

Full Report: Rubén González¹

Union Leader Persecuted for Exercising His Right to Freedom of Association

January 21, 2011

A. Background

Rubén González has worked for CVG Ferrominera Orinoco C.A. (Ferrominera) for nearly 27 years. He is 51 years old. He is married to Yadid de González, the mother of his four children. They have five granddaughters.²

González is the secretary general of the Workers' Union of CVG Ferrominera Orinoco C.A. (Sintraferrominera)³. With more than 3,600 affiliated members, out of an estimated total of 6,400 workers, Sintraferrominera is the company's largest union. The union is chaired by the secretary general, who follows the guidelines of a 12 person executive committee. From August 12 to August 26, 2009, González led the workers of Ferrominera on a peaceful strike to protest the company's failure to comply with a collective bargaining agreement signed on January 5, 2009, and ratified on June 1 of that year.

As a result of his participation in the strike, González was charged and formally indicted for the crimes of unlawful assembly, public incitement to commit crimes, restriction of the freedom to work, and violation of a security zone. On September 24, 2009, González was detained in the city of Bolívar and placed under house arrest. On January 21, 2010, González was transferred to a prison where he has been held ever since. As of the date of this report, his criminal trial is still ongoing.

On January 22, 2010, the National Labor Union of Public Workers of the Venezuelan Corporation of Guyana (SUNEP – CVG) filed a formal complaint to the Committee on Freedom of Association of the International Labor Organization (ILO) regarding the case of González. On November 19, 2010, the committee requested that the Venezuelan government have González “released without delay pending judgment and appropriately compensated for his inappropriate detention.”⁴

¹ Prepared by the Legal Department of the Human Rights Foundation (HRF).

² See interview by Melvin Brito, Revolutionary Socialism Press, CIT Venezuela. Available in Spanish only at: <http://www.elpueblosoberano.net/2010/10/entrevista-al-dirigente-sindical-Rubén-gonzalez/>. HRF has confirmed this information through several telephone interviews with Rubén González.

³ See Venezuelan Corporation of Guyana's (CVG) website: <http://www.cvg.com/>. CVG Ferrominera Orinoco C.A. is a state-owned company that is part of the Venezuelan Corporation of Guyana (CVG). See CVG Ferrominera Orinoco's website: <http://www.ferrominera.com/>

⁴ See INTERNATIONAL LABOR ORGANIZATION (ILO), Report of the Committee on Freedom of Association, *Case num. 2763 (Bolivarian Republic of Venezuela) Provisional Report 309th meeting*, Geneva, November 2010, ¶ 1012 (Information provided by the Venezuelan government to ILO). Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_146695.pdf

B. Statement of facts

a. The state-owned company Ferrominera allegedly failed to comply with a collective bargaining agreement signed with labor union Sintraferrominera

In December 2008, after 15 months with no collective bargaining agreement, a new agreement was signed between the state-owned company Ferrominera and the labor union Sintraferrominera.⁵ The new agreement was registered at the labor inspectorate on January 5, 2009, and came into effect immediately, in accordance with Venezuelan law.⁶

In May 2009, President Chávez authorized the ratification of the collective bargaining agreement with the workers of Ferrominera. The ratification was made by the Minister of Popular Power for Planning and Development, Jorge Giordani, and took effect on June 1, 2009.⁷

On August 9, 2009, President Chávez visited Ferrominera to broadcast his Sunday program *Aló Presidente* and to announce measures to finance the mining industry, as well as the implementation of production controls by the workers.⁸

In a phone interview with HRF, González said that when President Chávez visited the company, the workers of Ferrominera were displeased that the government had not fulfilled its main obligations pursuant to the new collective agreement.⁹ González had planned to inform the president of the workers' dissatisfaction during *Aló Presidente*.

González told HRF that a small number of union leaders who wanted to please the president barred him from reaching the place where the program was being filmed in order to prevent any voices critical of the situation of Ferrominera's workers from being heard. González claims this was the third time in six months that he was not allowed to take part in a broadcast of *Aló Presidente*. The

⁵ See Art. 507 Labour Law (LOT). See also the interview by Damián Prat, *supra* note 6; and the news report from Correo del Caroní, May 9, 2009. *Reclaman homologación de convención colectiva de FMO*. Available in Spanish only at:

<http://www.correodelcaroni.com/archivo/archivo.php?id=127010>

⁶ See Art. 521 (LOT) ("The collective bargaining agreement ought to be registered at the local Labor Inspectorate for it to come into effect. Agreements carried out by a federation or confederation must be registered at the National Labor Inspectorate. Its coming into effect starts on the date and time it is registered.").

⁷ See news report from the National Bolivarian News Agency, published by YVKE Radio Mundial, May 21, 2009. *Authorization of the collective bargaining agreement with the workers of Ferrominera Orinoco*, Available in Spanish only at:

<http://www.radiomundial.com.ve/yvke/noticia.php?24946>

⁸ Among other things, President Chávez announced the creation of the Iron and Steel Corporation and the Aluminum Corporation. See news report from Venezolana de Television, August 8, 2009. *President Chávez announces financing strategies for mining sector*. Available in Spanish only at:

<http://www.vtv.gov.ve/noticias-econ%C3%B3micas/21980>

⁹ Rubén González claimed that the workers were demanding the fulfillment of the retroactive payment of salaries from January 5 to May 31, 2010, according to the conditions of the new collective agreement, and the payment of a "one-time bonus" to settle unpaid obligations pursuant to the 14-month period before the agreement was reached, among other obligations from the collective agreement.

first time, armed government agents purportedly prevented him from entering the area where the program was filmed.

González says that a year and a half ago, five of the 12 members of the executive committee of Sintraferrominera stopped representing the interests of the workers. According to González, these leaders “are submissive to the interests of the boss (the State), because, in order to please him, they keep quiet about the demands of the workers.”¹⁰

b. Rubén González leads a 15-day strike

On August 12, 2009, a strike began in the city of Piar, located in the Bolivarian municipality of Angostura in the state of Bolívar. The strikers announced that the protest was a response to the company’s failure to comply with the collective bargaining agreement, and to how the real situation of the workers was concealed from President Chávez during his recent visit to the company.¹¹

Through the 15 days of the strike, state-controlled media tried to minimize the conflict. According to the government’s news agency, the strike was carried out by a “minuscule group of workers,” “around 20 to 60,” who were trying to “violently bring the company’s daily operations to a halt.”¹²

¹⁰ Rubén González’s phone interview with HRF, November & December, 2010. According to Rubén González, he himself had been an active supporter of President Hugo Chávez. He had supported him in his election and reelection, and even worked in the campaign for the constitutional reform. González stated in an interview: “I put my effort into this project, so that it became a reality. The same process that I supported has now turned against me and is keeping me in jail. Why? Because I defended the workers and their rights. Well, I will continue to do so. Ideas cannot be imprisoned.” See interview by Damian Prat, from April 5, 2010. Available in Spanish only at:

http://www.damianprat.com/index.php?option=com_content&task=view&id=1214&Itemid=89.

