



**International Convention on  
the Elimination  
of all Forms of  
Racial Discrimination**

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COMMITTEE ON THE ELIMINATION  
OF RACIAL DISCRIMINATION

**REPORTS SUBMITTED BY STATES PARTIES UNDER  
ARTICLE 9 OF THE CONVENTION**

**Eighteenth periodic reports of States parties due in 2004**

**Addendum**

**VENEZUELA\* \*\* \*\*\***

[14 June 2004]

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\* This document contains the fourteenth to eighteenth periodic reports of Venezuela, due on 4 January 1996, 1998, 2000, 2002 and 2004 respectively, submitted in one document. For the tenth to thirteenth periodic reports, submitted in one document, and the summary records of the meetings at which the Committee considered those reports, see document CERD/C/263/Add.8/Rev.1 and CERD/C/SR.1169-1170 and 1172.

\*\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

\*\*\* Annexes to the report may be consulted in the secretariat's files.

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**CONSOLIDATED REPORT OF THE BOLIVARIAN REPUBLIC  
OF VENEZUELA IN ACCORDANCE WITH ARTICLE 9 OF THE  
INTERNATIONAL CONVENTION ON THE ELIMINATION OF  
ALL FORMS OF RACIAL DISCRIMINATION**

**Part One**

**GENERAL - COUNTRY INFORMATION - POLITICAL ORGANIZATION**

**I. INFORMATION ON THE BOLIVARIAN REPUBLIC OF VENEZUELA**

1. The most recent census was conducted in November 2001, and recorded a total population of 23,054,210: 11,402,869 men, and 11,651,351 women.

**II. GENERAL POLITICAL STRUCTURE**

**A. Historical summary**

2. The process of Venezuela's formation as an independent State began with two interrelated events: the incidents of 19 April 1810, when colonial ties were broken off with the metropolitan country, Spain; and the Declaration of Independence by the 1811 Congress on 5 July 1811. The period between 19 April 1810 and late July 1812 was known as the First Republic, which ended when the republican territory was reconquered by Spanish forces and which was re-established in August 1813 by Simón Bolívar when he entered Caracas as the victor following the Admirable Campaign.
3. The period from August 1813 to December 1814 was known as the Second Republic, which ended with the events that went from the Oriente Emigration in mid-1814 until the battles of Urica and Maturín in December 1814. The Third Republic covered the period from 1817 to 1819, during which Bolívar and the other patriotic authorities referred officially to the Republic of Venezuela.
4. From 1819 until January 1830, Venezuela was part of Gran Colombia, which also consisted of what are now the Republics of Colombia, Panama and Ecuador. Venezuela recovered its status as an independent nation when it separated from Gran Colombia, an event known as La Cosiata. General José Antonio Páez was named President by the Congress of Valencia and, in his capacity as President, General-in-Chief and private individual, he was the depository of national power until 1848. He did not act despotically, however, but respected institutions, freedom of opinion and the separation of powers.
5. When Gómez died in 1935, power was assumed by his Minister of War, General Eleazar López Contreras, who gradually led the country towards a regime of greater freedoms. During López Contreras' term of office (1935-1941) and that of his successor, Isaías Medina Angarita (1941-1945), spectacular progress was made in improving public health and sanitation and political liberalization was considerable. With the establishment of freedom of the press, freedom of association and freedom of opinion, many newspapers came out, trade unions were established and modern political parties were founded. The Labour Act was promulgated

in 1936, the Central Bank of Venezuela was founded in 1939, social security was instituted in 1940 and income tax in 1942. In 1943, a new Hydrocarbons Act was adopted, giving the State fuller participation in oil production. From 1945 to 1948, a number of tax reforms increased the State's share of oil revenue by up to 50 per cent.

6. A revolt by civilians and members of the military overthrew President Medina Angarita in October 1945. The Government Junta headed by Rómulo Betancourt, the Democratic Action leader, called elections. The party's candidate, the teacher and writer, Rómulo Gallegos, was elected President in late 1947 and was deposed by the armed forces in November 1948. The leader of the military Junta which took power was Carlos Delgado Chalbaud, who was assassinated two years later. The Junta called elections in 1952 and they were won by the opposition. Marcos Pérez Jiménez, who had been a prominent figure since the October 1945 movement, ignored the results of the elections and took power, claiming that he was acting on behalf of the armed forces.

7. Marcos Pérez Jiménez was overthrown in 1958 by a military and popular movement and power was assumed by a Government Junta presided over successively by Vice-Admiral Wolfgang Larrazábal and Dr. Edgar Sanabria. The Venezuelan democratic era began at that time and is still continuing. The Government Junta called elections, which were won by Rómulo Betancourt, the Democratic Action leader. Betancourt served as constitutional President from 1959 to 1964 in difficult political, economic and social circumstances, but he managed to strengthen democracy. From 1964 to 1969, the office of President was held by his fellow party member, Raúl Leoni, who was also elected in free elections and handed over the office in 1969 to the winning candidate of the main opposition party (the Social Christian COPEI), Rafael Caldera, whose term of office ended in 1973. His Government based its policy of industrialization on a foundation of internal peace, reflected in the elimination of the guerrilla movements through the peace process.

8. In the presidential elections held in 1973, Carlos Andrés Pérez, the Democratic Action candidate, was elected President for the period 1974-1979. The elections were held at the time of the new Venezuelan oil boom, which was the result of the boycott by the Arab countries. Immediately after taking power (March 1974), the new President announced that he intended to nationalize the oil companies and the iron ore mining companies and he did so in 1975. The new oil earnings enabled President Pérez to launch an economic plan for the industrialization of the country.

9. In 1978, the COPEI candidate, Luis Herrera Campins, won the presidential elections and took office in March 1979. In the context of a serious economic and social crisis characterized by the country's heavy indebtedness and high unemployment figures, the Democratic Action candidate, Jaime Lusinchi, won in the 1983 elections and took office as President in February 1984. During the 1988 elections in Venezuela, the winner was the government candidate and former President, Carlos Andrés Pérez. His term of office was constitutionally ended in 1993. The Congress appointed Ramon José Velázquez as interim President; his term ended in December 1993. The former President, Rafael Caldera, stood in the December 1994 presidential elections and was successful.



10. In the most recent presidential elections in December 1998, Lieutenant-Colonel Hugo Rafael Chávez Frías was elected President. In the period of government since, impetus has been given to far-reaching political, economic and social changes, brought about in particular by a National Constituent Assembly. A new Constitution entered into force in December 1999, and the Fifth Bolivarian Republic of Venezuela was thus established.

11. In response to the Committee's recommendations, Venezuela made the declaration provided for in article 14 of the Convention.

### **B. Type of government**

12. In accordance with the Constitution of Venezuela, adopted in December 1999, "Venezuela is established as a democratic and social State subject to the rule of law and justice; as the higher values of its legal system and its activity, it advocates life, liberty, justice, equality, solidarity, democracy, social responsibility and, in general, the pre-eminence of human rights, ethics and political pluralism."<sup>1</sup>

13. Government authority is divided between municipal, State and national authority. National government authority is divided among the legislative, executive, judicial and citizen and electoral branches.<sup>2</sup>

14. The national executive branch is headed by the President of the Republic, the Executive Vice-President of the Republic and the ministers and other officials determined by the Constitution and the laws.<sup>3</sup>

15. Legislative authority is exercised by the National Assembly, which is composed of a single Chamber of Deputies. The deputies are elected in each federal district by universal, direct, personal and secret ballot, with proportional representation, according to a population base of 1.1 per cent of the total population of Venezuela.<sup>4</sup>

16. The judicial branch is composed of the Supreme Court and other courts which the law may establish, the Office of the Public Prosecutor, the Office of the Ombudsman, criminal investigation bodies, court officers and officials, alternative means of justice, citizens who take part in the administration of justice in accordance with the law and lawyers authorized to practise.<sup>5</sup>

17. The authority of the citizen branch is exercised by the Republican Moral Council, which is composed of the Ombudsman, the Public Prosecutor and the Controller-General of the Republic,<sup>6</sup> one of whom is appointed by the Republican Moral Council.

18. The authority of the electoral branch is exercised by the National Electoral Council, as governing body, and the National Electoral Board, the Civil and Electoral Register Commission and the Political Participation and Finance Commission, as subordinate bodies.<sup>7</sup>

### **C. Executive branch**

19. The executive branch is headed by the President of the Republic, the Executive Vice-President and the Cabinet ministers, as well as officials determined by the Constitution.

### **President of the Republic**

20. The President of the Republic is Head of State and of the national executive and, as such, conducts government activity.

21. The person elected as President of the Republic must be Venezuelan by birth, have no other nationality, be over 30 years of age and a layman, must not have been convicted by means of a final judgement and must comply with the other requirements provided for in the Constitution.

