennial Fund was set up to promote the selective substitution of imports and to stimulate the country's export sector, which includes companies that are members of FEDECAMARAS. The National Institute for the Development of Small and Medium-sized Enterprises (INAPYME) was established with a view to strengthening the productive model developed in our country and to boosting the output and productivity of small and medium-sized enterprises. The programme *Fabrica Adentro* was devised to promote industrial transformation and democratize productive relations by means of

policies on training, technical and social assistance and financing to encourage the people's economy by enhancing the role of cooperatives and other forms of community labour associations.

In addition, the Women's Development Bank was set up to provide women's groups and cooperatives, especially those in the most deprived socio-economic strata, with micro-credit loans and other financial services, while the Sovereign People's Bank, which focuses on the social economy, is committed to the integral development of the Republic and was created to supply services to micro-entrepreneurs, whether or not they have formed groups based on any form of community labour organization, so that they can participate in the country's socio-economic momentum.

All these initiatives and policies of the Venezuelan Government give the lie to the allegation that the national Government harasses and attacks Venezuelan employers.

(3) Alleged marginalization and exclusion of employers' organizations from social dialogue and tripartite consultation.

The Government, on the basis of its convictions and constitutional mandate, promotes broad and inclusive social dialogue. FEDECAMARAS has held innumerable meetings with various government authorities. Consultations and discussions have taken place with regard to the minimum wage, various laws and subjects of interest. Large, medium-sized and small enterprises, the urban and rural sectors and representatives of workers' communities, in other words all the country's organized social actors, have participated in all these processes.

The number of trade unions and employers' organizations has risen in the Bolivarian Republic of Venezuela since 1999, which shows that the right to freedom of association and collective bargaining has been promoted and respected, and that workers' rights are protected.

Although the spokespersons of FEDECAMARAS–IOE claim that in the Bolivarian Republic of Venezuela there is no freedom of association and that the Government restricts dialogue with employers, other employers' organizations, such as FEDEINDUSTRIA, CONFAGAN and Empreven, recognize the development of social dialogue within the country that includes all representative employers' organizations.

It should be recalled that our Government furthers broad and inclusive social dialogue and does not therefore relegate any employer to the fringes of tripartite consultation or social dialogue.

(4) Alleged government support for and interference in the establishment of parallel employers' organizations.

In the Bolivarian Republic of Venezuela there is complete freedom of association and freedom to establish trade union organizations in accordance with the Constitution, laws, regulations and ratified ILO Conventions on freedom of association. Moreover, some representative organizations in our country have been in existence for over 35 years, as is the case of FEDEINDUSTRIA, which was founded in 1972 and which brings together micro-, small and medium-sized enterprises from different productive sectors.

The national Government has fostered an environment for participation, inclusion and the formation of employers' and workers' organizations free from any interference. The national Government never promotes or intervenes in the establishment or activities of these organizations, nor does it engage in any type of favouritism or interference in respect of any particular organization.

(5) *Alleged creation of a hostile environment for employers by depriving them of land.*

Through the National Land Institute (INTI), the Government of the Bolivarian Republic of Venezuela is currently engaged in a land recovery procedure, which does not mean confiscation, invasion or attacks on property belonging to representatives of associations or private business; on the contrary, the procedure is based on the fact that land is idle, unproductive or used illegally, in accordance with the provisions of the national Constitution and the Land and Agrarian Development Act.

It is important to mention the land recovery procedure, as provided for in Chapter VII of the Land and Agrarian Development Act.

Section 86 provides that the INTI “is entitled to recover land owned by it where this is being illegally or illicitly occupied. To this end, it shall initiate the appropriate recovery procedure ex officio or following a denunciation, without prejudice to the guarantees set forth in sections 17, 18 and 20 of the present Legislative Decree.”

Section 88 provides that the land recovery procedure “shall not apply to land fit for optimal agricultural production and fully compliant with the plans and guidelines established by the National Executive ...”.

Consequently, once the procedure has been initiated, “the National Land Institute may assume control of any recovered land found to be idle or uncultivated, pursuant to the provisions of the present Legislative Decree”.

Like many nations of the world, the Bolivarian Republic of Venezuela has endeavoured to strengthen and deepen constitutional values of social development through the agrarian sector. To that end, it has aimed for a fair and equitable distribution of wealth and strategic, democratic and participatory planning in regard to land tenure and the development of agrarian activity as a whole.

Our Government has thus implemented the necessary measures and mechanisms to eliminate the landed estate (*latifundia*) system completely, as a system which is contrary to justice, equity, equality, the general interest and social peace; in particular, one of the fundamental principles underpinning the approval of the Land Act was the defence and protection of agrifood security and sovereignty, for the benefit of the whole population.

In this regard, it is important to mention the following principles stated by this honourable Organization with regard to agrarian reform, which are certainly still valid today:

- The ILO Tenants and Share-croppers Recommendation, 1968 (No. 132), states that, in conformity with the general principle that agricultural workers of all categories should have access to land, measures should be taken, where appropriate to economic and social development, to facilitate the access of tenants, share-croppers and similar categories of agricultural workers to land.
- The Rural Workers’ Organisations Recommendation, 1975 (No. 149), recognizes that “land reform is in many developing countries an essential factor in the improvement of the conditions of work and life of rural workers and that organisations of such workers should accordingly cooperate and participate actively in the implementation of such reform”.

- Along the same lines, the press release of 8 December 1997 on increasing agricultural productivity (ILO/97/32)² stated that: “the agricultural economy requires a number of basic changes. The first major requirement is to abandon the age-old system whereby governments impose artificially low prices for staples such as bread and rice, a practice which feeds urban dwellers but keeps farmers in poverty. A second requirement is to diversify production away from large-scale commodity production to areas of greater export potential, such as cut flowers, tropical fruits and vegetables. A third major requirement is land reform. Land is the primary resource in rural ... and access to land is highly restricted. Ownership is often concentrated in the hands of large proprietors, who often make very poor use of their holdings, either leaving them idle or holding them for speculative purposes, whereas it is well documented that small land holders absorb more labour per acre and are more productive”.

In the case of our country, land productivity has become a legal concept which serves as a measure of the extent to which the land owned is meeting its social function. There are three levels of productivity: idle or uncultivated land, improvable land and productive land. The first category consists of land that does not meet minimum production requirements, and may therefore be subject to intervention or expropriation. The second refers to land which is not productive but can be put into production in a reasonably short time; in this case the aim is for the owner to implement an adaptation plan, for which financial assistance is provided. The third category consists of land that is fit for use and production.

In the case of most of the land recovered by the State for the benefit of the people, the occupants were unable to prove ownership, as they held precarious title or no title at all, while in many other cases the land failed to meet the requirements for production or was unproductive or idle. Without prejudice to the above, the Government, through the competent authorities, acted and has continued to act in compliance with the legally established procedures to that effect, and in those cases has provided and has continued to provide compensation for the improvements made by the owners.

This shows that our Government’s policy, aimed at realizing the principles of social justice laid down in the Constitution of the Republic and in international instruments, has been accompanied by full guarantees, rights and benefits in regard to procedure and implementation, and can hardly be described as creating a hostile environment for employers who own land.

(6) Alleged application of a discriminatory foreign exchange control system to companies affiliated to FEDECAMARAS.

As regards the procedure for obtaining foreign exchange, we inform you that it is the same for all enterprises, and is carried out through an automated system via the www.cadivi.gob.ve web portal, which sets out all the necessary information and requirements for obtaining foreign exchange, without giving rise to discrimination of any kind. It is this method of foreign exchange management which has enabled the country to cope with fragile and volatile markets and deal with the effects of the global crisis, avoiding repercussions on the employment rate or workers’ wages.

It is important to mention that, through this procedure, the Foreign Exchange Administration Commission (CADIVI) has eased and speeded up the process of obtaining foreign exchange for basic consumer goods (medicine, food) and essential imports. In other words, the State considers it a priority to obtain foreign exchange to be used for the sale of foodstuffs, medical supplies or medicine and, in general, goods deemed vital to citizens’ welfare in accordance with centralized planning based on prior determination of

² http://www.ilo.org/global/about-the-ilo/press-and-media-centre/press-releases/WCMS_008037/lang-en/index.htm.

the needs of the people. Accordingly, priority in obtaining foreign exchange is given to enterprises that import such essential goods or inputs for which there is no substitute and which the country needs.

In addition, Decree No. 6,168 of 17 June 2008, published in *Gaceta Oficial* No. 38,958 of 23 June 2008, and Order No. 089 of 31 July 2008 introduced another mechanism to speed up the process of obtaining foreign exchange for imports of capital goods, inputs and raw materials by enterprises belonging to the country's production and manufacturing sectors. Specifically, the measure provides for an exemption from the obligation to meet CADIVI's requirements for enterprises applying for US\$50,000 or less in foreign exchange for the purpose of importing capital goods, machinery, spare parts or production inputs.

Through all these administrative measures streamlining the process of obtaining government-approved foreign exchange, the State discharges its duty to promote and stimulate the full development of the national economy and the production of goods for production purposes for the country's development, with the aim of raising the standard of living of Venezuelan men and women and strengthening economic sovereignty.

Final considerations

The Government of the Bolivarian Republic of Venezuela has maintained and will maintain its commitment to collaborate with the ILO by sending timely replies on numerous occasions to all of the requests of the ILO supervisory bodies, as it has always done.

Our Government has cooperated and, at the request of this Organization, has accepted direct contacts missions in 2002 and 2004 and a high-level mission in 2006, and has implemented the recommendations issued by those bodies.

As is clear from the above, this case has been kept active as a result of the instigation and persistence of FEDECAMARAS and the IOE, prompted by political considerations and the pursuit of privileges, driven by hidden economic motives, in the mistaken view that private property is under attack in the Bolivarian Republic of Venezuela.

The ILO should recognize that our Government is a government of workers, without excluding employers; but it is a Government that defends and protects those who are most excluded, who have always had nothing, not even hope, and who today identify with the policies pursued by our President, with the aim of achieving social justice.

This Government therefore wonders how this complaint can still be maintained; how the International Labour Organization allows its supervisory bodies to continue being distorted; how the ILO can allow itself to be used as a media stage to cater to certain political interests and disqualify the Government of the Bolivarian Republic of Venezuela, a legitimate and democratically established Government that respects and guarantees the rule of law.

This Government's delegation endorses each and every one of the questions raised in this letter, and we look forward to receiving legally founded replies.

The Government of the Bolivarian Republic of Venezuela hopes that this time the rights of our State will be respected, and that henceforth the procedures for complaints or other allegations will comply with the law, and this respected international body will not be allowed to be used once again to cater to political and economic interests of groups that are contrary to any national or international regulation.

We respectfully request that the present reply of the Government of the Bolivarian Republic of Venezuela be brought fully to the attention of the members of the Governing Body at the 310th Session to be held in March 2011, and request that it be included in its entirety in the document to be presented by the Office under item 7 of the agenda of the Governing Body (GB.310/7), fully translated at least into the other two official languages of the ILO (English and French) and thus distributed in the three official versions.