In the municipal elections of 2005, Rubén González was elected town councilor for the municipality of Raul Leoni (now the Bolivarian Municipality of Angostura), with 52% of the vote. In the regional elections of 2008, Rubén González ran for mayor of the municipality of Raul Leoni for the Electoral Movement of the People’s Party. González came in second with 29.17% of the vote. See National Electoral Council, Publication of Regional Elections of 2008. Available in Spanish only at:

http://www.cne.gob.ve/divulgacion_regionales_2008/index.php?e=06&m=08&p=00&c=00&t=00&ca=03&v=02

¹¹ Rubén González reported: “Early in the morning, the employees decided to stop all activities in order to seek a satisfactory answer to the claims regarding the retroactive payments, the production bonus and the reduction of the working day which resulted in a salary cutback of 50%.” He also reported other irregularities, stating that “transportation is in bad conditions, there is no security equipment, no toilet paper in the bathrooms, no drinking water, and no oil to do maintenance on mining machinery. This is something terrible and the workers wish to be heard and that something is done about it.” See news report from Correo del Caroni, *FMO halts activities in Ciudad Piar*, August 12, 2009. Available in Spanish only at:

http://www.correodelcaroni.com/component/option.com_wrapper/Itemid,174/?id=133602; See also news report from El Universal, *Strike at Ferrominera due to salary issues*, August 13, 2009. Available in Spanish only at:

http://economia.eluniversal.com/2009/08/13/eco_art_paro-en-ferrominera_1519656.shtml

¹² See news report from Venezuelan News Agency, *Minuscule group of workers attempts to violently paralyze Ferrominera*, August 19, 2010. Available in Spanish only at:

On the other hand, independent media reported that the protest was, in fact, massive, and that the number of workers involved was between 1,800 and 2,100, out of a total workforce of approximately 6,400 workers.¹³

On August 26, 2009, the president of Ferrominera, Radwan Sabbagh, and González, as secretary general of Sintraferrominera, signed an agreement to end the strike in exchange for the company's commitment to fulfill the collective bargaining agreement.¹⁴ On that very same day, the strike ended.

c. Rubén González is imprisoned, and indicted for four crimes in relation to the strike

i. House arrest

On September 24, 2009, González was detained in the city of Bolívar and kept in the offices of the General Direction of Intelligence and Prevention Services (DISIP)¹⁵, after testifying as part of an investigation of a former mayor.¹⁶

He was apprehended by six members of the Scientific and Criminal Investigations Corps (CICPC)¹⁷, who arrived at the offices of the DISIP with an arrest warrant issued by Judge Beltran Lira of the Fourth District Court of Puerto Ordaz. González was then taken to the offices of CICPC in Puerto Ordaz.¹⁸

http://portal.gobiernoenlinea.ve/noticias-view/ver_detalle.pag?idNoticia=93641#

¹³ According to Venezuelan newspaper El Universal, about 2,100 workers took part in the strike, which represent one third of the company's workforce. See news report from El Universal, *Strike at Ferrominera comes to an end after an agreement between the union and the administration is reached*, August 26, 2009. Available in Spanish only at:

http://www.eluniversal.com/2009/08/26/eco_ava_finaliza-huelga-en-f_26A2664847.shtml

On the other hand, the Venezuelan newspaper El Correo de Caroni informed that 1,800 workers took part in the strike. See news report from Correo del Caroni, *Conflict at FMO Ciudad Piar escalates*, August 15, 2009. Available in Spanish only at:

http://www.correodelcaroni.com/component/option.com_wrapper/Itemid,174/?id=133861

¹⁴ See news report from El Universal, August 26, 2009. *Strike at Ferrominera comes to an end after an agreement between the union and the administration is reached*. Available in Spanish only at:

http://www.eluniversal.com/2009/08/26/eco_ava_finaliza-huelga-en-f_26A2664847.shtml

¹⁵ In Spanish, Dirección General de los Servicios de Inteligencia y Prevención (DISIP).

¹⁶ See news report from Correo del Caroni, *Rubén González deprived of his liberty for a year*, September 24, 2010. Available in Spanish only at:

<http://www.correodelcaroni.com/archivo/archivo.php?id=162497>.

¹⁷ In Spanish, Cuerpo de Investigaciones Científicas, Penales y Criminalísticas (CICPC).

¹⁸ See news report from Correo del Caroni, *FMO's union leader is arrested*, September 25, 2010. Available in Spanish only at:

http://www.correodelcaroni.com/component/option.com_wrapper/Itemid,174/?id=137042.

The charges brought against González were unlawful assembly¹⁹, public incitement to commit crimes²⁰, violation of the freedom to work,²¹ and violation of a security zone.²² His ongoing criminal trial is based solely on those four criminal charges, although the media has also mentioned other charges such as the shutdown of public routes²³ and damages to state property^{24,25}

On September 26, 2009, Judge Solange Martinez of the Second District Court of Puerto Ordaz recused herself from presiding over the case.²⁶ Soon after, on September 28, the First District Court of Puerto Ordaz, headed by Judge Arsenio Lopez, ordered González to be put under provisional

¹⁹ See Art. 286 Venezuelan Criminal Code (VCC) (“When two or more people associate with the purpose of committing a crime, each one of them shall be penalized, for solely the fact of associating, and will be subject to 2 to 5 years in prison.”).

²⁰ See Art. 283 VCC (“Anyone that publicly or by any other means incites others to commit acts that violate the law, only for the fact of the incitement he or she shall be penalized: 1) If the incitement was aimed to commit crimes that are penalized with time in prison, with a third of the time determined for the incited crime 2) In all other cases, with fines of one hundred and fifty tributary units (150 UT), depending on the entity of the instigated act.”).

²¹ Crimes against the freedom to work are regulated by chapter VI of the Venezuelan Criminal Code. See Art. 192 VCC (“Anyone that, by means of violence or blackmail, restricts or suppresses in any way the freedom of commercial or industrial activities, shall be penalized with up to nine months in prison.”); Art. 193 VCC (“All those who, recurring to violence, cause or extend the suspension of work, with the objective of imposing workers, administrators or owners an increase or reduction of salaries or agreements different to the ones previously accorded, shall be penalized with up to 10 months of imprisonment.”); and Art. 194 VCC (“The leaders or promoters of the acts described in the previous articles shall be penalized with time in prison of forty five days up to 18 months.”).

²² See Art. 56 Organic Law of the Security of the Nation (LOSN) (“Anyone who organizes, holds or instigates activities, inside security zones, seeking the disturbance of the organization and normal operations of military and public services facilities, industrial or basic enterprises installations, or the socio-economic life of the country, shall be penalized with five up to 10 years in prison.”); and Art. 47 LOSN (“A security zone is an area within the national boundaries that, due to its strategic importance, characteristics and composing elements, is subject to especial regulation regarding the people, assets and activities held in them, in order to protect these areas from internal and external hazards. The appropriate Regulation will control all matters relating to this issue.”).

²³ See Art. 357 VCC (“Anyone who places obstacles in a transport route of any kind, opens or closes connections to those routes, makes false signs or carries out any other act with the purpose of causing damages, shall be penalized with four up to eight years in prison. Causing interruptions in transport routes by the use of explosions or the derailing or sinking of any form of transportation through the same means, shall be penalized with six up to 10 years in prison.”).

²⁴ See Art. 473 VCC (“Anyone who in any way destroys or damages another person’s property, shall be punished, at the request of the injured party, with up to three months in jail. Prison time will be of 45 days up to 18 months if the injury is committed to one of the following possessions: public buildings or any building that has public use, or is used as a place of worship, or to buildings or constructions indicated in article 349, or to public monuments, cemeteries or its dependences.”).

²⁵ See news report from Correo del Caroní, *Rubén González to remain behind bars*, May 8, 2010. Available in Spanish only at:

<http://www.correodelcaroni.com/archivo/archivo.php?id=152457>

²⁶ See news report from Correo del Caroní, *Legal process against FMO leader is delayed*, September 27, 2009. Available in Spanish only at:

http://www.correodelcaroni.com/component/option.com_wrapper/Itemid,174/?id=137234

house arrest.²⁷ At the same time, upon the request of González's defense, the file with the proceedings was sent over to the courts in the city of Bolívar.