22. The President shall be elected by universal, direct and secret ballot, in accordance with the law. The candidate who receives the majority of valid votes will be elected.

23. No person holding the post of Executive Vice-President, minister, governor or mayor, on the day when his candidature is submitted or at any time between that date and the election, may be elected President of the Republic.

24. The presidential term of office is six years. The President of the Republic may be re-elected for one further consecutive term of office.

25. The candidate elected assumes office as President of the Republic on 10 January of the first year of his constitutional term of office and is sworn in before the National Assembly.

26. The President of the Republic is responsible for his acts and for fulfilling the obligations inherent in his office. He is required to safeguard the rights and freedoms of Venezuelans and the independence, integrity, territorial sovereignty and defence of the Republic.<sup>8</sup> The functions of the President are:

- (a) To comply with and ensure compliance with the Constitution and the law;
- (b) To conduct government activity;
- (c) To appoint and dismiss the Executive Vice-President and to appoint and dismiss ministers;
- (d) To conduct Venezuela's foreign affairs and conclude and ratify international treaties, conventions and agreements;
- (e) To lead the armed forces in his capacity as Commander-in-Chief, exercising supreme authority over them and determining their size;
- (f) To act as Commander-in-Chief of the armed forces, promote officers above the rank of colonel or captain (naval) and appoint them to posts at his discretion;
- (g) To declare states of emergency and decree any restriction or suspension of guarantees in the cases provided for by the Constitution;
- (h) To issue law-ranking decrees, with prior authorization by an empowering statute;

- (i) To convene the National Assembly for special sessions;
- (j) To regulate laws, wholly or partially, without changing their spirit, purpose or reason;
- (k) To administer public finances;
- (l) To negotiate national loans;
- (m) To order additional budget allocations, with the authorization of the National Assembly or the Delegate Committee;
- (n) To enter into national contracts, in accordance with the Constitution and the law;
- (o) To appoint the Attorney-General of the Republic and the heads of permanent diplomatic missions with the prior authorization of the Senate or the Delegate Committee;
- (p) To appoint and dismiss officials whose appointment is entrusted to him by the Constitution and the law;
- (q) To address special reports or messages to Congress, either in person or through the Executive Vice-President;
- (r) To formulate the National Development Plan and monitor its implementation, with the prior authorization of the National Assembly;
- (s) To grant pardons;
- (t) To establish the number, organization and jurisdiction of ministries and other national public administration bodies and the organization and operation of the Council of Ministers, in accordance with the principles and guidelines embodied in the relevant organization act;
- (u) To dissolve the National Assembly, as provided for in the Constitution;
- (v) To call for referendums in the cases for which the Constitution provides;
- (w) To convene and preside over the National Defence Council;
- (x) All other functions provided for in the Constitution and the laws.<sup>9</sup>

### **Executive Vice-President**

27. The Executive Vice-President is the direct and immediate associate of the President of the Republic in his capacity as head of the national executive. The Executive Vice-President has to meet the same requirements as the President of the Republic and cannot be related to him by blood or marriage.<sup>10</sup> The functions of the Executive Vice-President are:

- (a) To collaborate with the President of the Republic in conducting government activity;
- (b) To coordinate the national public administration in accordance with the instructions of the President of the Republic;
- (c) To propose the appointment and dismissal of ministers to the President of the Republic;
- (d) To preside over the Council of Ministers with the authorization of the President of the Republic;
- (e) To coordinate relations between the national executive and the National Assembly;
- (f) To preside over the Government Federal Council;
- (g) To appoint and dismiss, in accordance with the law, national officials whose appointment is not assigned to another authority;
- (h) To replace the President of the Republic during temporary absences;
- (i) To perform the duties delegated to him by the President of the Republic;
- (j) The other functions provided for in the Constitution and the laws.<sup>11</sup>

### **Ministers**

28. Ministers come directly under the President of the Republic and, together with him and the Executive Vice-President, form the Council of Ministers.
29. The meetings of the Council of Ministers are presided over by the President of the Republic or, in his absence, by the Executive Vice-President. In the latter case, the decisions taken must be approved by the President of the Republic.
30. The Executive Vice-President and the ministers present are jointly responsible for the decisions of the Council of Ministers, except those they voted against.<sup>12</sup>
31. A minister must have Venezuelan nationality and be over 25 years of age, except as otherwise provided in the Constitution.
32. Ministers are responsible for their acts, in accordance with the Constitution and the law, and, in the first 60 days of each year, must submit a full and substantiated report to the National Assembly on the management of their ministries during the previous year, in accordance with the law.
33. Ministers have the right to speak in the National Assembly and its committees. They may take part in National Assembly debates, but without the right to vote.<sup>13</sup>

34. The ministries of the Republic of Venezuela are the following:
- Ministry of the Interior and Justice;
  - Ministry of Foreign Affairs;
  - Ministry of Finance;
  - Ministry of Defence;
  - Ministry of Production and Trade;
  - Ministry of Education, Culture and Sport;
  - Ministry of Health and Social Development;
  - Ministry of Labour;
  - Ministry of Infrastructure;
  - Ministry of Energy and Mines;
  - Ministry of the Environment and Natural Resources;
  - Ministry of Planning and Development;
  - Ministry of Science and Technology;
  - Cabinet Office.

#### **Office of the Attorney-General of the Republic**

35. The Office of the Attorney-General of the Republic advises on, defends and represents, judicially and extrajudicially, the patrimonial interests of the Republic and is consulted for the approval of contracts in the national public interest.
36. The Office of the Attorney-General is the responsibility of the Attorney-General of the Republic, with the collaboration of such other officials as its organization act may determine.
37. The Attorney-General of the Republic must meet the same requirements as a Supreme Court judge. He is appointed by the President with the authorization of the National Assembly and may attend the meetings of the Council of Ministers, with the right to vote.<sup>14</sup>

#### **Council of State**

38. The Council of State is the high-level advisory body of the Government and the national public administration. Its responsibility is to recommend national policies on matters which the President of the Republic considers to be of particular importance and on which he requires its opinion. The relevant act determines its functions and duties.

39. The Council of State is presided over by the Executive Vice-President and, in addition to five persons appointed by the President of the Republic, is composed of a representative appointed by the National Assembly, a representative appointed by the Supreme Court and a governor appointed by the group of State representatives.<sup>15</sup>

#### **D. Legislative branch**

40. National legislative power is exercised by the National Assembly, which is made up of deputies elected in each federal district by universal, direct, personal and secret ballot, with proportional representation, on a population base of 1.1 per cent of Venezuela's total population. Each federal district also elects three deputies. The indigenous people of the Republic of Venezuela elect three deputies in accordance with the Electoral Act and in keeping with their traditions and customs.

41. At present, there are 165 deputies in the National Assembly, 149 of whom are men (88.84 per cent) and 16 are women (9.69 per cent). The Ordinary Committee on Legislation and 15 standing working committees are also in operation:

The Standing Committee on Domestic Policy, Justice, Human Rights and Constitutional Guarantees;

The Standing Committee on Foreign Policy;

The Standing Treasury Inspection Committee;

The Standing Finance Committee;

The Standing Committee on Energy and Mines;

The Standing Committee on Defence and Security;

The Standing Committee on Integrated Social Development;

The Standing Committee on Education, Culture, Sports and Recreation;

The Standing Committee on the Environment, Natural Resources and Land Management;

The Standing Committee on Indigenous Peoples;

The Standing Committee on Citizen Participation, Decentralization and Regional Development;

The Standing Committee on Science, Technology and Social Communication;

The Standing Committee on Economic Development;

The Standing Committee on the Family, Women and Young People;

The Standing Committee on Administration and Public Services.