(Signed) María Lucrecia Hernández Vitar,
Director, International Relations Office

Appendix III

Report of the Committee on Freedom of Association of March 2011 on Case No. 2254

CASE NO. 2254

INTERIM REPORT

Complaint against the Government of the Bolivarian Republic of Venezuela presented by

- the International Organisation of Employers (IOE) and
- the Venezuelan Federation of Chambers of Commerce and Manufacturers’
Associations (FEDECAMARAS)

Allegations: The marginalization and exclusion of employers’ associations in the decision-making process, excluding them from social dialogue, tripartism and the implementation of consultations in general (particularly in relation to very important legislation that directly affects employers), thereby not complying with the recommendations of the Committee on Freedom of Association; the arrest of Carlos Fernández in retaliation for his activities as President of FEDECAMARAS; acts of discrimination and intimidation against employers’ leaders and their organizations; legislation at odds with civil liberties and the rights of employers’ organizations and their members; violent assault on the FEDECAMARAS headquarters by pro-Government mobs, who caused and threatened employers; bomb attack on the FEDECAMARAS headquarters; acts of favouritism by the authorities with respect to non-independent employers’ organizations

1177. The Committee last examined this case at its meeting of March 2010 and presented an interim report to the Governing Body [see 356th Report, paras 1392–1557, approved by the Governing Body at its 307th Session (March 2010)].

1178. Subsequently, the International Organisation of Employers (IOE) sent new allegations in a communication dated 12 October, two communications dated 3 November 2010 and additional information in a communication dated 10 February 2011. The Government sent new observations in communications dated 18 May and 9 and 12 November 2010 and 25 February 2011.

1179. The Bolivarian Republic of Venezuela has ratified 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).

A. Previous examination of the case

1180. At its March 2010 meeting, the Committee considered it necessary to draw the attention of the Governing Body to this case due to the extreme seriousness and urgency of the matters dealt with therein and made the following recommendations on the matters still pending [see 356th Report, paras 4 and 1557]:

- (a) The Committee reiterates its previous recommendations concerning social dialogue. Specifically:
 - deeply deploring that the Government has ignored its recommendations, the Committee urges the Government to establish a high-level joint national committee in the country with the assistance of the ILO, to examine each and 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 the Government to keep it informed in this regard;
 - the Committee expects that a forum for social dialogue will be established in accordance with the principles of the ILO, having a tripartite composition which 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 should 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 subject 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 sectors of activity, the formulation of economic and social policy and the drafting of laws which affect the interests of the employers and their organizations;
- (b) 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 employer interests, in a manner commensurate with its level of representativeness;
- (c) the Committee observes that the two suspects wanted for the bomb attack on the FEDECAMARAS headquarters (28 February 2008) have still not been arrested despite the time that has elapsed. The Committee reiterates its previous recommendations and expresses its deep concern at the fact that the case relating to this attack has still not been resolved. The Committee requests the Government to take measures to step up the investigations, ensure that they are independent, clarify the facts, arrest the perpetrators and impose severe penalties on them to prevent any recurrence of such crimes. The

Committee requests the Government also to step up the investigations into the attacks on the FEDECAMARAS headquarters which occurred in May and November 2007, and conclude those investigations as a matter of urgency. The Committee requests the Government to keep it informed in this respect. The Committee again deeply deplores these attacks and recalls that the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence. The Committee expresses its deep concern at this series of attacks and observes that they have effectively resulted in a situation of impunity that is incompatible with the provisions of Convention No. 87;

- (d) the Committee once again requests the Government to revoke the warrant for the arrest of former FEDECAMARAS President Mr Carlos Fernández, so that he may return to the country without risk of reprisals;
- (e) the Committee invites the complainant organizations to supply further details concerning the alleged deaths of six producers and the abduction of three sugar producers in 2006;
- (f) the Committee requests the Government to return the "La Bureche" farm property to the employers' leader Mr Eduardo Gómez Sigala without delay and to compensate him fully for all losses sustained as a result of the intervention by the authorities in the course of the property seizure. The Committee requests the complainant organizations and the Government to provide a detailed account of the charges against Mr Gómez Sigala, including the context and circumstances in which the events took place;
- (g) the Committee requests the Government to discuss with FEDECAMARAS issues relating to the application of legislation on "labour solvency" and the acquisition of foreign currency, with a view to allaying any concerns and guaranteeing that legislation is not applied on a discriminatory basis;
- (h) the Committee requests the Government to inform it as to progress in the adoption of the draft act on international cooperation (which is currently passing the second reading before the Legislative Assembly), the final version of which it trusts will contain provisions on rapid action in the event of discrimination;
- (i) the Committee invites the complainant organizations to supply additional information concerning their allegations of discrimination in relation to the Organic Act establishing the Central Planning Commission and harassment of employers' leaders through speeches given by the President of the Republic; and
- (j) the Committee draws the Governing Body's attention to the extreme seriousness and urgent nature of this case.

B. New allegations of the IOE

1181. In its communication dated 12 October 2010, the International Organisation of Employers (IOE) again complains, in common with the Venezuelan business community, the constant harassment by the Government of the Bolivarian Republic of Venezuela of free enterprise in the country and complains of new attacks on the private sector and its representative organization, FEDECAMARAS. The IOE complains of failure by the Government to comply with the recommendations made by the Committee on Freedom of Association in the last five years, including those made in its meeting of March 2010.

1182. In its communication dated 3 November 2010, the IOE alleges that on the night of 27 October 2010, in Caracas, a group of five armed and hooded men machine-gunned, kidnapped and maltreated the President of FEDECAMARAS, Mr Noel Alvarez, its former President, Ms Albis Muñoz, the Executive Director, Mr Luis Villegas and its Treasurer, Mr Ernesto Villamil. The kidnappers fired three shots into the body of Ms Albis Muñoz, Employer member of the ILO Governing Body. After she had lost a lot of blood, the attackers dragged her from the vehicle in which she was travelling and dumped her near the Pérez Carreño Hospital, where she was taken some time later by a passing police patrol. The other three abducted persons were released two hours later, after the abductors had faked an abduction, expressed their intention to demand a ransom of 300 million bolivars, and stolen their belongings.

- 1183.** According to the IOE, the manner of the attack suggests that its purpose was to decapitate the business leadership of the Bolivarian Republic of Venezuela, although it was afterwards disguised as an abduction.
- 1184.** The IOE indicates that the Government of the Bolivarian Republic of Venezuela has an obligation to guarantee the life and safety of citizens and their institutions and recalls that FEDECAMARAS has been the target of violent attacks on its offices and leaders on many occasions, as has been reported in previous complaints to the Committee on Freedom of Association.
- 1185.** The IOE emphasizes that the climate of aggression and hostility towards the private sector, especially towards FEDECAMARAS and its leaders which is constantly expressed in the highest institutions of the State, especially the President of the Republic himself, Mr Hugo Chávez, together with the growing insecurity in the country means that the State is responsible for this new violence against Venezuelan business leaders. It should be recalled, for example, that in June 2010, President Chávez declared “economic war” on Venezuelan private entrepreneurs and their organizations.
- 1186.** The IOE requests the Committee on Freedom of Association to invite the Government of the Bolivarian Republic of Venezuela to carry out a thorough investigation of this attack, to arrest and convict the perpetrators and stop the physical violence, confiscation of property and verbal attacks to which it incessantly subjected the business community and private companies in the Bolivarian Republic of Venezuela.
- 1187.** The IOE indicates that so far none of the attacks on FEDECAMARAS have led to the arrest and punishment of those responsible, despite the fact that the names of the persons and institutions behind them are known.
- 1188.** In another communication dated 3 November 2010, the IOE states that the Committee on Freedom of Association examined Case No. 2254 at its meeting of 2010, and made recommendations which were approved by the Governing Body, drawing the attention of the Governing Body to the “extreme seriousness and urgent nature of this case”. The IOE complains that the Government has not complied with any of the recommendations made in the last five years.
- 1189.** The IOE alleges that as a consequence of their work to defend their members, representatives of employers’ organizations, and the private sector in general, are constantly harassed and threatened. On this occasion, the IOE complains of attacks against the property of the former Presidents of FEDECAMARAS, Messrs Vicente Brito, Rafael Marcial Garmendia and Carlos Sequera Yépez, as well as against Mr Manuel Cipriano Heredia, the current President of FEDENAGA (the leading agricultural sector body affiliated to FEDECAMARAS) and its former President, Mr Genaro Méndez, and also Mr Eduardo Gómez Sigala, former President of CONINDUSTRIA (the leading industrial sector body affiliated to FEDECAMARAS). The National Land Institute (INTI) together with the National Guard constantly invade productive farms under the so-called “Land Recovery Plan”. The INTI could only “recover” those lands which it owned, and that is not the case of the properties of the expropriated business leaders.
- 1190.** In the specific case of the farm of Mr Eduardo Gómez Sigala, former President of the Caracas Chamber of Commerce, the Venezuelan Chamber of Food and the CONINDUSTRIA Industrial Confederation, the IOE alleges that on 21 September 2009, a group of 20 persons who claimed to be officials of the Lara Regional Land Office, accompanied by 14 members of the national armed forces, carrying automatic weapons, arrived at the entrance to the La Bureche farm. They threatened the farm manager, Mr Castejón Martínez, and ordered him to open the main door immediately, without

showing any documentation. They entered the farm and took over the premises. From that point on, the entrance to the La Bureche farm remained under the strict control of the army, who set up several tents around Mr Eduardo Gómez Sigala's family home. During that evening, 21 September 2009, and during the following days, the La Bureche farm remained totally occupied by officials of the INTI, the Venezuelan Food Corporation and members of the national armed forces. Only vehicles belonging to these bodies were allowed to enter, together with tractors and heavy machinery which were used to destroy the 18 hectares of sugar cane growing there, which should have been harvested in two months' time.