On September 29, 2009, González was transferred from the Caroni Patrolmen headquarters—where he had been held since September 26—to his home in Piar, where he was placed under house arrest.²⁸

ii. Delays caused by conflicts of jurisdiction

On October 16, 2009, the district courts of the city of Bolívar recused themselves from sitting on González's case. Subsequently, the Court of Appeals of the state of Bolívar determined that the jurisdiction to try González was with the courts of Puerto Ordaz, and sent the case back to the First District Court under Judge Arsenio Lopez. Additionally, it was reported that the Alfredo Maneiro Labor Inspectorate "" informed the media that Ferrominera appealed for dismissal status against González.²⁹

On October 21, 2009, the Judicial Commission of the Supreme Court of Justice agreed to suspend Arsenio Lopez, without pay, from his position as judge of the First District Court.³⁰ Eight days later, on October 29, 2009, the representatives of the Public Prosecutor's Office filed an indictment against González.

According to news reports from January 12, 2010, the Court of Appeals of the state of Bolívar admitted an appeal for constitutional protection filed by González's defense,³¹ and referred their claim for unconditional freedom to be decided by the Third District Court of Puerto Ordaz, under Judge Quintana.³²

²⁷ See news report from *Correo del Caroní*, *FMO leader is denied freedom*, September 29, 2009. Available in Spanish only at:

http://www.correodelcaroni.com/component/option.com_wrapper/Itemid,174/?id=137399. Also, see news report from *El Universal*, *House arrest for CVG Ferrominera's Union Leader is issued*, September 29, 2009. Available in Spanish only at:

http://economia.eluniversal.com/2009/09/29/eco_art_dictan-arresto-domic_1590249.shtml

²⁸ See news report from *Correo del Caroní*, *FMO leader is transferred to Ciudad Piar*, September 30, 2009. Available in Spanish only at:

http://www.correodelcaroni.com/component/option.com_wrapper/Itemid,174/?id=137424.

²⁹ The "dismissal status" claim is an administrative procedure that can be activated by an employer, by which the Labor Inspectorate is asked to declare the dismissal of an employee. See news report from *Correo del Caroní*, *Rubén González's case is returned to Caroní*, October 16, 2009. Available in Spanish only at:

http://www.correodelcaroni.com/component/option.com_wrapper/Itemid,174/?id=138701

³⁰ Supreme Court of Justice. Public Prosecutor's office Executive Directorate. Available in Spanish only at:

http://www.tsj.gov.ve/designaciones/designacion.asp?fecha_id=921

³¹ According the Court of Appeals press release, the appeal for constitutional protection was admitted, but the court deemed itself incompetent to handle the request for unconditional freedom. So, in the end, the merits of the claim were not addressed.

³² See news report from *Correo del Caroní*, *Case of Rubén González returns to Puerto Ordaz*, January 12, 2010. Available in Spanish only at:

http://www.correodelcaroni.com/component/option.com_wrapper/Itemid,174/?id=144824

iii. Change of house arrest for preventive imprisonment

On the night of January 19, 2010, members of the Scientific and Criminal Investigations Corps (CICPC) showed up at González's residence in the city of Piar. The officers informed González's family members that he would be taken to the courthouse, but once they reached Puerto Ordaz he was transported to the headquarters of the CICPC in San Felix.³³

The entire day on January 20, González remained under custody and incommunicado at the headquarters of the CICPC in San Felix.³⁴ Near midnight on January 20, 2010, Judge Quintana was removed from her position as the head of the Third District Court.³⁵

According to information made available by the Executive Directorate of the Supreme Court Magistrate, during an extraordinary session on January 20, the Judicial Commission agreed to repeal Judge Quintana's provisional designation. In the same session, Judge Jesus Figueroa Salazar was appointed to replace her.³⁶

In the early morning of January 21, Judge Figueroa dismissed the constitutional protection claim, ruled the house arrest to cease, and ordered Gonzalez's imprisonment at a police station by the name of "Patrulleros de Caroní."

iv. Confirmation of preventive imprisonment

On January 27, 2010, Judge Figueroa of the Third District Court called both parties to the preliminary hearing to be held on January 29.³⁷ However, the hearing did not take place on that date because the defense moved to disqualify Judge Figueroa, given that he had ordered González arrested.

According to the media, a different judge was required to sit on the case and rule over the constitutional protection claim. A new preliminary hearing was scheduled for February 12,³⁸ but

³³ See news report from Correo del Caroní, *Rubén González is taken back to the CICPC under false premises*, January 21, 2010. Available in Spanish only at:

http://www.correodelcaroni.com/component/option.com_wrapper/Itemid,174/?id=145449

³⁴ See news report from Correo del Caroní, *CICPC keeps FMO Union leader isolated*, January 21, 2010. Available in Spanish only at:

http://www.correodelcaroni.com/component/option.com_wrapper/Itemid,174/?id=145526

³⁵ Her removal was effected through resolution CJ1008, enacted by the Commission for the Restructuring of the Judicial Power. See news report from Correo del Caroní, *Judicial mess keeps Rubén González imprisoned*, January 23, 2010. Available in Spanish only at:

http://www.correodelcaroni.com/component/option.com_wrapper/Itemid,174/?id=145584

³⁶ Supreme Court of Justice. Public Prosecutor's office Executive Directorate. Extraordinary Session, January 21st 2010. Available in Spanish only at: http://www.tsj.gov.ve/designaciones/designacion.asp?fecha_id=936.

³⁷ See news report from Correo del Caroní, *Rubén González's defense refuses to fall in legal "trap"*, October 29, 2010. Available in Spanish only at:

http://www.correodelcaroni.com/component/option.com_wrapper/Itemid,174/?id=145915

³⁸ See news report from Correo del Caroní, *Social movements denounce the erosion of freedom of association*, January 30, 2010. Available in Spanish only at:

http://www.correodelcaroni.com/component/option.com_wrapper/Itemid,174/?id=146056

when the date arrived, it was then postponed.³⁹ On March 1, 2010, the preliminary hearing was also deferred.⁴⁰

On April 28, 2010, the hearing was suspended due to González's poor health. According to his wife, Yadid de González, her husband's condition worsened during his time in jail. González's wife requested permission to take him to a medical center.⁴¹

Finally, on May 7, 2010, the preliminary hearing took place. During the hearing, the Third District Court Judge Figueroa admitted the prosecutor's indictment and confirmed González's preventive imprisonment.⁴² His defense then filed a new constitutional protection claim before the Court of Appeals of the state of Bolívar, but it was declared inadmissible on February 19, 2010.⁴³

The initial hearing set for September 3, 2010⁴⁴ never took place because Judge Magda Hidalgo, of the Sixth District Court did not show up.⁴⁵ The hearings were then scheduled to begin on November 4, 2010.⁴⁶ As of the date of publication of this report, around nine to 10 hearings have taken place.

Since January 21, 2010, González remains imprisoned at the Patrulleros de Caroní police station.

³⁹ See news report from Correo del Caroní, *Rubén González to resort to the Court of Appeals*, February 13, 2010. Available in Spanish only at:

http://www.correodelcaroni.com/component/option.com_wrapper/Itemid,174/?id=147024

⁴⁰ See news report from Correo del Caroní, *Rubén González's hearing to be postponed once again*, March 2, 2010. Available in Spanish only at:

http://www.correodelcaroni.com/component/option.com_wrapper/Itemid,174/?id=148226

⁴¹ See news report from Correo del Caroní, *Preliminary hearing for Rubén González case is suspended due to his bad health*, from April 29, 2010. Available in Spanish only at:

http://www.correodelcaroni.com/component/option.com_wrapper/Itemid,174/?id=151938

⁴² See news report from Correo del Caroní, *Rubén González to remain behind bars*, May 8, 2010. Available in Spanish only at:

http://www.correodelcaroni.com/component/option.com_wrapper/Itemid,174/?id=152457

⁴³ See news report from Correo del Caroní, *Rubén González's appeal declared inadmissible*, February 20, 2010. Available in Spanish only at:

http://www.correodelcaroni.com/component/option.com_wrapper/Itemid,174/?id=147514

⁴⁴ See news report from Correo del Caroní, *Rubén González to stand trial today*, September 3, 2010. Available in Spanish only at:

http://www.correodelcaroni.com/component/option.com_wrapper/Itemid,174/?id=160968

⁴⁵ See news report from Correo del Caroní, *Absence of the Judge delays trial on Rubén González*. Available in Spanish only at:

http://www.correodelcaroni.com/component/option.com_wrapper/Itemid,174/?id=161033

⁴⁶ See news report from El Diario de Guyana, *Absence of the Judge delays trial on Rubén González*, October 30, 2010. Available in Spanish only at:

<http://www.eldiariodeguayana.com.ve/tercearias.php?pos=374>

C. Standards for protection of the freedom of association and personal freedom according to international human rights law

a. Freedom of association in international human rights law

According to Article 16.1 of the American Convention on Human Rights, “Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.”