The National Assembly has the following functions:

- (a) To legislate on national issues and the functioning of the various branches of national government;
- (b) To propose amendments and reforms to the Constitution, as provided for therein;
- (c) To monitor the Government and the national public administration, as provided for in the Constitution and the law; the evidence obtained in the exercise of this duty has probative value under the conditions laid down by law;
- (d) To organize and promote citizen participation in matters within its jurisdiction;
- (e) To issue general pardons;
- (f) To debate and adopt the national budget and any bill on the system of taxation and public funding;
- (g) To authorize additional budget allocations;
- (h) To approve the general outline of the national economic and social development plan, which the executive submits in the third quarter of the first year of every constitutional period;
- (i) To authorize the executive to conclude national contracts in cases provided for by law; to authorize municipal, State and national public contracts with foreign States or official bodies or companies not registered in Venezuela;
- (j) To take a vote of censure against the Executive Vice-President and ministers. The censure motion may be debated only two days after its submission to the Assembly, which may decide, by a majority of three fifths of the deputies, that the vote of censure means the removal from office of the Executive Vice-President or the minister concerned;
- (k) To authorize the deployment of Venezuelan military missions abroad or foreign missions in Venezuela;
- (l) To authorize the executive to alienate property in the private domain of the nation, with such exceptions as may be provided for by law;
- (m) To authorize the acceptance by public officials of posts, honours or recompense from foreign Governments;
- (n) To authorize the appointment of the Attorney-General of the Republic and the heads of permanent diplomatic missions;
- (o) To award the honours of the National Pantheon to illustrious Venezuelans for outstanding services to the Republic, 25 years after their death; such a decision may be taken by the President of the Republic, two thirds of state Governors and the rectors of the national universities in plenary;

- (p) To protect the interests and independence of the states;
- (q) To authorize the President of the Republic to leave the national territory for more than five consecutive days;
- (r) To adopt by law international treaties or conventions concluded by the national executive, except as provided for in the Constitution;
- (s) To enact its regulations and enforce the penalties provided for in them;
- (t) To register its members and consider their resignation; the temporary separation of a deputy may be approved only by a vote of two thirds of the deputies present;
- (u) To organize its internal security service;
- (v) To approve and implement its budget, bearing in mind the country's financial constraints;
- (w) To implement decisions relating to its functioning and administrative organization;<sup>16</sup>
- (x) All other functions provided for in the Constitution and the laws.

42. The National Assembly appoints standing, ordinary and ad hoc committees. The standing committees, of which there are no more than 15, deal with sectors of national activity. The National Assembly may also establish temporary research and study committees, in accordance with its regulations. It may establish or abolish standing committees by a two thirds vote of its members.<sup>17</sup>

43. The Delegate Committee, composed of the President, the Vice-Presidents and the chairmen of the standing committees, is in operation during the Assembly's recess. The functions of the Delegate Committee are the following:

- (a) To convene special sessions of the National Assembly, when a matter is of such importance as to require it;
- (b) To authorize the President of the Republic to leave the national territory;
- (c) To authorize the national executive to order additional funding;
- (d) To appoint temporary committees composed of members of the Assembly;
- (e) To exercise the investigation functions assigned to the Assembly;
- (f) To authorize the national executive to establish, modify or suspend public services in the event of proven emergency, by a two thirds vote of its members;
- (g) Other functions provided for by the Constitution and the laws.



### **E. Judiciary**

44. The power to administer justice derives from the people and is exercised on behalf of the Republic by authority of the law. It is the responsibility of the judiciary to hear cases and matters within its jurisdiction by means of procedures established by law and to enforce or ensure the enforcement of its judgements.<sup>18</sup>

45. The system of justice is composed of the Supreme Court, the other courts established by law, the Office of the Public Prosecutor, the Office of the Ombudsman, criminal investigation bodies, court officers and officials, citizens who take part in the administration of justice in accordance with the law and lawyers authorized to practise.

#### **Article 254 of the Constitution of Venezuela**

The judiciary is independent and the Supreme Court of Justice shall enjoy functional, financial and administrative autonomy. In the general State budget, the system of justice shall be assigned a variable annual allocation of not less than 2 per cent of the ordinary national budget so that it may function appropriately; this allocation may not be reduced or changed without prior authorization by the National Assembly. The judiciary is not empowered to establish rates or duties or to require any payment for its services.

46. Admission to a judicial career and the promotion of judges are determined by public competitive examination to ensure the suitability and excellence of candidates, who are selected by panels from circuit courts in the form and under the conditions laid down by law. The appointment and swearing-in of judges is the responsibility of the Supreme Court. The law guarantees the participation of the people in the selection and appointment of judges. Judges may be removed or suspended from their posts only by means of procedures specifically provided for by law. The law encourages the professionalization of judges and universities cooperate in this regard by organizing the relevant judicial specialization in university law studies.

47. Under the law, judges are personally responsible for negligence, delay or unjustified omissions, for substantive failure to comply with procedural rules, for denial of justice and partiality and for the offences of bribery and perversion of justice in the performance of their duties.<sup>19</sup>

48. The law organizes the system of community justices of the peace. Justices of the peace are elected by universal, direct and secret ballot, in accordance with the law. The law promotes arbitration, reconciliation, mediation and any other alternative means of settling disputes.<sup>20</sup>

#### **Supreme Court**

49. The work of the Supreme Court is carried out by its Plenary Division and by the Constitutional, Political and Administrative and Electoral Divisions and the Civil, Criminal and Social Appeals Divisions, the personnel and jurisdiction of which are specified in its organization act. The Social Appeals Division deals with appeals on agricultural, labour and juvenile matters.

50. The requirements to be a Supreme Court judge are:

To be of Venezuelan nationality by birth;

To be a citizen in recognized good standing;

To be a lawyer of recognized ability, to have a good reputation, to have practised law for a minimum of 15 years and to have completed a postgraduate course in law; or to have taught law in a university for a minimum of 15 years and to be a full professor; or to be or to have been a high-level judge in the specialization of the division to which the application is being made, with a minimum of 15 years' practice in the judicial service and recognized expertise in the performance of his duties;

Any other requirements established by law.<sup>21</sup>

The functions of the Supreme Court are:

(a) To exercise constitutional jurisdiction in accordance with title VIII of the Constitution;

(b) To declare whether or not there is a case for the prosecution of the President of the Republic or the acting President and, if so, to continue hearing the case, with the authorization of the National Assembly, until the final sentence is handed down;

(c) To declare whether or not there is a case for the prosecution of the Vice-President of the Republic, members of the National Assembly or of the Supreme Court itself, ministers, the Attorney-General, the Public Prosecutor, the Controller-General of the Republic, the Ombudsman, governors, generals and admirals of the national armed forces or heads of diplomatic missions and, if so, to transmit the records of the proceedings to the Public Prosecutor or the acting Public Prosecutor, as appropriate; and, in the case of an ordinary offence, to continue hearing the case until the final sentence is handed down;

(d) To settle adjudication disputes which may arise between the Republic, a federal state, a municipality or another public body when the other party is one of these entities, except in the case of disputes between municipalities in the same state, in which case the law may assign the case to another court;

(e) To declare regulations and other general and individual administrative acts by the national executive totally or partially null and void, where appropriate;

(f) To hear motions on the interpretation of the content and scope of legal texts, as provided for by law;

(g) To settle conflicts of jurisdiction between courts, whether ordinary or special courts, when there is no other court at the same or a higher level in the legal hierarchy;

(h) To hear appeals;

(i) Other functions which may be assigned to it by law.<sup>22</sup>

### **Prison System**

51. The State guarantees a prison system that ensures the rehabilitation of prisoners and respects their human rights. Prisons therefore have work, study, sports and recreation areas; they are run by professional prison staff with university qualifications; they are governed by a decentralized administration that is answerable to state or municipal governments and may be privatized. In general, preference is given to an open regime and to a system of prison farms. Non-custodial sentences are applied in preference to terms of imprisonment. The State establishes post-prison assistance institutions to enable former prisoners to reintegrate into society and encourages the establishment of autonomous prisons with an exclusively technical staff.<sup>23</sup>

### **F. Citizen Branch**

52. The citizen branch exercises its authority through the Republican Moral Council, which is composed of the Ombudsman, the Public Prosecutor and the Controller-General of the Republic.

53. In accordance with the Constitution and the law, citizen branch bodies are responsible for the prevention, investigation and punishment of acts contrary to public ethics and administrative morals, for ensuring good management and legality in the use of public assets, for compliance with and the implementation of the principle of legality in all State administrative activity and for the promotion of education as the creative force behind citizenship, solidarity, freedom, democracy, social responsibility and employment.<sup>24</sup>

### **Office of the Ombudsman**

54. The Office of the Ombudsman is responsible for the promotion, defence and monitoring of the rights and guarantees provided for in the Constitution and international human rights treaties and the legitimate, collective and broad interests of citizens.

55. The Office functions in accordance with the Principles relating to the status of national institutions,<sup>25</sup> a circumstance that confers an institutional legitimacy permitting advocacy of human rights at the international level and coordination with the relevant international mechanisms and bodies. In this context the Office of the Ombudsman ensures follow-up to recommendations by international human rights bodies.

56. The Office has established a national network comprising 25 state offices and 7 sub-offices, which allows human rights complaints and incidents to be reported first-hand. In parallel it supports educational activities and activities on the promotion of human rights for officials responsible for applying the law and for the populous at large with the aim of increasing awareness of their rights and enforcement mechanisms.

57. The Ombudsman, who is appointed for a single seven-year term, is in charge of and responsible for the Ombudsman's Office.