- 1191.** On 24 September 2009, Mr Gómez Sigala tried to enter his family home, situated within the La Bureche farm. Army personnel seized Mr Gómez Sigala and forced him inside the farm, before putting him in a vehicle and taking him under arrest to the headquarters of the Thirteenth Infantry Division, located in the town of Barquisimeto in Lara State. There he was arbitrarily held prisoner until the evening of 25 September. In being released, he was taken to the Barquisimeto Supervisory Court (*Tribunal de Control*), where, to justify his detention, the Public Prosecutor's Office charged him with "resisting authority and minor personal injury", because he had torn a sergeant's shirt during the struggle when he was forced to leave the farm. On the following day, the business leader was released on conditional bail subject to the obligation to report to the court or the Public Prosecutor's Office whenever required or needed for the investigation. It should be emphasized that there is no time limit or specific date was attached to this measure, thus the accused must remain indefinitely at the disposal of the authorities.
- 1192.** The La Bureche farm is owned by the Agrícola Bureche 2007, CA, a company based in Caracas. The company's memorandum and articles of association show that Mr Eduardo Gómez Sigala owns 99 per cent of the shares in Agrícola Bureche 2007, CA, of which he is the sole director. On this estate, as well as sugar cane, grass and other crops, is his family home, which he uses frequently during his long stays in the town of Barquisimeto, which, in addition to Caracas, is the seat of his businesses and interests and is the place of residence of part of his family.
- 1193.** Recently, the authorities came to move horses and cattle. The farm has currently been taken over by the military, who use it for military training. As of today, Mr Gómez Sigala is not allowed to enter the farm (see Annex 5).
- 1194.** In addition, the IOE alleges that despite the Committee's numerous requests, it regrets to have to report that the Government has not followed the Committee's recommendation to quash the order for the arrest of the former President of FEDECAMARAS, Mr Carlos Fernández, so that he may return to the country without fear of reprisals.
- 1195.** The IOE also recalls that over three years ago, on 24 May 2007, the headquarters of FEDECAMARAS was attacked by representatives of the Ezequiel Zamora National Campesino Front, the Simón Bolívar National Communal Front, the Alexis Vive Collective and the Simón Bolívar Coordinator, committing acts of violence against the institution and its premises. Those leaders were interviewed in the media where they identified themselves. To date, these violent groups have not been charged with anything.
- 1196.** Another attack on FEDECAMARAS headquarters occurred in February 2008. On 24 February 2008, metropolitan police inspector Mr Héctor Amado Serrano Abreu was killed by an explosive device when he was placing it against the front of the FEDECAMARAS headquarters building. On 26 February 2008, the complaint concerning this incident was lodged with the Public Prosecutor's Office, requesting a thorough and exhaustive investigation of the facts and identification of those responsible. So far, there has been no visible result. In 2009 and 2010, the IOE continues, just before the

International Labour Conference, these matters appeared in the media. Thus, just before the 98th Session of the International Labour Conference (2009), the Government said that it was dealing with the case and mentioned the persons under investigation and the courts handling the case. However, on 26 June 2009, seven days after the end of the International Labour Conference, in letter No. 01-F-50—842-09, the Public Prosecutor's Office told FEDECAMARAS that it "was ordering the case to be filed", due to the impossibility of assembling sufficient evidence to allow the conviction of any person in the case. This letter was received at FEDECAMARAS' offices on 26 August 2009, two months after the date when it was written and the necessary instructions were immediately given to appeal that decision. Up to now, no reply has been received. Recently, and before the 99th International Labour Conference (2010), it appeared in the press, on 6 May 2010, that an active official of PoliCaracas, Mr Juan Crisóstomo Montoya, had been identified as a member of the group which placed the bomb at FEDECAMARAS headquarters and had been arrested. However, on returning from the Conference, FEDECAMARAS was informed that Mr Montoya had been released and that, for no reason, all the charges against him had been dropped. Consequently, there has still been no visible result in this regard.

- 1197.** The IOE considers that the Government's action can be summarized as a strategy to present a semblance of progress in the investigations into the attacks against FEDECAMARAS during the International Labour Conference. However, that cannot hide the fact that for over three years, since those criminal acts were committed, the Government has not shown any serious will to investigate and punish those responsible for the bomb attack on FEDECAMARAS, thereby fostering a climate of hostility against FEDECAMARAS and one of impunity for those who attack the private sector and its representative organization, FEDECAMARAS.
- 1198.** The IOE also points out that Mr Noel Álvarez, the current President of FEDECAMARAS, after being interviewed by RCTV International, was the subject of an investigation by Public Prosecutor's Office 10 in the Caracas Metropolitan Area, and charges were brought against him for alleged offences against national security, rebellion, incitement to insurrection and incitement to commit criminal offences. As of today, Mr Noel Álvarez has been denied the right to appoint his defence lawyers.
- 1199.** There have been numerous threats and verbal attacks against the private sector representative organization, FEDECAMARAS, by the President of the Republic. Recently, on 3 June, at the beginning of the International Labour Conference 2010, the President of the Republic stated that "FEDECAMARAS is an enemy of this people and we do not need it. More than that, let me make it crystal clear, I think this country can do without it". Also, on 15 June 2010, he said that FEDECAMARAS "is a great obstacle to the country's development", and, therefore, he declared, its members were "enemies of the State". On 13 October 2010, as the annual assembly of FEDECAMARAS was ending, the President of the Venezuelan Republic stated that "FEDECAMARAS" does not exist" and declared in that regard "Do these people still exist? I do not recognize them, I don't know who they are" (the relevant annexes are attached).
- 1200.** The IOE concludes that all the foregoing shows a clear and constant will by the Government of the Bolivarian Republic of Venezuela to attack and destroy FEDECAMARAS, even though it is the national representative organization of the employers' side. The increasing frequency and content of the verbal attacks by the Government of the Bolivarian Republic of Venezuela against FEDECAMARAS is a cause for much concern.
- 1201.** The IOE alleges that the Government of the Bolivarian Republic of Venezuela finances parallel organizations to FEDECAMARAS by means of subsidies. In this regard, it

attaches an extract from the financial report of the Economic and Social Development Bank (BANDES) of 30 June 2007. This report indicates that Entrepreneurs for Venezuela (EMPREVEN) was granted an allocation of 2,267,846 bolivars and a further allocation of 438,378 bolivars. Furthermore, national financial institutions give priority to cases processed by EMPREVEN (the organization backed by President Chávez) to the detriment of those which are not affiliated to it. The Foreign Exchange Commission (CADIVI) allocated dollars for imports in 91 per cent of the cases processed by EMPREVEN (see annex).

1202. The Government's support to official companies was also expressed by the investment of 3 billion bolivars in the Bicentenary Fund which finances "social production companies" which participate in export and import substitution plans, but not to private enterprises represented by FEDECAMARAS.

1203. The result of the foregoing is discrimination against private companies and against FEDECAMARAS which do not have access to these public funds. Consequently, as has been emphasized on various occasions "the national industrial stock fell by 36 per cent between 1998 and 2007, according to the National Institute of Statistics (INE). Since 2007, no official figures on company closures have been published, but it is estimated that it is over 40 per cent. The intention to replace private companies with socialist enterprises is a fact. The former are being strangled by legal constraints and requirements, while the latter are promoted and obtain preferential credits, although without obvious results. They only contribute 10 per cent of the country's GDP". In the ten years since Mr Hugo Chávez came to power, the number of companies in the country fell from 11,000 to 7,000. Furthermore, a World Bank report early in 2010 warned that the collapse of private activity in the Bolivarian Republic of Venezuela would increase the prospect of negative economic growth and that "the lack of cooperation" between the private and public sector was a key factor in the collapse of economic performance in 2010.

Expropriations of private sector assets and property

1204. The IOE and FEDECAMARAS highlight that in the last few months, the Government has multiplied attacks against the private sector, issuing numerous expropriation orders against companies without the slightest legal justification and without any financial compensation. In this regard, on 2 June 2010, President Chávez declared "economic war" on the business sector and its representatives, especially FEDECAMARAS. He added "I declare myself in a state of economic war. Let's see who comes out on top, you bourgeois trash or those who love their country".

1205. It should be emphasized that recently, on 3 October 2010, the company Agroisleña SA, which is crucial to the agriculture and livestock industry of the Bolivarian Republic of Venezuela and the chief distributor of farming products with 82 sales outlets and eight silos across the country, was nationalized. The order for the expropriation of Agroisleña was widely rejected by producers and company workers. In Barinas, the state police used teargas to disperse a protest by 150 producers. After this action, one producer was arrested and injured.

1206. On 25 October 2010, an order was approved for the expropriation for the Venezuelan subsidiary of the United States company, Owen Illinois, the world leader in the manufacture of glass containers for drinks, food, medicines and cosmetics.

1207. On 30 October 2010, President Chávez ordered the expropriation of the Siderúrgica del Turbio (SIDETUR), a subsidiary of the private Venezuelan steel group SIVENSA, and six urban complexes were paralysed and a further eight were "temporarily occupied".

1208. The announcement concerning Owen Illinois brought the number of expropriated companies in 2010 to 200, most of them without any compensation. In 2009, 139 companies were expropriated, not including companies in the agricultural sector. As highlighted by the firm Eco-analítica and the Venezuelan American Chamber of Commerce and Industry (VenAmCham), nationalizations and state takeovers worth \$23,315 million have been ordered since 2007, but only \$8,600 million have been paid in compensation, representing one third of the expropriations. The pace of takeovers of private companies by the Government without compensation has been accelerating in recent months. In the last three years, the Venezuelan Government nationalized 371 companies in strategic sectors such as electricity, banking, cement, steel, oil and food. Of this total, half were taken over between January and August 2010. The exponential number and headlong rush of expropriations without compensation by the Government of the Bolivarian Republic of Venezuela is seriously endangering the viability, development and national output in key sectors of the economy, which as well as causing heavy economic losses also generates unemployment and poverty across large swathes of the population.

Deaths and abductions of producers and cattle breeders

1209. As a result of the constant confiscations of companies and properties, there have been many acts of violence and abductions in the agricultural and livestock sector. A special case is that of the agricultural and livestock farmer, Mr Franklin Brito, who died aged 49 years on 30 August 2010, as a result of going on a succession of hunger strikes since 2 July 2009 in protest against the Government for the invasion and expropriation of his land and despite having produced to the Government the maps and documents proving his ownership of the property situated in Bolívar State. The farmer was demanding the return of his land and payment of compensation for damages. Sadly, this was not achieved even when, after his death, the highest authorities published documentation recognizing his rights in the media.

1210. The policy of harassment of the private sector has now resulted in 25 agricultural and livestock farmers being abducted without the Government being concerned to bring about their release. Since 1999, the State has occupied 3 million hectares of land, rejecting titles of ownership.

1211. The IOE and FEDECAMARAS once again deplore the lack of social dialogue and bipartite and tripartite consultations, although the Committee has incessantly emphasized “the importance that should be attached to full and frank consultation taking place on any questions or proposed legislation”. Despite the Committee’s recommendation that “requests the Government to ensure that any legislation concerning labour, social and economic issues adopted in the context of the Enabling Act be first subject to genuine, in-depth consultations with the most representative independent employers’ and workers’ organizations”, it should be noted that the Government’s attitude has not changed and that it is adopting reforms and laws which affect the private sector without prior consultation or social dialogue with the social partners.

1212. The IOE and FEDECAMARAS emphasize the Government’s rejection of the Committee’s recommendations on the matter and the absence of any “social dialogue with FEDECAMARAS and its regional structures in connection with the various sectors of activity, the formulation of economic and social policy and the drafting of laws which affect the interests of the employers and their organizations”. On the contrary, the Government is now using the procedure of decrees with the force of law, which do not have a time limit, to legislate without dialogue or consultation, since with this type of instrument it is not necessary to discuss draft legislation in the National Assembly.

- 1213.** For example, there was no social dialogue or consultation by the Government in the following cases:

Fixing of the minimum wage. As reported many times to the various ILO supervisory bodies, the Government has been fixing the minimum wage unilaterally for ten years, without tripartite consultation or convening the National Tripartite Commission on the Minimum Wage, established by articles 167 and 168 of the Organic Labour Act, and despite the observations of the Committee and the Committee of Experts on the Application of Conventions and Recommendations on the application of ILO Convention No. 26.