The following is the interpretation of the article by the Inter-American Court of Human Rights:

These words establish literally that those who are protected by the Convention not only have the right and freedom to associate freely with other persons, without the interference of the public authorities limiting or obstructing the exercise of the respective right, which thus represents a right of each individual; but they also enjoy the right and freedom to seek the common achievement of a licit goal, without pressure or interference that could alter or change their purpose.⁴⁷

i. Freedom of association in labor issues: freedom to form and participate in labor unions

Exercising the right to freedom of association includes what workers do in defense of their interests. The freedom to form and participate in labor unions is simply referred to as freedom of association.

According to the Inter-American Court of Human Rights:

Freedom of association consists basically of the ability to constitute labor union organizations, and to set into motion their internal structure, activities and action programme, without any intervention by the public authorities that could limit or impair the exercise of the respective right. On the other hand, under such freedom, it is possible to assume that each person may determine, without any pressure, whether or not she or he wishes to form part of the association. This matter, therefore, is about the basic right to constitute a group for the pursuit of a lawful goal, without pressure or interference that may alter or denature its objective.⁴⁸

In the final judgment of the case *Baena Ricardo et al. v. Panama*, the Inter-American Court of Human Rights stated that “Freedom of association is of the utmost importance for the defense of the legitimate interests of the workers, and falls under the corpus juris of human rights.”⁴⁹

⁴⁷ Inter-American Court of Human Rights. Judgment of March 3, 2005 (Merits, Reparations and Costs) *Case of Huila Tesce v. Peru* Paragraph 69.

⁴⁸ Inter-American Court of Human Rights. Judgment of February 2, 2005 (Merits, Reparations and Costs) *Case of Baena Ricardo et al v. Panama* Paragraph 159.

⁴⁹ *Case of Baena Ricardo et al v. Panama*. Paragraph 158.

In the final judgment of the case *Huilca Tesce v. Peru*, the Inter-American Court of Human Rights stated that “In its individual dimension, labor-related freedom of association is not exhausted by the theoretical recognition of the right to form trade unions, but also corresponds, inseparably, to the right to use any appropriate means to exercise this freedom.”⁵⁰ In the same judgment, the Court established that “in its social dimension, freedom of association is a mechanism that allows the members of a labor collectivity or group to achieve certain objectives together and to obtain benefits for themselves.”⁵¹

Therefore, freedom of association must be guaranteed both in its individual and social dimensions. Should there be any fear of reprisals for exercising this freedom, the people’s ability to organize in order to defend their interests would be negatively affected.⁵²

The Additional Protocol to the American Convention on Human Rights in the area of Economic, Social, and Cultural Rights of November 17, 1988, (commonly known as the Protocol of San Salvador) and Convention No. 87 of the ILO Convention regarding the Freedom of Association and Protection of the Right to Organize of June 17, 1948, establish the obligation of the states to allow unions, federations and confederations to be freely established and operated—in Articles 8.1.a and 11 respectively. Venezuela ratified Convention No. 87 of the ILO on September 20, 1982.⁵³

ii. The right to strike as a fundamental element of freedom of association

According to the Committee on Freedom of Association of the ILO, the right to strike is “one of the essential means through which workers and their organizations may promote and defend their economic and social interests.”⁵⁴ Further, it constitutes an “intrinsic corollary to the right to organize protected by Convention No. 87.”⁵⁵

iii. Prohibition of penal sanctions for involvement in activities related to exercising freedom of association

Reprisals against a worker for exercising his legitimate right to strike constitute a violation of freedom of association, as guaranteed by Article 16 of the American Convention on Human Rights. In this regard, the Committee on Freedom of Association of the ILO has stressed that “no one should be deprived of their freedom or be subject to penal sanctions for the mere fact of organizing or participating in a peaceful strike.”⁵⁶

⁵⁰ *Case of Huila Tesce v. Peru*. Paragraph 70.

⁵¹ *Case of Huila Tesce v. Peru*. Paragraph 71.

⁵² *Case of Huila Tesce v. Peru*. Paragraph 77.

⁵³ The Protocol of San Salvador was signed by Venezuela on January 27th 1989.

⁵⁴ INTERNATIONAL LABOR ORGANIZATION (ILO). Freedom of association - Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO. Geneva, International Labor Office. Fifth (revised) edition, 2006, Paragraph 522.

⁵⁵ ILO, *ibid*, 523.

⁵⁶ ILO, *ibid*, 672.

Likewise, the Committee has stated that “the detention of trade union leaders or members, for trade union activities or membership, is contrary to the principles of freedom of association”⁵⁷ and that “the detention of trade unionists for reasons connected with their activities in defense of the interests of workers constitutes a serious interference with civil liberties in general and with trade union rights in particular.”⁵⁸

The expression “criminalization of social protest” or “criminalization of social activism” is used to refer to the application of penal laws against activism and social protest with the objective of weakening or disorganizing them.⁵⁹

iv. Prohibition of restrictions on the freedom of movement affecting the normal exercise of freedom of association

Freedom of movement is enshrined in Article 22 of the American Convention on Human Rights. Even though this right may be subject to restrictions,⁶⁰ these must meet the test of legality, necessity, and proportionality set by the Inter-American Court of Human Rights.⁶¹

In relation to the right to exercise trade union activities and restrictions to freedom of movement, the Committee on Freedom of Association of the ILO has stated that:

The restriction of a person’s movements to a limited area, accompanied by the prohibition of entry into the area in which his trade union operates and in which he normally carries on his trade union functions, is inconsistent with the normal enjoyment of the right of association and with the exercise of the right to carry on trade union activities and functions.⁶²

b. The right to personal liberty in international human rights law

The right to personal liberty is enshrined in Article 7 of the American Convention on Human Rights. As interpreted by the Inter-American Court of Human Rights:

⁵⁷ ILO, *ibid*, 61.

⁵⁸ ILO, *ibid*, 64.

⁵⁹ Zaffaroni, Raúl Eugenio, *Derecho penal y protesta social, en ¿ES LEGÍTIMA LA CRIMINALIZACIÓN DE LA PROTESTA SOCIAL? 2* (Bertoni, Eduardo) (en Argentina, los constitucionalistas y los organismos no gubernamentales denominan derecho a la protesta social a los reclamos que buscan “habilitar el funcionamiento institucional, es decir, que en definitiva reclaman que las instituciones operen conforme a sus fines manifiestos”). Available in Spanish only at:

http://www.palermo.edu/cele/pdf/LIBRO_BERTONI_COMPLETO.pdf

⁶⁰ See Art. 22.3 of the Convention (“The exercise of the foregoing rights may be restricted only pursuant to a law to the extent necessary in a democratic society to prevent crime or to protect national security, public safety, public order, public morals, public health, or the rights or freedoms of others.”).

⁶¹ Inter-American Court of Human Rights, Judgment of August 31, 2004 (Merits, Reparations and Costs) *Case of Ricardo Canese v. Paraguay*. Paragraph 123.

⁶² ILO, *ibid*, 129.