58. The Ombudsman must be Venezuelan and over 30 years of age, with proven and demonstrated competence in human rights matters, and must meet the requirements of good reputation, ethics and morality provided for by law. Any misconduct by the Ombudsman will be dealt with in accordance with the law.<sup>26</sup> The Ombudsman's functions are:

(a) To ensure full respect for and guarantees of the human rights provided for in the Constitution and the international human rights treaties, conventions and agreements ratified by the Republic; and to investigate, officially or at the request of another party, complaints brought to his attention;

(b) To ensure the proper functioning of public services by supporting and protecting the rights and legitimate, collective and broad interests of individuals against arbitrary acts, abuses of power and errors committed in providing such services, taking legal action, where necessary, to obtain compensation from the State for any loss or injury caused by the operation of the services in question;

(c) To bring actions of unconstitutionality, *amparo*, habeas corpus, habeas data and other actions or remedies required for the exercise of his functions;

(d) To urge the Public Prosecutor to bring such actions or remedies as may be necessary in respect of public officials responsible for any violation or impairment of human rights;

(e) To request the Republican Moral Council to adopt such measures as may be necessary in respect of public officials responsible for any violation or impairment of human rights;

(f) To request the competent body to apply the appropriate corrective measures and penalties for violations of the rights of the consumer and user public, in accordance with the law;

(g) To submit bills and other initiatives to municipal, state and national legislative bodies for the progressive protection of human rights;

(h) To ensure the rights of indigenous peoples and exercise the necessary options to guarantee and protect them effectively;

(i) To visit and inspect offices and establishments belonging to state bodies in order to protect human rights and prevent violations;

(j) To make recommendations and observations to the relevant bodies for the fuller protection of human rights; to this end, it will establish permanent machinery for communication with national and international public and private human rights bodies;

(k) To promote and implement policies for the dissemination and effective protection of human rights.<sup>27</sup>

## **Office of the Ombudsman Guiding Principles:**

### *Promotion*

59. The functions of the Office comprise:

(a) Submission of proposals and recommendations to government bodies for the promotion and effective protection of human rights, improvement of institutional practice and notification of major deficiencies;

(b) Information and training function, bringing together community-based activities and the establishment of a culture of peace and tolerance, as well as training activities for officials at institutions responsible for guaranteeing and protecting human rights. In this connection activities are conducted to train and raise awareness among officials, especially those involved in sensitive human rights areas, in the administration of justice, and, more generally, in areas involving public services.

### *Monitoring*

60. The monitoring function is discharged through investigations performed at the initiative of the Office or at the request of another party, and through oversight of public bodies. In this connection the Office of the Ombudsman hears cases involving administrative failures and malpractice, and issues recommendations and rulings to end them and improve the functioning of the various administrations. The monitoring function includes a preventive aspect to bring about the progressive eradication of public practice that is arbitrary or that undermines human rights.

### *Defence*

61. The defence function is conducted through the hearing of complaints and reports, the opening of investigations, and by means of mediation, conciliation, persuasion and judicial action. The Office brings judicial actions for the protection of human rights and broad community interests should conciliation not be successful or in the event of urgent need. The Office also brings actions, as required, for the full or partial voiding of laws that violate constitutional rights and rights recognized under international human rights instruments.

62. Similarly, the Office participates in the discussion of regulations and legislation so as to ensure, in the context of this process, that legislation about to be adopted is in accordance with constitutional and universal principles for the protection of human rights.

## **Office of the Public Prosecutor**

63. The Office of the Public Prosecutor is under the direction and responsibility of the Public Prosecutor, who performs his duties with the direct assistance of such officials as the law may determine.

64. The Public Prosecutor must meet the same eligibility requirements as Supreme Court judges. The Public Prosecutor is appointed for a seven-year term.<sup>28</sup> The functions of the Office are:

- (a) To guarantee, in legal proceedings, respect for constitutional rights and safeguards and for the international treaties, conventions and agreements signed by the Republic;
- (b) To guarantee the promptness and smooth functioning of the administration of justice, pre-trial proceedings and due process;
- (c) To order and conduct criminal investigations of punishable acts in order to record any circumstances of their commission which may affect the classification and responsibility of the offenders and other participants and to secure any material evidence related to the commission of such acts;
- (d) To bring criminal actions on behalf of the State in cases in which the request of a party is not required, with such exceptions as may be provided for by law;
- (e) To bring such actions as may be appropriate to invoke such civil, labour, military, criminal, administrative or disciplinary responsibility as may be incurred by public officials in the performance of their duties;<sup>29</sup>
- (f) Other functions assigned to the Office by the Constitution and the law.

#### **Office of the Controller-General of the Republic**

65. The Office of the Controller-General of the Republic is the body which monitors, supervises and inspects income, expenditure, public and national assets and related operations. It enjoys functional, administrative and organizational autonomy and conducts its activities on the basis of inspecting the bodies and entities under its control.

66. The Office of the Controller-General of the Republic is under the direction and responsibility of the Controller-General of the Republic, who must be of Venezuelan nationality, over 30 years of age and have experience and proven ability for the post. The Controller-General of the Republic is appointed for a seven-year term.<sup>30</sup> The Office of the Controller-General of the Republic has the following functions:

- (a) Monitoring, supervising and inspecting income, expenditure and public assets and related operations, without prejudice to the powers which may be assigned to other bodies in the case of states or municipalities, in accordance with the law;
- (b) Monitoring the public debt, without prejudice to the powers which may be assigned to other bodies in the case of states and municipalities, in accordance with the law;
- (c) Inspecting bodies, entities and legal persons in the public sector subject to its control, conducting inspections, arranging for investigations into irregularities in respect of public assets and ordering measures, formulating objections and imposing administrative penalties as necessary, in accordance with the law;

(d) Urging the Public Prosecutor to bring lawsuits as necessary as a result of breaches and offences against public assets of which he may be informed in the performance of his duties;

(e) Monitoring the management of and assessing compliance with and the results of decisions and public policies relating to income, expenditure and property adopted by bodies, entities and legal persons in the public sector under its control.<sup>31</sup>

### **G. Electoral Branch**

67. The authority of the electoral branch is exercised by the National Electoral Council as the governing body, and the National Electoral Board, the Civil and Electoral Register Commission and the Political Participation and Finance Commission as subsidiary bodies, which are organized and operate in accordance with the relevant organization act. The functions of the electoral branch are:

(a) To formulate rules to give effect to electoral laws and resolve any doubts to which they may give rise and make good any shortcomings which they may contain;

(b) To draw up its budget, which it negotiates directly with the National Assembly and administers independently;

(c) To issue guidelines on political and electoral finance and publicity and apply penalties in the event of non-compliance;

(d) To declare elections totally or partially invalid;

(e) To organize, administer, manage and monitor all acts relating to the election of representatives of the people to public posts, as well as referendums;

(f) To organize the elections of trade unions, professional associations and political organizations as provided for by law. It may also organize elections for other civil organizations at their request or by order of the Electoral Division of the Supreme Court. The corporations, entities and organizations referred to herein cover the costs of their election processes;

(g) To maintain, organize, manage and monitor the civil and electoral register;

(h) To organize the registration of political organizations and ensure that they comply with the provisions relating to them contained in the Constitution and the law; in particular, it takes decisions on applications for the establishment, renewal or abolition of political organizations and the identification of their lawful authorities and their provisional titles, colours and symbols;

(i) To monitor, regulate and investigate the funds of political organizations.

68. The bodies of the electoral branch guarantee the equality, reliability, impartiality, transparency and efficiency of elections, the entitlement to vote and proportional representation.<sup>32</sup>

### III. GENERAL REGULATORY FRAMEWORK FOR THE PROTECTION OF HUMAN RIGHTS

69. The Republic of Venezuela guarantees every person, in accordance with the principle of progressivity and without any discrimination, the irrevocable, indivisible and interdependent enjoyment and exercise of human rights. Respect for and guarantees of these rights are mandatory for public bodies in accordance with the Constitution, the human rights treaties signed and ratified by the Republic and the laws giving effect to them.<sup>33</sup>

70. The enunciation of the rights and guarantees contained in this Constitution and in international human rights instruments is not to be understood as negating other rights which, being inherent in the individual, are not expressly contained therein. The absence of any law regulating these rights does not impair their exercise.<sup>34</sup>

71. The human rights treaties, covenants and conventions signed and ratified by Venezuela have constitutional status and take precedence in domestic law insofar as they contain provisions on the enjoyment and exercise of such rights which are more favourable than those established by the Constitution and the laws of the Republic and are immediately and directly applicable by the courts and other public bodies.<sup>35</sup>

72. Any act issued in the exercise of public authority which breaches or impairs the rights guaranteed by the Constitution and the laws is null and void and public officials ordering or implementing it incur criminal, civil or administrative liability depending on the circumstances, and may not avail themselves of the excuse of orders from a superior.<sup>36</sup>

73. All persons have access to agencies for the administration of justice in order to assert their rights and interests, even where these are collective or broad; they have the right to the effective protection of these rights and to obtain a prompt decision concerning them. The State guarantees free, accessible, impartial, appropriate, transparent, autonomous, independent, responsible, fair and speedy justice, without undue delays, formalities or unnecessary repetitions.<sup>37</sup>

74. Every person has the right to the protection of the courts in the enjoyment and exercise of constitutional rights and guarantees, including those inherent in the individual and not expressly provided for in the Constitution and international human rights instruments. The procedure for the constitutional action of *amparo* is oral, public, brief, free of charge and free of formality and the competent legal authority is empowered to restore forthwith the legal situation impaired or to institute the situation that resembles it most. Action may be taken on it at any time and the court gives it preferential treatment over any other matter.