The Public Procurement Act, approved on 5 August 2010, which gives greater powers to the public administration in the award of contracts for institutions which use public funds. The employers' side expressed its concern that the reform of the law applies the seizure or requisition of assets in the case of alleged failures or halting of the works, without any opportunity for considering the right to defence.

The General Banking Act, approved on 12 August 2010, whereby shareholders, directors, staff and managers of the communication media are disqualified from exercising a financial activity, thereby openly violating article 112 of the Constitution which provides that anyone may engage in the productive activity of their choosing.

Land and Agrarian Development Reform Act, approved on 14 August 2010, under which producers lose their protection against procedures for expropriation of their lands without compensation. Venezuelan businessmen reject the legal practice of "recovery of lands" which is applied arbitrarily by the law enforcement services and the INTI, taking over estates and destroying tools and crops.

The Labour Stability Bill which envisages that employers have the obligation to obtain prior authorization from the labour authority to terminate the employment relationship with any of their workers, which, due to the country's actual economic crisis, has led to the closure of thousands of companies.

The Social Property Bill. The Government may order compulsory acquisition if it is determined that a company's productive activity is not aimed at satisfying real needs or it is not in conformity with national interests and the socio-productive model.

The International Cooperation Bill which seeks to control the registration and financing of NGOs in the Bolivarian Republic of Venezuela.

- 1214.** The Organic Act establishing the Central Planning Commission was approved by the National Assembly on 15 April 2010. The objectives of this Act include accelerating central planning and drawing up a central map of the national public and private economic structure, which implies defining plans for both sectors. Subsequently, on 24 May 2010, the Act to Reform the Organic Act establishing the Central Planning Commission was approved, a measure which constituted an unprecedented threat against economic freedoms. The private sector, in common with its representative organization, FEDECAMARAS, was never consulted on these laws.

- 1215.** Article 2, which sets out the aims of the Commission, provides that it shall carry out its functions with a view, among other things, to: "driving the transition to an integrated central planning model ..." and "guide the establishment of a model capable of ensuring satisfaction of the spiritual and material needs of society, achieving the utmost social happiness, in other words, the socialist model". It is a clear abuse that individual decisions taken by economic agents in the exercise of their rights may be challenged by third parties, i.e. by members of the Central Planning Commission.

- 1216.** Article 4 sets out the Commission's powers, indicating that its responsibilities shall include "drawing up a central map of the national economic structure, state, public and private, which will serve as the basis for planning and controlling the construction of the Venezuelan socialist model". Consequently, the officials appointed by the President of the Republic as members of the Commission will determine the structure of the national economy. This administrative determination of the structure of markets and economic sectors is a threat to economic freedom and disregards the reality of many sectors, in particular the dynamic and endogenous nature of market structures. The scope of this power granted to the Commission is in clear conflict with the economic freedoms enshrined in the Constitution and the social model of the market.
- 1217.** Article 5, paragraph 4, reads as follows: "To link and coordinate mechanisms for the exchange and distribution of national production, based on the needs of the people and the actual costs of production by branch, sector and productive unit, to fix fair prices". The lack of any definition of those who will be responsible for this function is another clear infringement of the National Constitution and the economic framework and model indicated therein. Indeed, central planning of this kind not only makes free initiative impossible and reduces the positive effects of dynamism and innovation, but it also damages consumer freedom of choice.
- 1218.** For all the above reasons, it is clear that the Government of the Bolivarian Republic of Venezuela, by its destructive attitude to social dialogue and its campaign of constant and violent harassment of the private sector, wanted once again to destabilize the country's employers' representative institution, FEDECAMARAS, by means of constant serious harassment of its members, business leaders, and attacks on their persons and properties. On the other hand, once again demonstrating its constructive approach, FEDECAMARAS expressed its optimism for the results of the parliamentary elections of September 2010, hoping that the composition of the new National Assembly from January 2010 would send a message of confidence to national and foreign investors, so that they would return to the country. It also stated that the expropriation and control measures had seriously damaged businesses, and that the situation needed to be reversed. The IOE and FEDECAMARAS again request the Committee on Freedom of Association to reach a decision on this Case No. 2254, which is extremely serious and urgent, urging the Government of the Bolivarian Republic of Venezuela to accept the tripartite missions of direct contacts requested by the various ILO supervisory bodies, to cease its practices that violate freedom of association, to permanently cease attacking the employers' representative institutions and begin a dialogue with them, to take specific measures to show their will to comply with the international agreements to which they subscribed voluntarily, to accept and fulfil the recommendations of the ILO supervisory bodies; and to protect business leaders and their institutions from the violent attacks that they frequently suffer from armed gangs and that the latter should be tried and held responsible for their acts.
- 1219.** In its communication dated 10 February 2011, the IOE provided additional information concerning the cases of confiscation of property of employers' leaders, the alleged physical attacks against employers' leaders and the lack of consultation and social dialogue, as well as other questions.

C. The Government's new reply

- 1220.** In its communication dated 18 May 2010, the Government states in relation to the allegations concerning social dialogue with FEDECAMARAS that in January 2010, the Ministry of Popular Power for Labour and Social Security sent communications to the employers' organizations, including FEDECAMARAS, inviting their opinion on the fixing of the national minimum wage for 2010. The majority of those organizations replied, sending their observations on the national minimum wage to the Department of Labour and

Social Security. The National Executive, having heard the views of the employers' and workers' organizations and the relevant bodies, ordered the national minimum wage to be increased by 25 per cent in 2010.

- 1221.** Meetings, consultations and discussions were also held with employers; and workers' organizations, including FEDECAMARAS, concerning the Food Act and its regulations, the regulations pursuant to the Organic Act on Occupational Safety and Health and the Workplace Environment, the new Organic Labour Act, measures on labour immobility and principles of the representativeness of the country's employers' and workers' organizations in 2003, 2004, 2006, 2008, 2009 and 2010.
- 1222.** Consultations were also held on many other laws not related to social and labour matters. Large, medium-sized and small enterprises, the urban and rural sector, workers' representatives, communities, etc., took part in all of these, including representatives of FEDECAMARAS which, as one of the country's employers' organizations, like others, was invited to consultations, discussions and dialogue on various subjects.
- 1223.** Furthermore, meetings were also held for the appointment of the tripartite delegation to attend the last International Labour Conference, in which the following employers' organizations took part: the Venezuelan Federation of Chambers of Commerce and Manufacturers' Associations (FEDECAMARAS); the Venezuelan Federation of Craft, Micro, Small and Medium-sized Business Associations (FEDEINDUSTRIA); Entrepreneurs for Venezuela (EMPREVEN); the Bolivarian Council of Industrialists, Entrepreneurs and Micro-entrepreneurs (COBOIEM) and the National Confederation of Farmers and Stockbreeders of Venezuela (CONFAGAN). At these meetings, the representatives of these organizations also discussed subjects of economic, political and social interest in the country.
- 1224.** On a separate matter, by Presidential Decree No. 7173 of 12 January 2010, published in the *Official Gazette* No. 39349 on 19 January 2010, the Constitutional President of the Bolivarian Republic of Venezuela created the Bicentenary Fund, through which the national Government is promoting strategies to stimulate selective import substitution and the country's export sector, through collaboration between workers and entrepreneurs in the productive sector of the economy, both under private and public ownership, in close coordination with governments, municipal and local authorities, with the firm commitment to satisfy the basic needs of the people by developing the national productive system.
- 1225.** This new initiative by the national Government complements others which, for some years past, have been designed to support initiatives in the business sector which generate economic sovereignty and social well-being. Considerable financing for such initiatives has been channelled through the public bank on preferential terms.
- 1226.** At national level, representatives of various productive areas in the private sector participated in the socialist productive forums initiated by the national Government on 28 January 2010. Many of those representatives were related to FEDECAMARAS, which confirms the participation of the latter and other employers' organizations in the inclusive, constructive and productive social dialogue promoted by the national Government to facilitate and strengthen the country's development based on the articulation of the public and private sectors of the economy.
- 1227.** An initial review of the results, in January 2010, showed 3,356 import substitution business projects and 589 export business projects. In percentage terms, the projects presented included 21 per cent in the agricultural sector, 14 per cent in textiles, 7 per cent in food and 10 per cent in tourism and services, all of them private enterprises.

- 1228.** As regards the reform of the Organic Labour Act, last year and in the first months of 2010, intensive consultations were held on the reform of the Act and its most important aspects. The debate began in June, with meetings being held in almost all sectors of the national economy. Representatives of all the employers' organizations, trade union confederations, federations and individual trade unions took part in these consultations. In addition, meetings and workshops were held both in the national capital and the various states of the country. By this process, the Social Development Commission of the National Assembly received over 4,000 proposals from all the interested parties. During the first few months of this year, the process of public consultation continued with the participation of all the social sectors, employers' organizations, workers' organizations and other people's organizations.
- 1229.** The Social Development Committee of the National Assembly is examining the observations and proposals made by the public institutions and social partners. The Organic Labour Act Reform Bill is will soon have its second reading in the National Assembly in accordance with the legislative agenda.
- 1230.** In addition, the National Assembly website also contains a forum, available to all workers, employers and citizens, on the Organic Labour Act, which is a space opened by the Permanent Social Development Committee to debate and consult on this reform.
- 1231.** The Reform Bill has been widely discussed and debated, as part of the process of "street social parliamentarianism" being developed by the Venezuelan State through the National Assembly, to allow workers, employers and their organizations, as well as interested citizens and social institutions to make proposals and suggestions to enrich this legislative initiative which represents a great advance in the social, labour and restitution rights of the workers, and designed to achieve the maximum consensus possible.
- 1232.** As regards the proceedings at the La Bureche estate and the situation of Mr Ángel Eduardo Gómez Sigala, the Government states that it duly informed the Committee that the National Land Institute, an agency of the Ministry of Popular Power for Agriculture and Land, duly authorized in accordance with the law, initiated the procedure for recovery of the plot of land known as the La Bureche estate, in the parish of Cabudare, municipality of Palavecino, Lara State, with the basic objective of promoting the agricultural use of the Río Turbio valley by immediately working the said land because it was lying idle. This was fully in conformity with the provisions of the National Constitution, the Land and Agrarian Development Act and Decree No. 2743 of 10 December 2003, published in the *Official Gazette*, No. 331541 of 30 December 2003.
- 1233.** Furthermore, inspection of this estate showed that the farm was underutilized, since it grew crops that were not suitable for the type of soil, thus causing a process of degeneration, and there was also inadequate management which had an adverse environmental impact and 83 hectares out of the farm's total area of 97 hectares (6,260 m²) were left idle.
- 1234.** Thus the proceeding carried out in the Río Turbio Valley in Lara State was part of a process of recovery of lands and properties by the national Government and implemented by the National Land Institute, based on fallowness, lack of productivity or illegal use of land, as laid down in Venezuelan legislation.
- 1235.** As regards the situation of Mr Ángel Eduardo Gómez Sigala, the Public Prosecutor's Office charged him, having apprehended him in the act, with the offences of resisting authority and minor personal injury, as laid down in articles 216 and 418, respectively, of the Venezuelan Criminal Code. Mr Sigala was charged by Public Prosecutor's Office 5 in Lara State. On 26 September 2009, the Eighth Lara State District Court, on the application of the Public Prosecutor's Office, ordered the application of the ordinary proceedings and

release on conditional bail, as laid down in article 256, section 9, of the Criminal Procedures Code. The Public Prosecutor's Office requested the San Juan and Barquisimeto branches of the Scientific, Penal and Criminal Investigation Service to carry out physical tests on a sample of clothing, verification of three compact discs provided for the defence of the accused, photographic records, technical inspection and interviews of witnesses in person, in order to prepare a report of its conclusions. The subsequent judicial proceeding against Mr Sigala is subject to all the procedural guarantees and rights set out in national and international law, and is based on compliance with and total application of the provisions of national legislation. Lastly, it should be noted that Mr Gómez Sigala is at liberty during the proceedings and all his constitutional rights and guarantees have been respected.