Article 7 of the Convention involves two types of very different regulations: one general and one specific. The general regulation is described in the first paragraph: “[e]very person has the right to personal liberty and security.” The specific regulation is a series of guarantees protecting the right not to be deprived of liberty (Art. 7(2)) or arbitrarily (Art. 7(3)), to be notified of the reasons for his detention and the charges against him (Art. 7(4)), to judicial control of the deprivation of liberty and reasonable nature of the term of preventive imprisonment (Art. 7(5)), to challenge the lawfulness of his detention (Art. 7(6)). Any violation of paragraphs 2 to 7 of Article 7 of the Convention shall necessarily entail the violation of Article 7(1) of such Convention.”⁶³

i. The right against arbitrary deprivation of liberty

According to Article 7.3 of the American Convention on Human Rights, “No one shall be subject to arbitrary arrest or imprisonment.” With regards to this provision, the Inter-American Court of Human Rights, in the case *Gangaram Panday v. Surinam*, held that,

...no one may be subjected to arrest or imprisonment for reasons and by methods which, although classified as legal, could be deemed to be incompatible with the respect for the fundamental rights of the individual because, among other things, they are unreasonable, unforeseeable or lacking in proportionality.⁶⁴

Likewise, in *Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, the Inter-American Court of Human Rights established criteria for determining the arbitrariness of a detention. The Court further determined that it was necessary to carry out a closer study of several aspects of a detention, among which is compatibility with the American Convention on Human Rights:

...it is not sufficient that every reason for deprivation or restriction of the right to liberty is established by law; this law and its application must respect the requirements listed below, to ensure that this measure is not arbitrary: (i) that the purpose of the measures that deprive or restrict liberty is compatible with the Convention. It is worth indicating that the Court has recognized that ensuring that the accused does not prevent the proceedings from being conducted or evade the judicial system is a legitimate purpose; (ii) that the measures adopted are appropriate to achieve the purpose sought; (iii) that they are necessary, in the sense that they are absolutely essential to achieve the purpose sought and that, among all possible measures, there is no less burdensome one in relation to the right involved, that would be as suitable to achieve the proposed objective. Hence, the Court has indicated that the right to personal liberty supposes that any limitation of this right must be exceptional, and (iv) that the measures are strictly proportionate, so that the sacrifice inherent in the restriction of the right to liberty is not exaggerated or excessive compared to the advantages obtained from this restriction and the achievement of the purpose sought. Any

⁶³ Inter-American Court of Human Rights, Judgment of November 20, 2009 (Preliminary Objections, Merits, Reparations, and Costs) *Case of Usón Ramírez v. Venezuela*. Paragraph 143.

⁶⁴ Inter-American Court of Human Rights, Judgment of January 21, 1994 (Merits, Reparations and Costs), *Case of Gangaram-Panday v. Suriname*. Paragraph 47.

restriction of liberty that is not based on a justification that will allow an assessment of whether it is adapted to the conditions set out above will be arbitrary and will thus violate Article 7(3) of the Convention.⁶⁵

D. Analysis of the conduct of the Venezuelan State in relation to the international standard of protection of freedom of association and personal liberty

a. General situation of freedom of association in Venezuela

In the last few years, the Venezuelan government has systematically restricted freedom of association. This course of action has been widely documented through reports by international organizations dedicated to promoting human rights.⁶⁶

The report “Democracy and Human Rights in Venezuela” published on December 30, 2009, by the Inter-American Commission on Human Rights, states:

The IACHR has followed the situation regarding the right to freely associate for labor purposes in Venezuela, and has warned that this right is critically affected by the existing degree of political polarization and lack of social coordination among trade unions, management organizations, and the Government. In its 2003 Report on the Situation of Human Rights in Venezuela, the Commission expressed special concern over the massive firing of workers, over State intervention in the organization and election of trade union officers, and over legal barriers erected against the exercise of trade union rights. These issues continue to be of concern for the Commission, as are the frequent outbursts of violence and criminalization to which trade unionists are currently subjected.⁶⁷

One of the issues linked to the situation of freedom of association in Venezuela is the increasing criminalization of peaceful protests. According to the IACHR:

In Venezuela, the official response to peaceful demonstrations has been characterized by the criminalization of social protest through the criminal prosecution of the persons involved, thereby distorting the application of the criminal laws of the State. This situation leads to a particular concern, since repression and sentences [of imprisonment] for those participating in protests has the effect of dissuading social actors from participating in peaceful demonstrations.⁶⁸

⁶⁵ Inter-American Court of Human Rights, Judgment of November 21, 2007 (Preliminary Objections, Merits, Reparations, and Costs) *Case of Chaparro Álvarez and Lapo Ñíguez v. Ecuador*. Paragraph 93.

⁶⁶ See HUMAN RIGHTS WATCH (HRW), *A DECADE UNDER CHÁVEZ*, November 25, 2008 (Chapter 3 “The unions”). Available at:

<http://www.hrw.org/en/reports/2008/09/18/decade-under-ch-vez>; and INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, *DEMOCRACY AND HUMAN RIGHTS IN VENEZUELA*, OAS /Ser I/V/II, December 30, 2009. Available at: <http://www.cidh.org/countryrep/Venezuela2009eng/VE09.TOC.eng.htm>

⁶⁷ CIDH, *ibid.*, ¶ 1082.

⁶⁸ CIDH, *ibid.*, ¶ 120.

Furthermore, the Venezuelan Program for Education-Action on Human Rights (PROVEA), in its yearly report of 2009, stated:

Since 2004, Provea has been denouncing the criminalization of peaceful protests. After analyzing the actions of the Government towards demonstrators in the past years, in particular the actions of the Public Prosecutor's Office, Criminal Courts and Security Forces; it can be concluded that they form a triangle of power whose purpose is to intimidate all those who exercise their right to protest, a right which is guaranteed by Article 68 of the constitution.⁶⁹

According to figures from PROVEA, in the last five years there have been more than 2,240 protestors who were subjected to criminal prosecution, most of them subject to a wide range of restrictive measures of deprivation of personal liberty, as an alternative to imprisonment.⁷⁰ According to Espacio Publico and PROVEA, in 2009 alone there were 3,297 public protests, 194 of which were repressed by government security forces. 754 protestors who participated in those manifestations were detained.⁷¹

The criminalization of peaceful strikes is illustrated by the persecution suffered by many workers and labor union leaders for exercising their right to protest. Regarding this issue, the IACHR has called upon "the State (of Venezuela) to refrain from subjecting to judicial processes [those] labor leaders who are exercising that right legitimately and peacefully."⁷²

Professor Ayala Corao, in Venezuela, wrote:

...the criminal offenses intended for the criminalization of protest are essentially the ones included in the Criminal Code, the Organic Law on Security and Defense of the Nation, the Law for the Defense of People in the Access of Goods and Services, and the Special Law for the Popular Defense against Hoarding, Speculation, Boycott or any other Conduct that Threatens the Consumption of Food or Products under Price Control.⁷³

In 2005, the Venezuelan National Assembly enacted the Law Concerning the Partial Amendment to the Criminal Code. This law changed many provisions of the Criminal Code.⁷⁴ According to some

⁶⁹ PROVEA, *Yearly report October 2008 / September 2009*. Caracas 2009, p. 300. Available in Spanish only at:

http://www.derechos.org/ve/proveaweb/?page_id=1651

⁷⁰ PROVEA, *ibid.*, p. 301.

⁷¹ See press release published on the website of NGO "Espacio Publico" on March 18th 2010 *3297 public protests accounted for in 2009*. Available in Spanish only at:

<http://www.espaciopublico.org/index.php/noticias/7-manifestaciones/738-3297-manifestaciones-pcas-se-contabilizaron-en-2009>

⁷² CIDH, *ibid.*, paragraph 1,115.