75. An action for the judicial protection (*amparo*) of liberty or security may be filed by any person and the detainee is immediately placed without further delay in the custody of the court. The exercise of this right may not be affected in any way by the declaration of a state of emergency or the restriction of constitutional guarantees.<sup>38</sup>

76. The State is required legally to investigate and punish human rights offences committed by its authorities. Actions to punish crimes against humanity, serious human rights violations



and war crimes are not time-barred. Violations of human rights and crimes against humanity are investigated and tried by the ordinary courts. Such offences are excluded from privileges which may allow them to go unpunished, such as pardons and amnesties.<sup>39</sup>

77. The State has an obligation to guarantee full compensation to the victims of human rights violations and their beneficiaries, including the payment of damages. Legislative and other measures must also be taken to ensure the payment of the compensation ordered; the victims of ordinary offences are protected and efforts made to ensure that those responsible repair the damage caused.<sup>40</sup>

78. Every person has the right, in accordance with the human rights treaties, covenants and conventions ratified by the Republic, to address petitions or complaints to the international bodies established for the purpose in order to request protection of his human rights. In accordance with procedures established in the Constitution and the laws, the necessary measures are to be adopted to give effect to decisions by international bodies.<sup>41</sup>

79. In accordance with article 337 of the Constitution, the President may, in the Council of Ministers, declare a state of emergency. Circumstances of a social, economic, political, natural or ecological nature which seriously affect the security of the nation, its institutions and its people and in respect of which the powers available to deal with such events are inadequate are classified as states of emergency. In such cases, the guarantees established in the Constitution may be temporarily restricted, except those relating to the right to life, the prohibition of solitary confinement and torture, the right to due process, the right to information and other intangible human rights.

80. The decree declaring the state of emergency, which regulates the exercise of the right whose guarantee is restricted, must, within eight days of its issue, be submitted to the National Assembly or the Delegate Committee for consideration and approval and to the Constitutional Division of the Supreme Court for a decision concerning its constitutionality. The decree must comply with the requirements, principles and guarantees provided for in the International Covenant on Civil and Political Rights and in the American Convention on Human Rights. The President of the Republic may request its extension for the same period of time and it may be revoked by the National Executive or by the National Assembly or its Delegate Committee before the end of the period if the causes that gave rise to it cease to exist.

81. The declaration of a state of emergency does not interrupt the functioning of government bodies.<sup>42</sup>

#### **IV. AUTHORITIES HAVING JURISDICTION IN HUMAN RIGHTS MATTERS**

##### **A. National executive authorities**

82. Recognizing the need for the establishment, existence and activities of national institutions for the promotion and protection of human rights - a long-standing universal concern - the Republic of Venezuela has been promoting the establishment and strengthening of institutions of various kinds, origins, aims and scope, including those referred to below.

### **National Human Rights Commission**

83. The National Human Rights Commission was established by Presidential Decree No. 3,152 in accordance with article 19 of the Central Government Organization Act. The decree was published in the *Official Gazette* of the Republic of Venezuela, No. 36,616, of 7 January 1999, on the basis of the human rights agreements and commitments ratified by Venezuela and in accordance with the responsibility of the national executive for the drafting of plans and programmes to promote and protect human rights, to monitor them and to assess their implementation.

84. The National Human Rights Commission has the following functions and duties:

- (a) To assist the President of the Republic in formulating human rights policies;
- (b) To collaborate with the national executive in drafting plans and programmes for the promotion and protection of human rights, to monitor them and to assess their implementation;
- (c) To recommend to the national executive the implementation of measures it deems necessary for resolving human rights problems and the fulfilment of international obligations;
- (d) To contribute, together with the national executive, to the preparation of studies, reports and replies for submission to international human rights bodies and non-governmental organizations (NGOs) and to participate in the coordination of programmes implemented with these bodies;
- (e) To advise the national executive on cases submitted to the Commission and to the Inter-American Court of Human Rights;
- (f) To receive and process complaints submitted on alleged human rights violations. For this purpose, it may request information and documents, formulate such recommendations as it deems relevant and refer action taken to the competent bodies;
- (g) To cooperate with the Office of the Public Prosecutor in promoting and protecting human rights;
- (h) To submit an annual report to the President of the Republic on the human rights situation in Venezuela and make the necessary recommendations;
- (i) To cooperate with the national executive in preparing and drafting human rights education programmes and to promote the inclusion of human rights subjects and specializations in undergraduate and postgraduate courses in universities and higher education institutes;
- (j) To represent the country at conferences, forums, seminars and national and international meetings, when invited to do so;

(k) To appoint sub-committees and groups of experts within or outside the National Human Rights Commission for the better performance of its functions;

(l) To propose the draft budget to the national executive.

85. Venezuela's ratification of international human rights conventions makes it clear that the institutional machinery for the promotion of respect for these rights and freedoms is to be found at the highest political level, where appropriate procedures are established for ensuring their recognition and their universal and effective implementation with the participation of civil society, through teaching and education and the involvement of the necessary technical and management coordination staff.

86. The Government of Venezuela recognizes the National Human Rights Commission as the permanent government body whose role is to advise the national executive and coordinate its activity in all domestic and international human rights matters.

87. In this context, the National Human Rights Commission coordinated the formulation of a national human rights plan on the occasion of the commemoration of the fiftieth anniversary of the Universal Declaration of Human Rights and called on organizations of civil society to take part in the design and formulation of the plan, which will enable policies to be implemented to guarantee the promotion, protection and dissemination of human rights and human rights education.

88. It should be mentioned that, once the Ombudsman's Office is established, the Commission's objective will be to disseminate and promote human rights and not to defend them.

89. At the time of writing this report, the Commission was not active, although had functioned from its inception until 2000.

90. The Government intends to reactivate the national Commission, to which end consultations have been held with the various national bodies constituting the Commission at the time of its establishment; its future sphere of competence once reactivated is under study, in accordance with the relevant provisions of the 1999 Constitution.

### **Ministry of Foreign Affairs**

#### **International Policy Department**

#### **Human Rights Unit**

91. This Unit was established in 1994 to prepare Venezuela's position on human rights in international forums. Its functions are: to follow up on decisions adopted by international bodies; to coordinate and draft Venezuela's periodic reports under the international human rights instruments the Republic has signed; to reply to requests for information from international organizations and complaints of alleged human rights violations in coordination with the

Government Representative to international forums; to maintain communication with national and foreign non-governmental human rights organizations; to disseminate nationally the international commitments undertaken by the Republic; and to contribute to public awareness-raising and education in order to promote respect for human rights and prevent violations.

### **Ministry of the Interior and Justice**

#### **Human Rights Department**

92. This Department was reactivated in December 2003 following a period of inactivity and was allocated budget resources to achieve its objectives of promoting, defending and protecting human rights.

### **Ministry of Defence**

#### **Human Rights and International Humanitarian Law Department**

93. This Department was established in October 1997 for the purpose of involving all military personnel in studying, learning about, disseminating and implementing human rights principles and giving advice to the armed forces of Venezuela on policies, doctrines and other activities relating to human rights and international humanitarian law.

#### **Metropolitan Police Commissioner for Human Rights**

94. This post was established in November 1995 with jurisdiction for the Federal District and the municipalities of Miranda State, which make up the Caracas metropolitan area. The Commissioner was appointed by the Governor of the Federal District for a five-year term; his functions include receiving complaints by citizens of human rights violations. It should be noted that in view of the political and territorial changes introduced in the 1999 Constitution, the country is now divided into states, the federal capital, federal dependencies and federal territories. The post of Commissioner was occupied for several years, but at present is not filled.

#### **Office of the Government Representative for Human Rights**

95. The functions of the Government Representative are to represent the Government in cases before the Inter-American system of human rights (Inter-American Commission on Human Rights and Inter-American Court of Human Rights); to represent the Government before United Nations treaty bodies; to formulate the government response to complaints and allegations submitted to human rights bodies by complainants and petitioners; to liaise with national bodies and courts to gather the information required in each case; to conduct negotiations and reach agreements in cases submitted to settlement procedures; to submit applications for inadmissibility or closure of cases, as appropriate; and other duly authorized acts in the discharge of his functions.