- 1236.** As regards the allegations relating to labour solvency, the Government states that during the coup d'état, the employers' strike with mass closures of companies and sabotage of oil production in 2002 in the Bolivarian Republic of Venezuela, many private sector entrepreneurs belonging to FEDECAMARAS were responsible for the economic losses and involved in attacks on democracy, using dismissals and violation of rights to punish the working class. That is why, at the beginning of 2004, the workers' side, organized in the National Workers' Union in order to seek tools to guarantee their rights, presented the draft decree on labour solvency to the national Government. This initiative by the workers was widely discussed, and the decree was approved by the national Government to safeguard the social and labour rights of the country's workers and their families.
- 1237.** The labour solvency certificate is an administrative document issued by the Ministry of Popular Power for Labour and Social Security, which certifies that the employer effectively complies with the human, labour and social rights of its workers. It is an essential requirement for employers which wish to conclude contracts and agreements with the State in the financial, economic, technological, international trade and foreign exchange areas.
- 1238.** The labour solvency scheme has broad and sufficient guarantees of legality and impartiality for all those who apply for it. It also has simple, fast procedures. It is thus very far from restricting or threatening the free operation and development of companies and commercial activity in the country, or limiting the production and marketing of goods and services. Much less is it a mechanism of discrimination against employers. On the contrary, it is an effective means of guaranteeing and protecting the human, social and labour rights of workers which, for a long time, were at risk. The procedure is also subject to transparent mechanisms of social supervision.
- 1239.** Employers which comply with the law, contracts of employment, respect the workers and maintain satisfactory conditions of safety and health in the workplace have no reason to be concerned that they will not duly and efficiently obtain the labour solvency certificate.
- 1240.** With respect to the incidents which occurred in February 2008 at FEDECAMARAS headquarters, the Government states that it informed the Committee that, according to the information provided by the Public Prosecutor's Office, the police investigation related to the detonation of the explosive device at FEDECAMARAS headquarters and the case against Mr Juan Crisóstomo Montoya González and Ms Ivonne Gioconda Márquez Burgos, who were suspected of committing the offences, was conducted in May 2008. Their arrest was also ordered in 2008, and they thus became fugitives from justice.
- 1241.** The Prosecutor's Office also reports that, on 6 and 10 May 2010, law enforcement officers arrested the accused, Mr Juan Crisóstomo Montoya González and Ms Ivonne Gioconda Márquez Burgos, respectively, on suspicion of committing the acts which occurred at FEDECAMARAS headquarters. The Public Prosecutor's Office requested the application

of the ordinary procedure and remand in custody, which was granted by the court, and the said citizens were held in a remand centre in the metropolitan area of Caracas. The current stage in the proceedings is that submission of the final report is pending, according to official information provided by the Prosecutor's Office.

- 1242.** Notwithstanding the foregoing, the Government categorically rejects the Committee's suggestions that the fact that until a few days ago the accused citizens were fugitives from Venezuelan justice constituted a situation of impunity, as that would be a denial of justice and a lack of will to punish offences. The Venezuelan State, through its competent authorities, carried out all relevant investigations and made every effort to find the accused as quickly as possible, to ensure the fulfilment of the provisions of the law and the application of the principles and values of the rule of law and justice. Thus, even though those citizens could not be arrested, the Committee is not entitled at this stage to find that the Bolivarian Republic of Venezuela is a State of impunity.
- 1243.** As regards the alleged events in May and November 2007 at FEDECAMARAS headquarters, the Government states that the competent authority, in this case the Public Prosecutor's Office, informed the Department of Labour and Social Security, that no complaint or information had been received which would give rise to investigation into any incident at the headquarters of that employers' organization during 2007.
- 1244.** As regards the request to quash the order for the arrest of Mr Carlos Fernández, the Government reiterates what it said on other occasions to the Committee concerning the constitutional principle of the separation of powers in the Venezuelan State. This separation of powers seeks to distribute and organize the functions of the State in which the powers of each are granted to a separate public body or organization. This, together with the fundamental rights enshrined in the Constitution, is one of the principles that characterize the rule of law and justice in the Bolivarian Republic of Venezuela.
- 1245.** The Venezuelan Constitution of 1999 establishes rules of institutional control and balance, by setting limits on the exercise of power and the guarantee that the bodies which hold those powers keep within their legal framework. Thus, public bodies are constrained to carry out only those activities which are assigned to them by legislation. This is where the principle of separation of powers is considered essential to ensure and safeguard the freedom of citizens, and by attributing the exercise of those powers to separate bodies, the power in the hands of each is limited.
- 1246.** In the same vein, given that this principle applies in the Venezuelan State, it is the Public Prosecutor's Office which is responsible for investigating and examining the evidence in these cases, as well as all the related trial proceedings.
- 1247.** The Government states that it is paradoxical that the Committee should request it to take steps to investigate and apprehend those suspected of the incidents which occurred at FEDECAMARAS headquarters, as requested in the last recommendations in the Committee's reports, and at the same time request it in this case to quash an arrest warrant issued by the Public Prosecutor's Office for the arrest of Mr Carlos Fernández, who is accused of committing the particularly serious offences of civil rebellion and incitement to crime, established in the Venezuelan Criminal Code in articles 144, 284, 285 and 286. These are offences with which he was charged on the basis of evidence that he committed those offences during the employers' strike and oil stoppage during 2002 and 2003 which were an assault on the rule of law and caused serious social harm and significant economic losses in the country.
- 1248.** We cannot understand how the Committee on Freedom of Association can request punishment for some and absolution for others, when in both cases offences were

committed which are specified and punishable under Venezuelan law and because they are punishable offences, warrant investigation to secure conviction in the case of guilt or acquittal if found innocent.

- 1249.** The fact is that, in both cases, the suspects were identified and charged and the legal process was paralysed due to the obstruction of justice by the flight or absence of the accused, a situation which persists in the case of Mr Carlos Fernández, who continues to be a fugitive from justice.
- 1250.** We request and urge the Committee to show respect, impartiality and fairness in its observations and statements about our country, since persons suspected of committing an offence, whoever they may be, must be tried and punished if appropriate. The mere fact that he is a member of an employers' organization does not, in the Bolivarian Republic of Venezuela, give Mr Carlos Fernández any form of immunity in the case of the commission of criminal acts which, in this case, were public and notorious, as well as being particularly grave.
- 1251.** The Committee should be reminded, when it requests the order for the arrest of Mr Carlos Fernández to be quashed, that his participation not only in the incidents on the occasion of the employers' strike and oil stoppage but also in relation to the breakdown of the constitutional order by a coup d'état in April 2002, is public and notorious, which is why we wish to make some observations in this regard. Mr Carlos Fernández was the Vice-President of FEDECAMARAS in 2002 and was one of the participants in the coup d'état suffered by the Bolivarian Republic of Venezuela against the Government of President Hugo Chávez on 11 April of that year.
- 1252.** In December 2002 and January–February 2003, Mr Carlos Fernández, now President of FEDECAMARAS, was one of the promoters of the illegal employers' strike and oil sabotage, which had serious economic and social consequences for the country and its people, acts which led to his being charged by the Public Prosecutor's Office with the abovementioned offences.
- 1253.** The illegal employers' strike and oil sabotage left the population without access to basic services and staple foods, a public industry with losses of over \$12 million, and forced hundreds of small and medium-sized enterprise in economic difficulty to close down permanently, leaving thousands of workers jobless, such that unemployment rose from 11 per cent in 2002 to 20 per cent in June 2003.
- 1254.** Despite the investigations and proceedings opened by the Public Prosecutor's Office against the suspected participants in the incidents that occurred during the coup d'état and the oil stoppage in December 2002 and January–February 2003, on 31 December 2007, the President of the Republic, in a magnanimous gesture, granted a presidential pardon to all those persons who, at that time, were within the law, had surrendered to the relevant criminal proceedings, and had been tried or convicted for offences during the coup d'état, illegal employers' strike and oil sabotage, extinguishing in full all criminal, judicial, military and police proceedings initiated by the organs of State. This law and the pardon in question do not apply to the perpetrators of offences considered as in crimes against humanity.
- 1255.** Mr Carlos Fernández could have benefited from this pardon and amnesty. However, he was and still is a fugitive from Venezuelan justice. Consequently, because he did not surrender to the competent authorities with respect to the commission of the offences with which he was charged, he was not covered by the presidential pardon or Amnesty Act.

- 1256.** Eight years have passed since 11 April 2002, when the coup d'état took place, and eight years have also passed since the illegal employers' strikes and oil sabotage. It is incredible, unfair and deplorable that international bodies, such as some of the ILO supervisory bodies, do not recognize these facts and repeatedly insist that they should fall under a cloak of impunity. The Government demands due respect and due impartial from the officials of the ILO supervisory bodies.
- 1257.** In its communication of 9 November 2010, the Government condemns and investigates any act of violence against persons living in the country. It therefore deploras and condemns what happened on 27 October 2010 to Ms Albis Muñoz and the FEDECAMARAS, leaders, Messrs Noel Álvarez, Luis Villegas and Ernesto Villamil, as was stated publicly at the time by the Minister of Popular Power for Internal Relations and Justice, Mr Tarek El Aisami.
- 1258.** The Government states that, as soon as the facts were known, the competent authorities of the Venezuelan State immediately launched an investigation in order to clarify what had happened, identify those responsible and bring them to trial, in accordance with national legislation. Once the results of this investigation are complete, they will be made public and the information will be duly published. Thus the "request for investigation" made by the Secretary-General of the IOE in the complaint of 3 November 2010 is both tardy and superfluous, as the competent national authorities acted immediately as is right and proper.
- 1259.** Given that the investigation into the incident is in progress, until the results are known, any speculative suggestion such as that expressed by the Secretary-General of the IOE is unjustified and not serious, when he indicates that "... purpose [of the attack] was to decapitate Venezuela's business leadership, although it was afterwards disguised as an abduction". In this regard, the prejudiced and reckless speculations should at least not claim to be the real explanation of the facts, but deliberate and opportunist manipulation of an act of violence which we all deplored and condemned. It should be noted that the victims of this act of violence, all of them representatives of FEDECAMARAS, did not make an official complaint in the Bolivarian Republic of Venezuela like the one filed by the official representing the IOE.
- 1260.** Furthermore, due to the fact that the Secretary-General of the IOE states that "... none of the attacks on FEDECAMARAS have led to the arrest and punishment of those responsible, despite the fact that the names of the persons and institutions behind them are known", we feel obliged to remind the Secretary-General of the IOE that the Committee on Freedom of Association was duly informed of the detonation in 2008 of an explosive device at the Federation's headquarters, the investigation of which resulted in the arrest and trial of Mr Juan Crisóstomo Montoya and Ms Ivonne Gioconda Márquez Burgos, who were suspected of the attack. With regard to other attacks against FEDECAMARAS headquarters in 2007 (not specified in the complaint in question), the Committee on Freedom of Association was also informed that, according to the Public Prosecutor's Office, there were no other current proceedings concerning an alleged attack or attacks on the headquarters of the said Federation. Thus, apart from the deplorable act of violence which occurred on 27 October 2010, which is still under investigation, there are no complaints filed by representatives of FEDECAMARAS which are not being dealt with by the competent national authorities.
- 1261.** Lastly, the Government categorically rejects the irresponsible, unfounded and false allegations with which, with impunity, they seek to link public institutions, even up to the highest representatives of the State, with acts of "... violence against Venezuelan business leaders", as expressed by the Secretary-General of the IOE in his complaint. The Bolivarian Republic of Venezuela is a deeply democratic state, based on the sovereignty of the people and a social state, governed by the rule of law and justice which was interrupted

only during the coup d'état which took place on 11 April 2002 against the constitutional President, Hugo Chávez, when the then president of the leading business organization, FEDECAMARAS, took the Government Palace by assault and dissolved by decree all the public powers.