⁷³ Ayala Corao, Carlos. *The criminalization of Protest in Venezuela* in Bertoni, *ibid.*, page 211

⁷⁴ The reform to the Criminal Code was published in the extraordinary issue of the Official Gazette No. 5763 on March 16th 2005. Available at:

human rights organizations, persecution and penalization of protesters increased after this reform was passed.⁷⁵ The persecution of workers for involvement in union activities is one type of human rights violation that occurs in this context of widespread criminalization of social protest.

b. Criminal prosecution of Rubén González for engaging in trade union activities protected by the right to freedom of association

González has been indicted and is currently being prosecuted for the crimes of unlawful assembly, public incitement to commit crimes, violation of the freedom to work, and violation of a security zone. According to the accusations made by the prosecution, all these crimes were committed during the 15-day strike held by the workers of the state-owned company Ferrominera and led by González himself.

i. The crime of unlawful assembly is not applicable to members of a labor union

One of the crimes González is accused of, unlawful assembly, is committed when “two or more people come together with the purpose of committing a crime.”⁷⁶ According to criminal law scholars, “when incriminating a person under unlawful assembly, the legislator intends to prevent the constitution of associations that are formed with the purpose of committing crimes, due to the dangerous nature of these groups and the menace they represent to the public order,” And according to the *Grisanti Manual of Criminal Law*, to test for the existence of unlawful assembly, “there needs to be an element of permanence.”⁷⁷ In other words, it is necessary that the association was created with criminal purposes.

The Inter-American Court of Human Rights stated that “freedom of association is a mechanism that allows the members of a labor collectivity or group to achieve certain objectives together and to obtain benefits for themselves.”⁷⁸ According to the Court, freedom of association is the “right to form labor unions for licit purposes without pressure or intrusion that may alter or pervert their nature.”

Venezuelan law also recognizes that labor unions in the country have, among other attributions and goals, the purpose of “protecting and defending the professional or general interests of its members

http://www.oas.org/juridico/spanish/mesicic3_ven_anexo7.pdf

⁷⁵ According to Espacio Público, “in the aforementioned reform, unconstitutional provisions were established that restrict and violate the right to protest and the freedom of expression; since crimes were created or modified in the law with the clear intention of limiting and sanctioning any demonstrations critical of the government.” Cubas, Raul. *Criminalization, penalization and repression of social protest in Venezuela*. Page 53, in Correa, Carlos (coordinator). 2007 REPORT: SITUATION OF THE FREEDOM OF EXPRESSION AND INFORMATION. Available in Spanish only at:

http://www.espaciopublico.org/index.php/biblioteca/doc_download/234-informe-2007-venezuela-situacion-del-derecho-a-la-libertad-de-expresion-e-informacion-

⁷⁶ See note 19 supra.

⁷⁷ Grisanti Manual of *Criminal Law. Special Section*, quoted in Ayala Corao, Carlos, *ibídem*, 222.

⁷⁸ *Case Huilca Tesce vs Peru*. Paragraph 71.

before employers or public authorities” and “promoting, negotiating, accepting, revising and modifying collective agreements and demand their compliance.”⁷⁹

A labor union cannot be equated to an association created with the purpose of committing crimes because it is a voluntary association created with the goal of protecting the rights of workers. According to Venezuelan law, the members of a labor union could never commit the crime of unlawful assembly while acting as members of a union in the pursuit of their legitimate goals.

Any accusation of unlawful assembly made against the secretary general of a labor union for actions carried out while acting as the head of the union, should be dismissed by the judge for failing to meet the minimum statutory conditions for a criminal case. According to the Organic Penal Procedure Code of Venezuela, the public prosecutor must request the dismissal of charges; otherwise, the judge must dismiss the accusation by the public prosecutor’s office if (a) the defendant cannot possibly be charged with the crime; (b) the action does not constitute punishable conduct; or (c) there are no bases to request the prosecution of the defendant.⁸⁰

⁷⁹ Ley Orgánica del Trabajo (LOT), Art. 408. (Spanish original: “Los sindicatos de trabajadores tendrán las siguientes atribuciones y finalidades: a) Proteger y defender los intereses profesionales o generales de sus asociados ante los organismos y autoridades públicas; b) Representar a sus miembros en las negociaciones y conflictos colectivos de trabajo, y especialmente en los procedimientos de conciliación y arbitraje; c) Promover, negociar, celebrar, revisar y modificar convenciones colectivas de trabajo y exigir su cumplimiento; d) Representar y defender a sus miembros y a los trabajadores que lo soliciten, aunque no sean miembros del sindicato, en el ejercicio de sus intereses y derechos individuales en los procedimientos administrativos que se relacionen con el trabajador, y, en los judiciales sin perjuicio del cumplimiento de los requisitos para la representación; y, en sus relaciones con los patronos; e) Vigilar el cumplimiento de las normas destinadas a proteger a los trabajadores, especialmente las de previsión, higiene y seguridad sociales, las de prevención, condiciones y medio ambiente de trabajo, las de construcción de viviendas para los trabajadores, las de creación y mantenimiento de servicios sociales y actividades sanas y de mejoramiento durante el tiempo libre; f) Ejercer especial vigilancia para el fiel cumplimiento de las normas dirigidas a garantizar la igualdad de oportunidades, así como de las normas protectoras de la maternidad y la familia, menores y aprendices; g) Crear fondos de socorro y de ahorro y cooperativas, escuelas industriales o profesionales, bibliotecas populares y clubes destinados al deporte y a la recreación o al turismo. No obstante, para la organización de cooperativas de producción o servicios por trabajadores de una empresa, se requerirá autorización expresa de la misma, cuando se trate de producir mercancías o prestar servicios semejantes a los que produzca o preste la empresa correspondiente. La administración y funcionamiento de las cooperativas se regirá por las disposiciones pertinentes a ellas; h) Realizar estudios sobre las características de la respectiva rama profesional, industrial o comercial o de servicios, costos y niveles de vida, educación, aprendizaje y cultura y, en general, sobre todas aquellas que les permita promover el progreso social, económico y cultural de sus asociados; y presentar proposiciones a los Poderes Públicos para la realización de dichos fines; i) Colaborar con las autoridades, organismos e institutos públicos en la preparación y ejecución de programas de mejoramiento social y cultural y en la capacitación técnica y colocación de los trabajadores; j) Responder oportunamente a las consultas que les sean formuladas por las autoridades y proporcionar los informes que se les soliciten, de conformidad con las leyes; k) Realizar campañas permanentes en los centros de trabajo para concientizar a los trabajadores en la lucha activa contra la corrupción, consumo y distribución de estupefacientes y sustancias psicotrópicas y hábitos dañinos para su salud física y mental, y para la sociedad; y l) En general, las que señalen sus estatutos o resuelvan sus asociados, para el mejor logro de sus fines.)

⁸⁰ Código Orgánico Procesal Penal; Art. 325 (Spanish original: “El fiscal solicitará el sobreseimiento ante el juez de control cuándo: 1º El hecho objeto del proceso no se realizó o no puede atribuírsele al imputado; 2º Considere que el hecho imputado no es típico o concurre una causa de justificación, inculpabilidad o de no punibilidad; 3º La acción penal se ha extinguido o resulta acreditada la cosa juzgada; 4º A pesar de la falta de

The accusation of unlawful assembly by the Venezuelan public prosecutor, as well as the failure to dismiss this claim by the Venezuelan judge, are in violation of the Organic Labor Law and the rules of the Organic Penal Procedure Code, which recognize, respectively, the right to strike and the minimum statutory requirements for a criminal case. Hence, the trial against González constitutes an illegal action by both the public prosecutor and the judge and criminalizes a legitimate labor union activity fully protected under Venezuelan law.