## **B. Judicial authorities**

### **Supreme Court**

96. The Supreme Court is competent to deal with cases of the protection of rights (*amparo*) and to declare laws and other administrative acts unconstitutional. Article 266, paragraphs 1, 5, 6 and 8, of the Constitution establish the functions of the Supreme Court as follows: to exercise constitutional jurisdiction in accordance with title VIII of the Constitution; to declare totally or partially null and void regulations and other general or individual administrative acts by the national executive, where appropriate; to hear motions concerning the interpretation of the content and scope of legal terms, as provided for by law; to hear appeals.

## **C. Citizen branch**

97. The citizen branch has the following functions: to prevent, investigate and punish acts contrary to public and administrative ethics and morals; to ensure good management and legality in the use of public assets; to comply with and apply the principle of legality in all State administrative activity and promote education as the creative force behind citizenship, solidarity, liberty, democracy, social responsibility and employment. It exercises its authority through the Republican Moral Council, composed of the Ombudsman, the Public Prosecutor and the Controller-General of the Republic.

### **Office of the Ombudsman**

98. The functions of the Office of the Ombudsman are:

(a) To ensure full respect for and guarantees of the human rights provided for in the Constitution and the international human rights treaties, conventions and agreements ratified by the Republic, and to investigate, officially or at the request of another party, complaints brought to his attention;

(b) To ensure the proper functioning of public services by supporting and protecting the rights and legitimate, collective and broad interests of individuals against arbitrary acts, abuses of power and errors committed in providing such services, taking legal action, where necessary, to obtain compensation from the State for any loss or injury caused by the operation of the services in question;

(c) To bring actions for unconstitutionality, *amparo*, habeas corpus, habeas data and other actions or remedies required for the exercise of his functions;

(d) To urge the Public Prosecutor to bring such actions as may be necessary in respect of public officials responsible for any violation or impairment of human rights;

(e) To request the Republican Moral Council to adopt such measures as may be necessary in respect of public officials responsible for any violation or impairment of human rights;

(f) To request the competent body to apply the appropriate corrective measures and penalties for violations of the rights of the consumer and user public, in accordance with the law;

(g) To submit bills and other initiatives to municipal, state and national legislative bodies for the progressive protection of human rights;

(h) To ensure the rights of indigenous peoples and exercise the necessary options to guarantee and protect them effectively;

(i) To visit and inspect offices and establishments belonging to state bodies in order to protect human rights and prevent violations;

(j) To make recommendations and observations to the relevant bodies for the fuller protection of human rights; to this end, it will establish permanent machinery for communication with national and international public and private human rights bodies;

(k) To promote and implement policies for the dissemination and effective protection of human rights.

#### **Office of the Public Prosecutor**

99. The functions of the Office of the Public Prosecutor are: to guarantee in legal proceedings respect for constitutional rights and safeguards and for the international treaties, conventions and agreements signed by the Republic; and to bring such actions as may be appropriate to invoke such civil, labour, military, criminal, administrative or disciplinary responsibility as may be incurred by public officials in the performance of their duties.

#### **Office of the Controller-General of the Republic**

100. Pursuant to article 289, paragraphs 3 and 4, of the Constitution, the functions of the Office of the Controller-General of the Republic are: to inspect bodies, institutions and legal persons in the public sector under its control; to conduct inspections, arrange for investigations into irregularities in respect of public assets, and order measures, formulate objections and impose administrative penalties as necessary, in accordance with the law; and to urge the Public Prosecutor to bring lawsuits as necessary as a result of breaches and offences against public assets of which he may be informed in the performance of his duties.

### **Part two**

## **INFORMATION RELATING TO ARTICLES 2 TO 7 OF THE CONVENTION**

### **I. BACKGROUND**

101. In accordance with its obligation as a State party to the International Convention on the Elimination of All Forms of Racial Discrimination, the Government of the Bolivarian Republic of Venezuela, which is bound by article 9 of the Convention, hereby submits, in one document, its eleventh, twelfth, thirteenth and fourteenth reports.

102. The general recommendations made by the Committee during its consideration of previous reports have been taken into consideration in the preparation of this report. Contributions were sought from bodies established by the State for the purpose of giving effect to the provisions of the Convention in Venezuela.

103. Racially discriminatory concepts, categories and actions have loomed large throughout history, right up to the present day: there has been discrimination on grounds of race, ethnicity, physical and biological attributes such as skin colour or blood group, and cultural background. This has given rise to inequality, discrimination and domination by one group which defines itself as superior or as having more, or more legitimate, rights than other groups - groups which it devalues and excludes, putting in place cultural, social, political and even institutional systems and mechanisms of domination that block equal access to the benefits of economic and social development for large segments of humanity.

104. For many years Venezuela was convinced that, after centuries of racial intermingling and homogenization - Spanish and indigenous for the most part, with a dash of African in certain regions - its society had reached a state of ethnic homogeneity that reflected what we believed was a social democracy where there was no place for discrimination between Venezuelans on grounds of physical or cultural characteristics.

105. However, in the closing years of the last century, this ideologically-inspired false consciousness was discredited by the dawning awareness of a deep-seated and spreading social inequality, reflected in the polarization between a privileged minority that did not answer to any particular ethnic description, and a marginalized majority not so very different from that minority in racial terms, yet which formed an underclass condemned to poverty, disease, malnutrition, unemployment, exclusion from education and increasing social vulnerability: Venezuela's social crisis could no longer be hidden. This crisis culminated in a peaceful collective decision by the electorate in 1999 which heralded a change of political class and the development and launch of an alternative social and political project, in a break with an ignominious past. From this new awareness sprang a novel concept of participatory, proactive, popular democracy, one which corrects the structural deficiencies of representative democracy and aims at the full realization of human rights for the excluded majorities condemned by the system to exploitation, poverty and social marginalization.

106. Under the old regime, in the historical context of the late twentieth century, racial discrimination, wielded as an ideological tool, had been pretext for excluding ever larger segments of society, such as women, children and adolescents, and indigenous populations, who found themselves in dire poverty and abandoned by the State. Using an arsenal of ethnically pejorative terms to disqualify poor, destitute or indigenous people as racially inferior and mentally disabled, the country's rulers constantly reinforced what they called social marginalization, which they accepted as an incurable condition.

107. Thus the extreme poverty in which not only men, but women, children and adolescents and indigenous people found themselves, revealed how the State had abandoned these majorities within society, not on the basis of sex, age or racial characteristics, but by reason of the abyss of poverty in which they barely survived, and from which the Bolivarian Republic of Venezuela has made it a political and social priority to rescue them.

108. The State made half-hearted and inadequate attempts to protect abandoned children and adolescents during the last century, establishing towards the end of the Second World War, and under the Ministry of Education, an institute for the protection of children, which later became the National Children's Institute (INAM). However, the Institute gradually degenerated into a depository or detention centre for abandoned children, more like a prison and indeed run by prison officials whose sole policy was punishment and ill-treatment. In the end it was not uncommon to hear news of children running away from these so-called State children's homes, where they had been ill-treated and, far from being socialized into productive citizens, turned into criminals and irredeemable social pariahs.

109. For the majority of Venezuelan women - and particularly the poorest and most disadvantaged of them - there had never previously been any State institutions, much less any public policies, to help them assert or exercise their rights to equal treatment. Indigenous peoples, too, living in areas where the State was rarely, if ever, present or active, were consistently left to their fate, with no benefits or rights whatsoever as Venezuelan citizens. The State has always divested itself of all objective responsibility for such groups, delegating it through the Missions Act and agreements with the Holy See to foreign missions whose work in the areas of health and education did nothing to lift these people out of material poverty.

110. The demise of "negation of the other", as a reflection of social rejection and discrimination, dates from 1998 and the introduction of the public policies of the Bolivarian Republic of Venezuela, which heralded the project for political and social change now embodied in the world's most advanced constitution.

111. Venezuela has made significant progress in the area of government policy, placing special emphasis on the elimination of racial discrimination from the moment the current President, Hugo Rafael Chávez Frías, took office in 1999; it was in that year that the Constituent Assembly, in consultation and cooperation with the citizenry at large, produced a draft constitution that, for the first time in Venezuela's political history, was adopted by the people, in a referendum held on 15 December 1999, as the Constitution of the Bolivarian Republic of Venezuela.<sup>43</sup>

112. In this new legal order, human rights are given constitutional rank under the highest law in the land: the preamble to the Constitution establishes the universal principles that should govern the Republic, guaranteeing the universality and indivisibility of human rights; similarly, title III, "On Duties, Human Rights and Guarantees" stipulates in chapter I, "General Provisions", article 19, that the State shall guarantee to every person, in accordance with the principle of progressivity and without any discrimination, the irrevocable, indivisible and interdependent enjoyment and exercise of human rights. Respect for and guarantees of these rights are mandatory for public bodies in accordance with the Constitution, the human rights treaties signed and ratified by the Republic, and the laws through which these are applied.<sup>44</sup>

113. All persons are guaranteed equality before the law, and no discrimination on grounds of race, sex, belief or social status or any other discrimination is permitted which impairs the enjoyment or exercise, in conditions of equality, of the rights and freedoms of any individual, as stipulated in article 21: "No discrimination on grounds of race, sex, belief or social status shall



be permitted, or any other discrimination which in general has as its aim or effect the denial or impairment of the recognition, enjoyment or exercise, in conditions of equality, of the rights and freedoms of any individual.”