- 1262.** The Government, once again, deplores the attempt to abuse the complaint mechanism, using it as a political stratagem to undermine the institutions of the Bolivarian Republic of Venezuela, generate a web of adverse opinion and to manipulate the ILO's supervisory bodies.
- 1263.** In its communication of 12 November 2010, the Government states that, on 10 November 2010, as a result of the investigations carried out by the competent authorities, two people, Mr Antonio José Silva Moyega and Mr Jaron Manjares, were arrested for their direct participation in the incident which occurred on 27 October (allegations of abduction and attacks on four FEDECAMARAS leaders). In addition a warrant was issued for the arrest of Mr Cristian Leonardo Castro Rojas, who is currently a fugitive from justice. The Minister of Popular Power for Internal Relations and Justice also reported that a further two persons are suspected of being involved, but they have not yet been identified with certainty and all of these people are members of a criminal gang engaged in robbery and abduction. The arrested persons are being tried in Caracas Metropolitan District Court 35. Finally, the Government provided additional observations in a communication dated 25 February 2011, in response to the communication sent by the IOE on 10 February 2011.

D. The Committee's conclusions

Allegations concerning acts of violence against employers' leaders and members of FEDECAMARAS or its headquarters

- 1264.** *The Committee notes with deep concern the allegations of the IOE according to which: (1) on the night of 27 October 2010, in Caracas, a group of five armed and hooded men machine-gunned, kidnapped and maltreated the President of FEDECAMARAS, Mr Noel Alvarez, its former President, Ms Albis Muñoz, the executive director, Mr Luis Villegas and its treasurer, Mr Ernesto Villamil. The kidnappers fired three shots into the body of Ms Albis Muñoz, employer member of the ILO Governing Body. After she had lost a lot of blood, the attackers dragged her from the vehicle in which she was travelling and dumped her near the Pérez Carreño Hospital, where she was taken some time later by a passing police patrol. The other three abducted persons were released two hours later, after the abductors had faked an abduction, expressed their intention to demand a ransom of 300 million bolivars, and stolen their belongings. According to the IOE, the manner of the attack suggests that its purpose was to decapitate the business leadership of the Bolivarian Republic of Venezuela, although it was afterwards disguised as an abduction.*
- 1265.** *The Committee notes the statements according to which: (1) the Government condemns and investigates any act of violence against persons living in the country. It therefore deplores and condemns what happened on 27 October 2010 to Ms Albis Muñoz and the FEDECAMARAS, leaders, Messrs Noel Álvarez, Luis Villegas and Ernesto Villamil; (2) as soon as the facts were known, the competent authorities of the Venezuelan State immediately launched an investigation in order to clarify what had happened, identify those responsible and bring them to trial, in accordance with national legislation; (3) given that the investigation into the incident is in progress, until the results are known, any speculative suggestion such as that expressed by the Secretary-General of the IOE, is unjustified and not serious, when he indicates that "... purpose of the attack was to decapitate Venezuela's business leadership, although it was afterwards disguised as an*

abduction.” In this regard, no representative of FEDECAMARAS made a similar official complaint in the Bolivarian Republic of Venezuela; the Government categorically rejects the irresponsible, unfounded and false allegations with which, with impunity, they seek to link public institutions, even up to the highest representatives of the State, with acts of violence against Venezuelan business leaders; (4) on 10 November 2010, as a result of the investigations carried out by the competent authorities, two people, Mr Antonio José Silva Moyega and Mr Jaron Manjares, were arrested for their direct participation in the incident which occurred on 27 October. In addition a warrant was issued for the arrest of Mr Cristian Leonardo Castro Rojas, who is currently a fugitive from justice; and (5) a further two persons are suspected of being involved, but they have not yet been identified with certainty and all of these people are members of a criminal gang engaged in robbery and abduction. The arrested persons are being tried in Caracas Metropolitan District Court 35.

- 1266.** *The Committee 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 expresses the hope that the persons guilty of these crimes will soon be convicted and sentenced in proportion to the seriousness of the offences in order that such incidents will not be repeated and requests the Government to keep it informed in this respect.*
- 1267.** *As regards the allegation relating to the attacks on FEDECAMARAS headquarters in 2007, the Committee notes that, according to the IOE, the attacks consisted of acts of violence against the institution, FEDECAMARAS, and its premises and were carried out by representatives of the Ezequiel Zamora National Campesino Front, the Simón Bolívar National Communal Front, the Alexis Vive Collective and the Simón Bolívar Coordinator. Those leaders were interviewed in the media where they identified themselves, but they have not been punished. The Committee deplores that the Government has ignored its recommendation to step up the investigations into these attacks on FEDECAMARAS headquarters in May and November 2007, whether or not there had been a complaint by representatives of FEDECAMARAS within the country. The Committee requests FEDECAMARAS to file an official complaint concerning the alleged facts of the attacks on its headquarters in 2007 with the Public Prosecutor’s Office and hopes that the authorities will collaborate with the organization’s representatives to clarify the facts, identify and convict the guilty persons.*
- 1268.** *As regards the allegation concerning the bomb attack on FEDECAMARAS headquarters on 24 February 2008, the Committee notes that the IOE recalls that in that attack, metropolitan police inspector Mr Héctor Amado Serrano Abreu was killed by an explosive device when he was placing it against the front of the FEDECAMARAS headquarters building. On 26 February 2008, the complaint concerning this incident was lodged with the Public Prosecutor’s Office, requesting a thorough and exhaustive investigation of the facts and identification of those responsible and, so far, there has been no visible result. The Committee notes, however, that the Government states that the investigation into the case of the detonation in 2008 of an explosive device at the FEDECAMARAS headquarters resulted in the arrest and trial of Mr Juan Crisóstomo Montoya and Ms Ivonne Gioconda Márquez Burgos, who were suspected of the attack. The Committee firmly hopes that the authors of the bomb attack at FEDECAMARAS headquarters will soon be convicted and sentenced in proportion to the seriousness of the offences. The Committee requests the Government to keep it informed of developments.*
- 1269.** *The Committee notes that, according to the IOE, as a result of the constant confiscations of companies and properties, there have been many acts of violence and abductions in the agricultural and livestock sector. A special case is that of the agricultural and livestock*

farmer, Mr Franklin Brito, who died aged 49 years on 30 August 2010, as a result of going on a succession of hunger strikes since 2 July 2009 in protest against the Government for the invasion and expropriation of his land and despite having produced to the Government the maps and documents proving his ownership of the property situated in Bolívar State. The farmer was demanding the return of his land and payment of compensation for damages. The IOE highlights that the policy of harassment of the private sector has now resulted in 25 agricultural and livestock farmers being abducted without the Government being concerned to bring about their release. Since 1999, the State has occupied 3 million hectares of land, rejecting titles of ownership.

- 1270.** *Deploing the lack of observations by the Government concerning these allegations, the Committee emphasizes their seriousness, requests the Government to reply without delay to these allegations, and that it should make every effort to secure the release of the 25 abducted agricultural and livestock farmers and should order investigations to be carried out to punish the guilty persons. The Committee requests the Government to keep it informed of developments.*
- 1271.** *In general, taking into account the series of allegations examined in this section, the Committee draws the attention of the Government to the principle that the rights of workers' and employers' organizations can only be exercised in a climate free from violence. The Committee expresses its deep concern at this series of attacks and observes that they have effectively resulted in a situation of impunity that is incompatible with the provisions of Convention No. 87.*

Allegations of harassment and intimidation of employers' leaders

- 1272.** *The Committee notes that, according to the IOE, as a consequence of their work to defend their members, representatives of employers' organizations, and the private sector in general, are constantly harassed and threatened. The IOE complains of attacks against the property of the former Presidents of FEDECAMARAS, Messrs Vicente Brito, Rafael Marcial Garmendia and Carlos Sequera Yépez, as well as against Mr Manuel Cipriano Heredia, the current President of FEDENAGA (the leading agricultural sector body affiliated to FEDECAMARAS) and its former President, Mr Genaro Méndez, and also Mr Eduardo Gómez Sigala, former President of CONINDUSTRIA (the leading industrial sector body affiliated to FEDECAMARAS). Also, according to the IOE, the National Land Institute (INTI) together with the National Guard constantly invade productive farms under the so-called "Land Recovery Plan". The INTI could only "recover" those lands which it owned, and that is not the case of the properties of the expropriated business leaders. The Committee also notes that the IOE emphasizes that Mr Noel Álvarez, the current President of FEDECAMARAS, after being interviewed by RCTV International, was the subject of an investigation by Public Prosecutor's Office 10 in the Caracas Metropolitan Area, and charges were brought against him for alleged offences against national security, rebellion, incitement to insurrection and incitement to commit criminal offences. As of today, Mr Noel Álvarez has been denied the right to appoint his defence lawyers.*
- 1273.** *The Committee further notes that, according to the IOE, there have been numerous threats and verbal attacks against the private sector representative organization, FEDECAMARAS, by the President of the Republic. Recently, on 3 June, at the time of the International Labour Conference 2010, the President of the Republic stated in Venezuela that "FEDECAMARAS is an enemy of this people and we do not need it. More than that, let me make it crystal clear, I think this country can do without it". Also, on 15 June 2010, he said that FEDECAMARAS "is a great obstacle to the country's development", and, therefore, he declared, its members were "enemies of the State". On 13 October 2010, as*

the annual assembly of FEDECAMARAS was ending, the President of the Venezuelan Republic stated that “FEDECAMARAS” does not exist” and declared in that regard “Do these people still exist? I do not recognize them, I don’t know who they are”.