These actions by the public prosecutor and the judge sitting on González's case also violate the international standard of protection of freedom of association. According to this international law standard, reprisals against a worker for exercising his legitimate right to strike constitute a violation of freedom of association, as guaranteed by Article 16 of the American Convention on Human Rights.

In this regard, the Committee on Freedom of Association of the ILO has stressed that “no one should be deprived of their freedom or be subject to penal sanctions for the mere fact of organizing or participating in a peaceful strike.” The Committee further stated that “the detention of trade unionists for reasons connected with their activities in defense of the interests of workers constitutes a serious interference with civil liberties in general and with trade union rights in particular.”

ii. No one leading a strike can be liable for the crime of violation of the freedom to work

González is also accused of the crime of violation of the freedom to work, which is committed when a person “recurring to violence, causes or extends the suspension of work, with the objective of imposing workers, administrators or owners an increase or reduction of salaries or agreements different from the ones previously accorded.”⁸¹ In this respect, the actions that restrict the freedom to work are only punishable when they are carried out with “violence,” and have the goal of “imposing” on workers or employers modifications to the salaries or “agreements *different* from the ones previously accorded.”

According to the Committee on Freedom of Association of the ILO, the committee has always recognized “the right to strike by workers and their organizations as a legitimate means of defending their economic and social interests.”⁸² These interests not only include “better working conditions or collective claims of an occupational nature, but also the seeking of solutions to

certeza, no exista razonablemente la posibilidad de incorporar nuevos datos a la investigación, y no hay bases para solicitar fundadamente el enjuiciamiento del imputado.”); Art. 333 (Spanish original: “Finalizada la audiencia el juez resolverá, en presencia de las partes, sobre las cuestiones siguientes, según sea el caso: 1º. Admitir, total o parcialmente, la acusación del Ministerio Público o del querellante y ordenar la apertura a juicio. Sobreseer si desestima totalmente la acusación del Ministerio Público; 2º. Resolver las excepciones opuestas; 3º. Decidir acerca de medidas cautelares; 4º. Sentenciar conforme al procedimiento por admisión de los hechos; 5º. Aprobar los acuerdos reparatorios; 6º. Decidir sobre la pertinencia y necesidad de la prueba ofrecida para el juicio oral.”)

⁸¹ See note 21 supra.

⁸² ILO, *ibid*, 521.

economic and social policy questions and problems facing the undertaking which are of direct concern to the workers.”⁸³

Venezuelan law defines a strike as the “collective suspension of work activities by workers affected by a labor related conflict,” and makes it clear that “the collective presence of workers in the workplace” cannot be considered a breach of the right to strike.⁸⁴ Moreover, labor unions have, among other attributions and goals, the purpose of “promoting, negotiating, accepting, revising and modifying collective agreements and demand their compliance.”⁸⁵

According to Venezuelan law, workers that participate in a strike could never commit the crime of violation of the freedom to work, provided that (1) the strike is peaceful, and (2) the goal of the strike is to demand compliance with an agreement “previously accorded.” Therefore, the strike held by Sintraferrominera cannot constitute a violation of the freedom to work because (1) it was not a violent act which stopped or suspended work activities, and (2) it did not seek to impose conditions different from those previously agreed upon, but to demand the fulfillment of a collective bargaining agreement ratified on June 1, 2009.

The accusation against González of violation of the freedom to work should have been dismissed by the judge for failing to meet the minimum statutory conditions for a criminal case. According to the Organic Penal Procedure Code of Venezuela, the public prosecutor must request the dismissal of charges; otherwise, the judge must dismiss the accusation by the public prosecutor’s office if (a) the defendant cannot possibly be charged with the crime; (b) the action does not constitute punishable conduct; or (c) there are no bases to request the prosecution of the defendant.

The accusation for the crime of unlawful assembly by the Venezuelan public prosecutor, as well as the failure to dismiss this claim by the Venezuelan judge, are in violation of the Organic Labor Law and the rules of the Organic Penal Procedure Code, which recognize, respectively, the right to strike and the minimum statutory requirements for a criminal case. Hence, the trial against González constitutes an illegal action by both the public prosecutor and the judge, which criminalizes a legitimate labor union activity fully protected under Venezuelan law.

These actions by the public prosecutor and the judge sitting on González’s case also violate the international standard of protection of freedom of association. According to this international law standard, reprisals against a worker for exercising his legitimate right to strike constitute a violation of freedom of association, as guaranteed by Article 16 of the American Convention on Human Rights.

In this regard, the Committee on Freedom of Association of the ILO has stressed that “no one should be deprived of their freedom or be subject to penal sanctions for the mere fact of organizing or participating in a peaceful strike.” The Committee further stated that “the detention of trade

⁸³ ILO, *ibid*, 526.

⁸⁴ Ley Orgánica del Trabajo, Art. 494 (defining a strike as the collective suspension of work activities by workers affected by a labor related conflict); and Art. 495 (considering the collective presence of workers in the workplace to be a protected action within the right to strike).

⁸⁵ See note 79 supra.

unionists for reasons connected with their activities in defense of the interests of workers constitutes a serious interference with civil liberties in general and with trade union rights in particular.”

iii. Leaders of a strike are not liable to be accused of violation of a security zone

González is also accused of violation of a security zone. This crime is committed when a person “organizes, holds or instigates activities inside security zones, seeking the disturbance of the organization and normal operations of military and public services facilities, industrial or basic enterprises installations, or the socio-economic life of the country.”⁸⁶

In Venezuela, security zones are regulated by the Organic Law of the Security of the Nation (LOSN)⁸⁷ and comprise “areas within the national boundaries that, due to their strategic importance, characteristics and composing elements, are subject to special regulation regarding the people, assets and activities held in them, in order to protect these areas from internal and external hazards.”⁸⁸ These areas are declared security zones “by the Executive Power, after consultation with the National Defense Council.”⁸⁹

According to the Organic Labor Law, the right to strike is not violated by “the collective presence of workers in the vicinity of the workplace once the strike has commenced.”⁹⁰

The Committee on Freedom of Association of the ILO has stated that “the prohibition of entry into the area in which his [the worker’s] trade union operates and in which he normally carries on his trade union functions, is inconsistent with the normal enjoyment of the right of association and with the exercise of the right to carry on trade union activities and functions.”⁹¹ Accordingly, the Committee believes that the article criminalizing the violation of security zones in Venezuela should be amended.⁹²

⁸⁶ See note 22 supra.

⁸⁷ According to Ayala Corao, “The Venezuelan legal regime concerning security zones in Venezuela in general and the designation of 8 security zones inside the Caracas metropolitan area in particular in the year 2002, are plagued with unconstitutional flaws.” These flaws are: the violation of the essential contents of property rights law, violation of the concept of equality, violation of municipal autonomy and the principle of elected civilian government, violation of the constitutional concept of the security of the nation, violation of the constitutional requirements to declare a state of emergency and a violation of the guarantee of legality. See more on Ayala Corao, Carlos, *The unconstitutionality of the legal regime governing the Security Zones designated in Caracas*, at EL DERECHO PÚBLICO A COMIENZOS DEL SIGLO XXI: ESTUDIOS EN HOMENAJE AL PROFESOR ALLAN R. BREWER CARIAS. Volume III, Civitas Madrid, 2003, page 3,147 (in Spanish only).

⁸⁸ LOSN, Art. 47.

⁸⁹ LOSN, Art. 48.

⁹⁰ See note 84 supra.

⁹¹ See note 62 supra.

⁹² Recommendation approved by the Committee on Freedom of Association on its 309th meeting, Geneva, November 2010. *Case No. 2763 (Bolivarian Republic of Venezuela) Provisional Report Ibid.* Paragraph 1,016.