114. The law shall ensure the legal and administrative conditions which make equality before the law real and effective, and shall take positive measures on behalf of persons or groups who may be discriminated against, marginalized or vulnerable; in particular, it shall protect those persons who find themselves in a situation of manifest weakness by reason of any of the conditions specified above, and shall punish any abuses or ill-treatment to which they may be subjected.<sup>45</sup>

115. The Constitution includes important provisions on all potential harm or discrimination against individuals, and pays special attention to population groups that hitherto have not enjoyed the protection of the State.

116. In the preamble to the 1999 Constitution and in the Basic Principles, the Venezuelan State lays the foundations of Venezuelan society: “... democracy, participation, leadership; a multi-ethnic, multicultural society; a just, federal, decentralized State which embodies the values of freedom, independence, peace, solidarity, the common good, territorial integrity, coexistence and the rule of law, for this and coming generations; and which guarantees the right to life, work, culture, education, social justice and equality without discrimination or subjection of any kind ...”.

117. The overriding aims of the Venezuelan State are the protection and development of the individual, as a human being of integrity and worthy of every respect.

118. The power of the people has made it possible to begin implementing the constitutional provisions on social inclusion, the first requirement for which was the peaceful transfer of power, through the ballot box, from the political oligarchy which for nearly 200 years had been responsible for the indifference and discrimination with which Venezuela’s majorities had been treated and for the disregard of their human rights. This has now resulted in the paradox that it is not the Venezuelan State but the ousted ruling minorities - who still retain a degree of power through their ownership of the media and their ability to manipulate information - who practise racial discrimination in violation of professional and international legal and ethical standards, through their messages on television and in the press; this point, which deserves the attention and study of the United Nations Commission on Human Rights, is borne out by the various articles that have appeared in the Venezuelan press over the last two years, making specific reference to the working-class sectors that support the present Government of Venezuela.

## **II. ARTICLE 2**

### **A. Policies adopted to eliminate racial discrimination**

119. The Bolivarian Republic of Venezuela is a democratic social State founded on the rule of law and on justice, and guarantees to every natural and legal person, without discrimination, the inalienable, indivisible and interdependent respect, enjoyment and exercise of the human rights, fundamental freedoms and constitutional guarantees established in the Constitution of the

Bolivarian Republic of Venezuela and in the international treaties, covenants and conventions signed and ratified by the Republic; the latter take precedence in domestic law to the extent that their provisions regarding the enjoyment and exercise of such rights are more favourable than those established by the Constitution and the laws of the Republic, and they are immediately and directly applicable by the courts and other public bodies.

120. The Venezuelan State has a duty to investigate, punish and compensate violations of human rights through the competent national or international judicial authorities, in accordance with the judicial procedures established in Venezuela's legal order.

121. In this context, mention should be made of the following constitutional provisions on protection of human rights and discrimination in Venezuela:

**Article 2.** Venezuela is established as a democratic and social State subject to the rule of law and justice; it champions life, liberty, justice, equality, solidarity, democracy, social responsibility and, in general, the pre-eminence of human rights, ethics and political pluralism, as the highest values of its legal system and of its own functioning.

**Article 19.** The State shall guarantee to every person, in accordance with the principle of progressivity and without any discrimination, the irrevocable, indivisible and interdependent enjoyment and exercise of human rights. Respect for and guarantees of these rights are mandatory for public bodies in accordance with the Constitution, the human rights treaties signed and ratified by the Republic, and the laws through which they are applied.

**Article 21.** All persons are equal before the law. Consequently:

1. No discrimination on grounds of race, sex, belief or social status or any other discrimination shall be permitted which in general has as its aim or effect the denial or impairment of the recognition, enjoyment or exercise, in conditions of equality, of the rights and freedoms of any individual.

2. The law shall establish legal and administrative conditions to ensure that equality before the law is real and effective, and shall take positive measures on behalf of persons or groups who may be discriminated against, marginalized or vulnerable; in particular, it shall protect those persons who, because of any of the conditions specified above, are in a situation of manifest weakness and shall punish any abuses or ill-treatment to which they may be subjected.

3. With the exception of diplomatic forms of address, only the term "citizen" shall be used.

4. Titles of nobility and hereditary distinctions are not recognized.

**Article 22.** The enunciation of the rights and guarantees contained in this Constitution and in the international human rights instruments shall not be understood as negating other rights which, being inherent in the individual, are not expressly contained therein. The absence of any law regulating these rights does not impair the exercise thereof.

**Article 23.** The human rights treaties, covenants and conventions signed and ratified by Venezuela have constitutional status and take precedence in domestic law to the extent that their provisions regarding the enjoyment and exercise of such rights are more favourable than those established by this Constitution and the laws of the Republic, and they are immediately and directly applicable by the courts and other public bodies.

**Article 27.** Every person is entitled to the protection of the courts in the enjoyment and exercise of constitutional rights and guarantees, even those inherent in the person which are not expressly mentioned in the Constitution or in international human rights instruments.

The procedure for the constitutional action of *amparo* shall be oral, public, brief, free of charge and free of formality and the competent legal authority is empowered to restore forthwith the legal situation impaired or to institute the situation that resembles it most.

**Article 29.** The State is required to investigate and punish by law human rights offences committed by its authorities.

Actions to punish crimes against humanity, serious human rights violations and war crimes are not time-barred. Violations of human rights and crimes against humanity shall be investigated and tried by the ordinary courts. Such offences are excluded from privileges which may allow them to go unpunished, such as pardons and amnesties.

**Article 30.** The State has an obligation to grant full compensation to the victims of human rights violations and their beneficiaries, including the payment of damages.

**Article 31.** Every person has the right, in accordance with the human rights treaties, covenants and conventions ratified by the Republic, to address petitions or complaints to the international bodies established for the purpose in order to request protection of their human rights.

In accordance with procedures established in the Constitution and the law, the State shall adopt the necessary measures to give effect to decisions of the international bodies referred to in this article.

### **III. ARTICLE 3**

#### **A. Publicizing rights in order to prevent situations of discrimination (2000-2003)**

##### **Children's and families' rights**

122. The Venezuelan State, which is at the forefront of efforts to protect and promote human rights, has adopted an Organization Act for the Protection of Children and Adolescents which complies fully with the Convention on the Rights of the Child and has been effectively implemented by the Government; it has been instrumental in establishing a comprehensive system for the protection of children and adolescents, which has improved their social situation in respect of the enjoyment and exercise of their human rights.

123. Venezuela ratified the Convention on the Rights of the Child on 29 August 1990, incorporating it into its own legislation; from that time onwards the State has undertaken to provide comprehensive protection for children and adolescents in two areas, legal and social. To that end, it first brought the domestic legal order into line with the new regime and laid the foundations for a national system for the protection of children and adolescents that would ultimately realize and guarantee the rights of the Convention for all children and adolescents in Venezuela.

124. Both the Constitution and the Organization Act incorporate the new programmatic, political and technical paradigms in this field and endow the State with a new institutional framework within which to guarantee the rights of all children and adolescents in the country, based on the doctrine of comprehensive protection.

125. In this context, article 78 of the Constitution stipulates that the State, families and society shall give absolute priority to ensuring the full protection of children and adolescents, and to that end shall take into account their best interests in decisions and actions that concern them. In order to promote their gradual incorporation into active citizenship, the State has established, through the Organization Act (*Official Gazette*, No. 5,266 (special issue) of 2 October 1998; entry into force 1 April 2000), a national system for the comprehensive protection of children and adolescents, to be overseen by the National Council for Children's and Adolescents' Rights.

126. The adoption and entry into force of the Organization Act and the establishment, by that Act, of the National Council for Children's and Adolescents' Rights to oversee the child protection system, underpin Venezuela's efforts to implement the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter referred to as the Convention) in respect of children and adolescents.

127. For example, the Act contains provisions to prevent all forms of discrimination against children and adolescents. To that end, it goes beyond racial discrimination against children and adolescents and regulates other forms of discrimination, on such grounds as sex, ethnic origin or religion. These provisions of the Act form the context for the work of the National Council and of other bodies within the child protection system, which are guided in all their operations by the principle of non-discrimination. This principle cuts across all the rights recognized to children and is therefore incorporated into all programmes, plans, projects and policies produced by the National Council for Children's and Adolescents' Rights and the child protection system.