- 1274.** *The Committee observes that the IOE concludes that the foregoing shows a clear and constant will by the Government of the Bolivarian Republic of Venezuela to attack and destroy FEDECAMARAS, even though it is the national representative organization of the employers’ side; the increasing frequency and content of the verbal attacks by the Government of the Bolivarian Republic of Venezuela against FEDECAMARAS is cause for much concern.*
- 1275.** *Finally, the Committee notes that, according to the IOE, as part of the harassment of the private sector, the President of the Republic declared “economic war” on the business sector and its representatives, and, in the last three years, the Government had nationalized and expropriated 371 companies in strategic sectors and had paid only one third of the compensation.*
- 1276.** *The Committee expresses is concern with respect to these allegations of intimidation and harassment of FEDECAMARAS and its leaders, including the invasion and expropriation of farms or companies (in many cases without payment of due compensation) to the detriment of leaders or members of FEDECAMARAS, criminal prosecutions of employers’ leaders and verbal attacks by the authorities against FEDERCAMARAS and its leaders. The Committee deplors that the Government has not replied to these allegations and requests it to send detailed observations without delay. The Committee reiterates the principle expressed previously on the exercise of the rights of organizations in a climate free of violence and intimidation and expresses the firm hope that in the future the authorities will refrain from adopting such an aggressive tone in their statements concerning FEDECAMARAS and its leaders and members, and that these allegations of unjust invasions and expropriations, prosecutions (see following paragraph) and measures involving periodic reporting to the judicial authority should be investigated.*
- 1277.** *As regards the allegations concerning the employers’ leader, Mr Eduardo Gómez Sigala (seizure of his lands by military personnel in the framework of recovery of lands falsely considered as unproductive or idle, detention and prosecution for “resisting authority and minor personal injury” because he had torn a sergeant’s shirt in the struggle when he was forced to leave the farm and the order for his release on conditional bail with the obligation to appear before the court whenever required) the Committee notes the Government’s statements, according to which: (1) the National Land Institute, an agency of the Ministry of Popular Power for Agriculture and Land, duly authorized in accordance with the law, initiated the procedure for recovery of the plot of land known as the La Bureche estate, in the parish of Cabudare, municipality of Palavecino, Lara State, with the basic objective of promoting the agricultural use of the Río Turbio valley by immediately working the said land because it was lying idle; (2) inspection of this estate showed that the farm was underutilized, since it grew crops that were not suitable for the type of soil, thus causing a process of degeneration, and there was also inadequate management which had an adverse environmental impact and 83 hectares out of the farm’s total area of 97 hectares (6,260 m²) were left idle; (3) the Public Prosecutor’s Office charged Mr Ángel Eduardo Gómez Sigala, having apprehended him in the act, with the offences of resisting authority and minor personal injury, as laid down in articles 216 and 418, respectively, of the Venezuelan Criminal Code; (4) On 26 September 2009, the Eighth Lara State District Court, on the application of the Public Prosecutor’s Office, ordered the application of the ordinary proceedings and release on conditional bail, as laid down in article 256, section 9, of the Criminal Procedures Code. The Public Prosecutor’s Office requested the San Juan and Barquisimeto branches of the Scientific, Penal and Criminal Investigation Service to carry out physical tests on a sample of clothing, verification of three compact*

discs provided for the defence of the accused, photographic records, technical inspection and interviews of witnesses in person, in order to prepare a report of its conclusions; and (5) all his legal procedural and constitutional guarantees have been respected.

- 1278.** *The Committee deplores that the Government has not explained in detail the circumstances of the specific facts which resulted in the criminal charge and trial of this employers' leader (in its previous examination of the case, the Committee requested a detailed account of the events, since the Government had stated that Mr Gómez Sigala had been arrested for assaulting a military officer who had suffered a dislocated arm) and requests it to do so since the IOE states that this leader had torn a sergeant's shirt in a struggle.*
- 1279.** *The Committee reiterates its previous conclusion and recommendation concerning the illegal and unlawful nature of the confiscation of this leader's property. The Committee requests the Government to keep it informed of developments in the proceeding and wishes to refer it to its conclusions in the last examination of the case on the alleged illegality of the confiscation (according to the Government, it was not about 25 hectares but 83):*

The Committee observes that while the law does provide for the recovery of land or property on the basis that it is idle, non-productive or in illegal use, and that the Land Act provides for the elimination of large land estates (associated in the legislation to an "appropriate" yield of less than 80 per cent), the Government has failed to make any reference to the statement by the IOE concerning the size of the farm owned by employers' leader Mr Eduardo Gómez Sigala (25 hectares, which can hardly be considered a "large estate" in a country the size of the Bolivarian Republic of Venezuela), or to the fact that far from being non-productive or idle, the farm in question had 18 hectares of sugar cane about to be harvested, six hectares of pasture and space for family and employee dwellings. Nor has the Government replied to the allegation that these 18 hectares of land were destroyed by the authorities. In these circumstances, and given that an important employers' leader within the country was concerned, the Committee cannot discount the possibility that the so-called "land recovery measures" to which he was subjected may have been motivated by his status as an employers' leader. The Committee underlines that such measures can have an intimidating effect on employers' leaders and their organizations and limit the free exercise of their activities, in violation of Article 3 of Convention No. 87. The Committee considers in any event that this land recovery has not been proven to be in line with the substance of the legislation and requests the Government to return the "La Bureche" farm property to the employers' leader Mr Eduardo Gómez Sigala without delay and to compensate him fully for all losses sustained as a result of the intervention by the authorities [see 356th Report, para. 1542].

- 1280.** *As it did in its recommendation in its last examination of the case, the Committee once again requests the Government to return the "La Bureche" farm to the employers' leader, Mr Eduardo Gómez Sigala and to compensate him fully for all the damages caused by the intervention of the authorities in the seizure of his farm.*
- 1281.** *The Committee notes that the IOE reiterates that the authorities have still failed to quash the order for the arrest of the former President of FEDECAMARAS, Mr Carlos Fernández, so that he may return to the country without fear of reprisals. The Committee notes the Government's observations in this respect. The Committee emphasizes that it had examined the Government's position on Mr Carlos Fernández on several occasions, and the Government's latest observations do not add anything new which might lead it to modify its previous recommendation. Consequently, the Committee once again requests the Government to quash the order for the arrest of the former President of FEDECAMARAS, Mr Carlos Fernández, so that he may return to the country without fear of reprisals.*

Allegations concerning deficiencies in social dialogue

1282. *The Committee notes that the IOE and FEDECAMARAS once again deplore the lack of social dialogue and bipartite and tripartite consultations, although the Committee has incessantly emphasized “the importance that should be attached to full and frank consultation taking place on any questions or proposed legislation”. Despite the Committee’s recommendation that “requests the Government to ensure that any legislation concerning labour, social and economic issues adopted in the context of the Enabling Act be first subject to genuine, in-depth consultations with the most representative independent employers’ and workers’ organizations”, it should be noted that the Government’s attitude has not changed and that it is adopting reforms and laws which affect the private sector without prior consultation or social dialogue with the social partners. The Committee notes that the IOE and FEDECAMARAS emphasize the Government’s rejection of the Committee’s recommendations on the matter and the absence of any “social dialogue with FEDECAMARAS and its regional structures in connection with the various sectors of activity, the formulation of economic and social policy and the drafting of laws which affect the interests of the employers and their organizations”. On the contrary, according to the complainants, the Government is now using the procedure of decrees with the force of law, which do not have a time limit, to legislate without dialogue or consultation, since with the new “Enabling Act” it is not necessary to discuss draft legislation in the National Assembly. The Committee notes that the IOE mentions four important laws on which there was no consultation, which nevertheless clearly affect employers’ interests, as well as three bills which were also not a subject of consultations, and also unilateral decisions on fixing the minimum wage.*

1283. *The Committee notes that the Government states that, in January 2010, the Ministry of Popular Power for Labour and Social Security sent communications to the employers’ organizations, including FEDECAMARAS, inviting their opinion on the fixing of the national minimum wage for 2010. The majority of those organizations replied, sending their observations on the national minimum wage to the Department of Labour and Social Security. The National Executive, having heard the views of the employers’ and workers’ organizations and the relevant bodies, ordered the national minimum wage to be increased by 25 per cent in 2010. The Committee notes that the Government reiterates that meetings, consultations and discussions were also held with employers’ and workers’ organizations, including FEDECAMARAS, concerning the Food Act and its regulations, the regulations pursuant to the Organic Act on Occupational Safety and Health and the Workplace Environment, the new Organic Labour Act, measures on labour immobility and principles of the representativeness of the country’s employers’ and workers’ organizations in 2003, 2004, 2006, 2008, 2009 and 2010. In addition, the Government indicates that consultations were also held on many other laws not related to social and labour matters. Large, medium-sized and small enterprises, the urban and rural sector, workers’ representatives, communities, etc., including representatives of FEDECAMARAS, took part in all of these. The Committee also notes that meetings were also held for the appointment of the tripartite delegation to attend the 99th International Labour Conference in which several employers’ organizations, including FEDECAMARAS, took part; at these meetings, the representatives of these organizations also discussed subjects of economic, political and social interest in the country. On a separate matter, by Presidential Decree No. 7173 of 12 January 2010, published in the Official Gazette No. 39349 on 19 January 2010, the Constitutional President of the Bolivarian Republic of Venezuela created the Bicentenary Fund, through which the national Government is promoting strategies to stimulate selective import substitution and the country’s export sector, through collaboration between workers and entrepreneurs in the productive sector of the economy, both under private and public ownership, in close coordination with governments, municipal and local authorities, with the firm commitment to satisfy the*

basic needs of the people by developing the national productive system. The Government adds that at national level, representatives of various productive areas in the private sector participated in the socialist productive forums initiated by the national Government on 28 January 2010, many of them related to FEDECAMARAS, which confirms the participation of the latter and other employers' organizations in the inclusive, constructive and productive social dialogue promoted by the Government. An initial review of the results, in January 2010, showed 3,356 import substitution business projects and 589 export business projects.