Also, according to the IACHR, the crime of violation of security zones established by the LOSN obstructs the exercise of the right to freely associate for labor purposes and allows for criminalization of the exercise to strike at a basic industry.⁹³

During its investigation, HRF has not been able to determine the guidelines that supposedly establish and define security zones within the state-owned company Ferrominera. Although the reach of the security zones could not be determined inside the company, according to international law, restrictions to the freedom of movement can never hinder the exercise of legitimate labor union activities.

Therefore, the accusation of violation of a security zone by the Venezuelan public prosecutor, as well as the failure to dismiss this claim by the Venezuelan judge, are in violation of the Organic Labor Law, which guarantees the right to strike, and international law, which recognizes the freedom of association, guarantees the right to strike, and enshrines the prohibition on establishing restrictions to the freedom of movement that may obstruct the regular exercise of labor union activities. With this in mind, the trial against González constitutes an illegal action by the prosecutor and the judge—an action which effectively criminalizes a legitimate labor union activity fully protected by Venezuelan law.

These actions by the public prosecutor and the judge sitting on González's case also violate the international standard of protection of freedom of association. According to this international law standard, reprisals against a worker for exercising his legitimate right to strike constitute a violation of freedom of association, as guaranteed by Article 16 of the American Convention on Human Rights.

In this regard, the Committee on Freedom of Association of the ILO has stressed that “no one should be deprived of their freedom or be subject to penal sanctions for the mere fact of organizing or participating in a peaceful strike.” The Committee further stated that “the detention of trade unionists for reasons connected with their activities in defense of the interests of workers constitutes a serious interference with civil liberties in general and with trade union rights in particular.”

iv. Leaders of a strike should not be accused of the crime of public incitement to commit crimes

González is also accused of public incitement to commit crimes. This crime is committed when a person “publically or by any means” incites “other or others to commit acts that violate the law.” According to this article of the Criminal Code, the crime is committed “solely by the action of the incitement.”⁹⁴

⁹³ According to information received by the IACHR, Art 56 of the LOSN was applied at least in 70 occasions in 2009. OAS/SerL/V/II *Ibid.* Paragraphs 148 & 1,106.

⁹⁴ See note 20 *supra*.

As stated by the Committee on Freedom of Association of the ILO, “The right to express opinions without previous authorization through the press is one of the essential elements of the rights of occupational organizations.”⁹⁵

Venezuelan law also recognizes that labor unions in the country have, among other attributions and goals, the purpose of “protecting and defending the professional or general interests of its members before employers or public authorities” and “representing their members in collective bargaining and action.”

Actions carried out by the secretary general of a labor union while taking part in legitimate labor union activities cannot be considered public incitement to commit crimes, since such actions pursue the legitimate end of defending the workers’ interests. According to Venezuelan law, union leaders and workers can never commit the crime of public incitement to commit crimes while acting as members of a labor union pursuing its lawful goals.⁹⁶

As stated above, the Ferrominera workers’ strike cannot be equated to a criminal act. During the days of the strike, there were no events that could lead to an indictment against González for public incitement to commit crimes.

Any accusation of public incitement to commit crimes made against the secretary general of a labor union for actions carried out while acting as the head of the union, should be dismissed by the judge for failing to meet the minimum statutory conditions for a criminal case. According to the Organic Penal Procedure Code of Venezuela, the public prosecutor must request the dismissal of charges; otherwise, the judge must dismiss the accusation by the public prosecutor’s office if (a) the defendant cannot possibly be charged with the crime; (b) the action does not constitute punishable conduct; or (c) there are no bases to request the prosecution of the defendant.

Therefore, the accusation made against González by the Venezuelan public prosecutor of public incitement to commit crimes, as well as the judge’s failure to dismiss this claim, are in violation of the Organic Labor Law and the rules of the Organic Penal Procedure Code, which recognize, respectively, the right to strike and the minimum statutory requirements for a criminal case. Hence, the trial against Gonzalez constitutes an illegal action by both the public prosecutor and the judge—an action which effectively criminalizes a legitimate labor union activity fully protected under Venezuelan law.

The actions of the public prosecutor and the judge sitting on González’s case also violate the international standard of protection of freedom of association. According to this international law standard, reprisals against a worker for exercising his legitimate right to strike constitute a violation of freedom of association, as guaranteed by Article 16 of the American Convention on Human Rights.

⁹⁵ ILO, *ibid.* ¶ 157.

⁹⁶ See note 79 *supra*.

In this regard, the Committee on Freedom of Association of the ILO has stressed that “no one should be deprived of their freedom or be subject to penal sanctions for the mere fact of organizing or participating in a peaceful strike.” The Committee further stated that “the detention of trade unionists for reasons connected with their activities in defense of the interests of workers constitutes a serious interference with civil liberties in general and with trade union rights in particular.”

c. Arbitrary detention of Rubén González

According to the Inter-American Court of Human Rights, “no one shall be subject to detention or imprisonment for *causes* or by means *that*—even though they may be characterized as legal—could be reputed as *incompatible with the respect to fundamental human rights*, due to, among others, their *irrationality, unpredictability or lack of proportionality*.”

Therefore, the trial or the criminal case against González for the commission of four crimes constitutes an illegal action, by both the judge and public prosecutor that restricts and criminalizes the right to strike and the freedom of association. The detention of González as part of a process of these characteristics is irrational, unpredictable, lacks proportionality, and is inconsistent with the American Convention on Human Rights.

The illegality of this trial, and its contradiction of the exercise of freedom of association, casts its effects over the whole legal process, making the detention of González, arbitrary, in accordance to the American Convention on Human Rights.⁹⁷

Therefore, the detention of González is arbitrary and violates Article 7 of the American Convention on Human Rights.

E. Conclusions

Rubén González, secretary general of Sintraferrominera, has been accused, detained, imprisoned, and prosecuted exclusively for exercising his right to freely associate for labor purposes in Venezuela.

From August 12-26, 2009, González led a peaceful strike of the workers of Ferrominera, complaining of the company’s failure to comply with a collective bargaining agreement signed on January 5, 2009, and ratified on June 1, 2009. As a result of the strike, González was indicted for the

⁹⁷ Along the same lines, in the *Case Usón Ramírez v. Venezuela* the Court stated: “the tribunal that tried Mr. Usón Ramírez lacked jurisdiction and impartiality, essential prerequisites to due process. The effects of this situation are projected to all of the proceeding, rendering it defective from the beginning, and to the consequences derived from it. In that regard, any act of a tribunal that manifestly lacks competence that results in a restriction or deprivation of personal liberty, such as those that occurred in the present case to the detriment of Mr. Usón Ramírez, lead to the consequent violation of Article 7(1) of the American Convention.”

crimes of unlawful assembly, violation of the freedom to work, violation of a security zone, and public incitement to commit crimes.

These accusations and the criminal proceedings against González are in violation of the Organic Labor Law, which recognizes the legitimate ends of labor union activities and strikes, and the Organic Penal Procedure Code, which establishes the minimum statutory requirements for a criminal case.

The actions of the public prosecutor and the judge sitting on González's case also violate the international standard of protection of freedom of association. According to this international law standard, reprisals against a worker for exercising his legitimate right to strike, constitute a violation of freedom of association, as guaranteed by Article 16 of the American Convention on Human Rights.

In this regard, the Committee on Freedom of Association of the ILO has stressed that "no one should be deprived of their freedom or be subject to penal sanctions for the mere fact of organizing or participating in a peaceful strike." The Committee further stated that "the detention of trade unionists for reasons connected with their activities in defense of the interests of workers constitutes a serious interference with civil liberties in general and with trade union rights in particular."

The illegal actions of the public prosecutor and the judge regarding the case of González violate the international human rights law standard of protection of freedom of association, freedom of movement, and the right to personal liberty.

These actions make the Venezuelan State responsible for the violation of Articles 7, 16 and 22 of the American Convention on Human Rights, as interpreted by the Inter-American Court of Human Rights and the principles of the Committee on Freedom of Association of the ILO.