1284. *The Committee wishes to emphasize that the Government referred to consultations with FEDECAMARAS were also held on various laws and certain questions and many laws not related to social and labour matters, as well as consultations on the minimum wage and the composition of the tripartite delegation to the last International Labour Conference. The Committee emphasizes, however, that some of these measures refer to the period 2003–10 and in other cases the Government refers to consultations or activities with private sector representatives “related” to FEDECAMARAS, for example in relation to tripartite activities in the framework of the Bicentenary Fund and/or “socialist productive forums”.*

1285. *The Committee observes that the Government does not provide much detail about these consultations which, as indicated above, sometimes refer to previous years, not does it indicate with respect to these activities or consultations which it mentions how it took into account the views of the employers' confederation, FEDECAMARAS or whether there were agreements. The Committee also observes that the Government did not deny the alleged lack of consultations with it on various laws or bills on matters affecting them. The Committee further observes that the Government continues not to convene the national tripartite commission on the minimum wage provided in the legislation and that it has not implemented its recommendations. In particular, it has not established a high level joint commission assisted by the ILO to resolve problems pending before the Committee through direct dialogue, nor has it created a tripartite forum for social dialogue based on the representativeness of workers' and employers' organizations. In these circumstances, the Committee must deplore once again that the Government has ignored its previous recommendations, for which reason it reiterates them and reproduces them below:*

- *deeply deploring that the Government has ignored its recommendations, the Committee urges the Government to establish a high-level joint national committee in the country with the assistance of the ILO, to examine each and 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 the Government to keep it informed in this regard;*
- *the Committee expects that a forum for social dialogue will be established in accordance with the principles of the ILO, having a tripartite composition which 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 should 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 subject 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 sectors of activity, the formulation of economic and social policy and the drafting of laws which 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 employer interests, in a manner commensurate with its level of representativeness.*

Allegations relating to acts of favouritism or discrimination

- 1286.** *As regards the Committee's recommendation in its previous examination of the case in which it requested the Government to discuss with FEDECAMARAS issues relating to the application of legislation on "labour solvency" and the acquisition of foreign currency, with a view to allaying any concerns and guaranteeing that legislation is not applied on a discriminatory basis, the Committee notes the Government's statements according to which: (1) the labour solvency certificate is an administrative document issued by the Ministry of Popular Power for Labour and Social Security, which certifies that the employer effectively complies with the human, labour and social rights of its workers. It is an essential requirement for employers which wish to conclude contracts and agreements with the State in the financial, economic, technological, international trade and foreign exchange areas; (2) the labour solvency scheme has broad and sufficient guarantees of legality and impartiality for all those who apply for it. It also has simple, fast procedures. It is thus very far from restricting or threatening the free operation and development of companies and commercial activity in the country, or limiting the production and marketing of goods and services. Much less is it a mechanism of discrimination against employers. On the contrary, it is an effective means of guaranteeing and protecting the human, social and labour rights of workers which, for a long time, were at risk. The procedure is also subject to transparent mechanisms of social supervision, and (3) employers which comply with the law, contracts of employment, respect the workers and maintain satisfactory conditions of safety and health in the workplace have no reason to be concerned that they will not duly and efficiently obtain the labour solvency certificate.*
- 1287.** *The Committee requests the Government to indicate the means of recourse available to employers who feel that they are victims of discrimination involving refusal to issue a labour solvency certificate or official foreign exchange authorizations, to initiate a dialogue with FEDECAMARAS on these questions and to inform the Committee of developments.*
- 1288.** *The Committee notes that the IOE alleges that the finances parallel organizations to FEDECAMARAS with official subsidies. It attaches, in this regard, an extract from the financial report of the Economic and Social Development Bank (BANDES) of 30 June 2007. This report indicates that Entrepreneurs for Venezuela (EMPREVEN) was granted an allocation of 2,267,846 bolivars and a further allocation of 438,378 bolivars. Furthermore, national financial institutions give priority to cases processed by EMPREVEN (the organization backed by President Chávez) to the detriment of those which are not affiliated to it. The Foreign Exchange Commission (CADIVI) allocated dollars for imports in 91 per cent of the cases processed by EMPREVEN. The Government's support to official companies was also expressed by the investment of three billion bolivars in the Bicentenary Fund which finances "social production companies" which participate in export and import substitution plans, but not to private enterprises*

represented by FEDECAMARAS. According to the IOE, the intention to replace private companies, which are being strangled by legal constraints and requirements, with socialist enterprises which obtain preferential credits, is a fact. The consequence of this situation is that since the President of the Republic came to power, the number of companies in the country fell from 11,000 to 7,000.

- 1289.** *The Committee observes with regret that the Government has not replied to these allegations of discrimination against FEDECAMARAS and its members concerning parallel bodies and organizations close to the Government. The Committee requests the Government to send without delay its observations on these allegations and wishes to emphasize that by favouring or disadvantaging certain organizations compared with the rest, governments can influence the attitude of workers or employers when they choose which organization they wish to join, which is incompatible with the principle contained in Convention No. 87, whereby public authorities must refrain from any interference which would restrict the rights enshrined in the Convention.*
- 1290.** *With regard to the examination of the bill on international cooperation, the Committee hopes that it will provide for rapid recourse in the cases of discrimination and that it will avoid interference by the authorities in access to foreign funds by workers' and employers' organizations. Finally, the Committee notes the comments of the complainant organization concerning the Organic Act establishing the Central Planning Commission. In this respect, while the legislation establishes strong state intervention in the economy and national economic structure under the aegis of central planning in order to construct the Venezuelan socialist model, the Committee requests the complainant organizations to provide information as to the relationship between the allegations and the violation of Conventions Nos 87 and 98.*
- 1291.** *The Committee notes the additional information sent by the IOE on 10 February 2011 concerning the cases of confiscation of property of employers' leaders, the alleged physical attacks against employers' leaders, the lack of social dialogue, as well as other questions, and the Government's communication, dated 25 February 2011, received two days before the Committee's meeting. The Committee will review these communications when it will next examine this case.*

The Committee's recommendations

- 1292.** *In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) *With regard to the abduction and maltreatment of the FEDECAMARAS leaders, Messrs Noel Álvarez, Luis Villegas, Ernesto Villamil and Ms Albis Muñoz (Employer member of the Governing Body of the ILO), the latter being wounded by three bullets, the Committee deplors 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 expresses the hope that the persons guilty of these crimes will soon be convicted and sentenced in proportion to the seriousness of the offences in order that such incidents will not be repeated and requests the Government to keep it informed in this respect.*

- (b) *As regards the allegations concerning the attacks on FEDECAMARAS headquarters in 2007, the Committee notes that the Government states that there is no complaint pending with the Public Prosecutor's office and the representatives of FEDECAMARAS have not filed any complaint. The Committee deplores, whether or not there had been a complaint by representatives of FEDECAMARAS within the country, that the Government has ignored its recommendation to step up the investigations into these attacks on FEDECAMARAS headquarters in May and November 2007. The Committee requests FEDECAMARAS to file an official complaint concerning the alleged facts of the attacks on its headquarters in 2007 with the Public Prosecutor's Office and hopes that the authorities will collaborate with the organization's representatives to clarify the facts, identify and convict the guilty persons.*
- (c) *As regards the allegation concerning the bomb attack on FEDECAMARAS headquarters on 24 February 2008, the Committee firmly hopes that the authors of the bomb attack at FEDECAMARAS headquarters will soon be convicted and sentenced in proportion to the seriousness of the offences. The Committee requests the Government to keep it informed of developments.*
- (d) *The Committee deplores the lack of observations on the alleged abduction of 25 agricultural and livestock farmers and the death of one farmer (Mr Franklin Brito) as a result of going on a succession of hunger strikes in protest against the Government for the unjust invasion and expropriation of his land. The Committee emphasizes the seriousness of these allegations, requests the Government to reply to them without delay, and to make every effort to secure the release of the 25 abducted agricultural and livestock farmers and should order investigations to be carried out to punish the guilty persons. The Committee requests the Government to keep it informed of developments.*
- (e) *In general, taking into account the series of allegations examined in this section, the Committee draws the attention of the Government to the principle that the rights of workers' and employers' organizations can only be exercised in a climate free of violence, intimidation and fear, as such situations of insecurity are incompatible with the requirements of Convention No. 87.*
- (f) *With respect to the allegations of intimidation and harassment of FEDECAMARAS and its leaders, including the invasion and expropriation of farms or companies (in many cases without payment of due compensation) to the detriment of leaders or members of FEDECAMARAS, criminal prosecutions of employers' leaders and verbal attacks by the authorities against FEDECAMARAS and its leaders, the Committee deplores that the Government has not replied to these allegations and requests it to send detailed observations without delay. The Committee reiterates the principle expressed in the previous paragraph and expresses the firm hope that in the future the authorities will refrain from adopting such an aggressive tone in their statements concerning FEDECAMARAS*

and its leaders and members, and that these allegations of unjust invasions, expropriations and prosecutions should be investigated.

- (g) *The Committee deplores that the Government has not explained in detail the circumstances of the specific events which resulted in the criminal charge and trial of employers' leader, Mr Eduardo Gómez Sigala, and requests it to do so and to keep it informed of developments in the trial. The Committee once again requests the Government to return the "La Bureche" farm property to the employers' leader Mr Eduardo Gómez Sigala without delay and to compensate him fully for all losses sustained as a result of the intervention by the authorities in seizing his farm.*
- (h) *The Committee once again requests the Government to quash the order for the arrest of the former President of FEDECAMARAS, Mr Carlos Fernández, so that he may return to the country without fear of reprisals, given the lack of significant progress.*
- (i) *The Committee reiterates its previous recommendations concerning social dialogue:*
- *deeply deploring that the Government has ignored its recommendations, the Committee urges the Government to establish a high-level joint national committee in the country with the assistance of the ILO, to examine each and 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 the Government to keep it informed in this regard;*
 - *the Committee expects that a forum for social dialogue will be established in accordance with the principles of the ILO, having a tripartite composition which 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 should 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 subject 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 sectors of activity, the formulation of economic and social policy and the drafting of laws which 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 employer interests, in a manner commensurate with its level of representativeness.*

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- (j) *The Committee requests the Government to indicate the means of recourse available to employers who feel that they are victims of discrimination involving refusal to issue a labour solvency certificate or official foreign exchange authorizations, to initiate a dialogue with FEDECAMARAS on these questions and to inform the Committee of developments.*
- (k) *The Committee observes with regret that the Government has not replied to the allegations of discrimination against FEDECAMARAS and its members concerning parallel bodies and organizations close to the Government. The Committee requests the Government to send without delay its observations on these allegations and wishes to emphasize that by favouring or disadvantaging certain organizations compared with the rest, governments can influence the attitude of workers or employers when they choose which organization they wish to join, which is incompatible with the principle contained in Convention No. 87 whereby public authorities must refrain from any interference which would restrict the rights enshrined in the Convention. The Committee therefore requests the Government to ensure equal treatment for all employers' organizations in the matter of financing of activities and not to discriminate against members of FEDECAMARAS.*
- (l) *With regard to the examination of the international cooperation bill, the Committee hopes that it will provide for rapid recourse in the cases of discrimination and that it will avoid interference by the authorities in access to foreign funds by workers' and employers' organizations.*
- (m) *The Committee notes the comments of the complainant organization concerning the Organic Act establishing the Central Planning Commission. In this respect, while the legislation establishes strong state intervention in the economy and national economic structure under the aegis of central planning in order to construct the Venezuelan socialist model, the Committee requests the complainant organizations to provide information on the relationship between the allegations and the violation of Conventions Nos 87 and 98.*
- (n) *The Committee notes the additional information sent by the IOE on 10 February 2011 concerning the cases of confiscation of property of employers' leaders, the alleged physical attacks against employers' leaders, the lack of social dialogue, as well as other questions, and the Government's communication, dated 25 February 2011, received two days before the Committee's meeting. The Committee will review these communications when it will next examine this case.*
- (o) *The Committee draws the special attention of the Governing Body to this case because of the extreme seriousness and urgency of the matters dealt with therein.*