128. In terms of publicity and promotion for children's, adolescents' and family rights, the following items have been distributed: more than 5,000 leaflets giving instructions on civil registration; 5,000 leaflets on national adoption; 1,000 on the National Council for Children's and Adolescents' Rights; 6,000 on rights and duties; 5,000 on the right to information; 20,000 on identity; 10,000 on travel authorizations; 5,000 on the competencies of the Public Defender's Office; and 60 copies of a study of sexual abuse and commercial sexual exploitation in Venezuela. Publicity drives of this kind familiarize public officials, NGO activists and the public at large with the various aspects of children's and adolescents' rights and obligations, and remind them of the priority given to these rights and the fact that it is unlawful to disregard or discriminate against children and adolescents.

129. Information workshops on children's and adolescents' communication rights have been developed in the media faculties of the Central University of Venezuela and the University of Zulia. Support has also been provided for the development of training workshops for media communicators and alternative media in the area of children's and adolescents' rights in Caracas, Zulia and Falcón.

130. A print run of 43,000 copies of the Organization Act for the Protection of Children and Adolescents has been distributed nationwide.

131. Radio announcements and printed materials have been produced, and special events organized, to promote and publicize children's and adolescents' rights.

132. A series of 39 audio-visual programmes was produced, covering the following subjects: the national system for the comprehensive protection of children and adolescents; building citizenship; early schooling; the World Summit for Children; events involving children; the situation of child and adolescent workers in Venezuela; eco-regional events; adoption; human development indicators; children's rights; transfer of funds; Christmas campaign; indigenous football championships; institutional responses to the 2002 nationwide strike call; advertising spots to promote and reinforce the draft law on social responsibility in radio and television; spots to reinforce the child protection system and promote children's and adolescents' rights; and institutional spots to strengthen and sensitize those working within the child protection system.

133. The Ministry of the Interior and Justice, through the Department of Civil Registration and Aliens, made changes in the approach to the registration of children and adolescents, in order to provide them with access in accordance with their needs (officers in schools and special registration officers); this is essential if this group is to be fully integrated into society and their rights effectively safeguarded. The Ministry has pressed for improvements in the civil registration service for children and adolescents, including the effective introduction of speedy, no-cost processing, which allows the effective exercise of the right to an identity, registration and filiation, as well as all rights inherent in the human person.

#### **Organization Act for the Protection of Children and Adolescents: legal points relating to discrimination**

134. The purpose of this Act, as set forth in article 1, is "to guarantee to all children and adolescents within the national territory the exercise and the full and effective enjoyment of their rights and guarantees, through the comprehensive protection that the State, society and the family must provide for them from the moment of their conception".

135. One of the basic principles of the Act, as set forth in article 3, is the principle of equality and non-discrimination, according to which: "The provisions of this Act apply equally to all children and adolescents, without any discrimination on grounds of race, colour, sex, age, language, ideas, conscience, religion, beliefs, culture, political or other kind of opinion, financial status, social, ethnic or national origin, disability, illness, birth or any other condition of the child or adolescent, or of their parents, representatives or guardians, or of their relatives."

136. Special emphasis is placed on equal rights for children and adolescents belonging to Venezuela's ethnic minorities, including the indigenous population:

**Article 36.** Cultural rights of minorities: All children and adolescents have the right to enjoy their own cultural life, to profess and practise their own religion and beliefs, and to use their own language, particularly those belonging to ethnic, religious, linguistic or indigenous minorities.

**Article 60.** Education of indigenous children and adolescents: The State shall guarantee to all indigenous children and adolescents educational regimes, plans and programmes which promote respect for, and the conservation of, their own cultural life, the use of their own language and access to knowledge generated by their own cultural group. The State shall make sufficient provision for financial resources to enable this obligation to be met.

The same applies to children and adolescents with special needs.

**Article 29.** Rights of children and adolescents with special needs: All children and adolescents with special needs shall enjoy all the rights and guarantees established and recognized by this Act, in addition to those arising from their specific circumstances. The State, the family and society shall guarantee them the full development of their personality to their maximum potential, and a fulfilling and dignified life. With the active participation of society, the State shall guarantee them:

Comprehensive welfare, rehabilitation and integration programmes;

Care, guidance and welfare programmes for their families;

Continuing publicity, guidance and social promotion campaigns on their specific circumstances, aimed at the community and with a view to their care and integration.

Education of children and adolescents with special needs.

**Article 61.** The State shall guarantee educational arrangements, regimes, plans and programmes specifically for children and adolescents with special needs. With the active participation of society, it shall also guarantee to such children and adolescents the full and effective enjoyment of their right to education and access to educational services. The State shall make sufficient provision for financial resources to enable this obligation to be met.

137. As to other civil rights, the Act provides for the rights indicated below for all children and adolescents, in accordance with the aforementioned principles.

138. Right to a name and a nationality, to an identity and to official identification papers; the right to know their parents and be cared for by them; the right to an adequate standard of living, to the full development of their personality, to personal integrity, to protection against abuse and sexual exploitation, to freedom of thought, conscience and religion, to personal liberty and to

freedom of movement; to health and health services and information, particularly in respect of sexual and reproductive health appropriate to their level of development; the right to social security, to education and involvement in the education process; to rest, recreation and leisure; the right to honour and a good reputation; and to their own self-image, a private life and a family environment; the right to freedom of expression, to information and to an education critical of the media; to express their opinion and to be heard; the right to participate; the right of assembly, in public or in private; the right to demonstrate and to freedom of association; the right of petition and of defence of their rights; the right to a defence and due process; to humane and dignified treatment; to employment protection; to join a trade union and to strike; and the right to holidays.

139. National child protection system. In order to guarantee children's and adolescents' rights in accordance with the principles of inclusion, interdependence and non-discrimination, Venezuela's child protection system operates nationwide and comprises administrative and judicial bodies, the Public Prosecutor's Office and offices for the care and defence of children and adolescents, all of which cater for children within their own sphere of competence.

140. Councils on children's and adolescents' rights. These are the bodies that administer the child protection system; they are responsible, inter alia, for monitoring the implementation of the various collective rights of all children and adolescents within their geographical jurisdiction (state or municipality).

141. Child and adolescent protection councils. These bodies are responsible for providing protection in the event of a threat to or violation of the individual rights or guarantees of one or more children or adolescents. Their main task is to adopt measures of protection. Every year they assist more than 300,000 families with problems relating to maintenance, identity, ill-treatment, visiting rights, travel authorizations and arbitrary exclusion; 50 per cent of cases are resolved through conciliation, a basis of no cost, equal treatment and non-discrimination, which represents a step forward in the application of the doctrine of protection and of the new constitutional paradigm.

142. Children's and adolescents' ombudsmen. This is a public interest service established for the purpose of promoting and defending the rights of all children and adolescents.

143. Courts. The courts are responsible for settling any cases of violation, threat and/or impairment to children's and adolescents' rights that may be brought by public administrations, the Public Prosecutor's Office, NGOs or private individuals.

144. Office of the Public Prosecutor. The Public Prosecutor's Office is responsible for monitoring implementation of all children's and adolescents' rights in administrative and judicial procedures.

145. Programmes. A series of activities for all children and adolescents carried out by individuals or bodies for the purposes of education, protection, care, training, social investment, or strengthening emotional ties or other values. The child protection system runs programmes in the following areas: welfare; support and guidance; family placement; rehabilitation and prevention; identification; training and skills development; localization; shelter; communication; socio-educational; promotion and defence; and cultural.

146. Care institutions. These are public interest bodies that run programmes and apply measures and sanctions. They may be constituted in any form permitted by law, i.e. as State, private or mixed organizations or associations.

147. Child and adolescent protection funds. The Child and Adolescent Protection Fund is the total of financial and non-financial resources available at the national, state and municipal level for the implementation of programmes, initiatives and services for the protection and care of children and adolescents. Its purpose is to help improve the quality of life for all children and adolescents, particularly those at risk of violations of their rights.

### **Children's and adolescents' right to health**

148. The right to health implies living in a healthy environment where bodily and mental health can be maintained, access to basic services which facilitate capacity, and sustained, stable economic growth which promotes greater productivity, all of which certainly results in improved living conditions for children and adolescents; access to comprehensive health services has therefore been expanded to ensure that no child or adolescent is excluded or suffers discrimination by reason of their circumstances.

149. Another important point regarding the elimination of racial discrimination and the recognition of rights to previously excluded groups such as children and adolescents, is that the child and adolescent protection system under the Constitution and the Organization Act for the Protection of Children and Adolescents<sup>46</sup> is intended to protect and care for all children and adolescents; it also establishes the means of ensuring the effective enjoyment of their rights and guarantees, as well as compliance with legal obligations towards this very vulnerable group which has been subjected to all forms of discrimination and suffered ill-treatment and abuse.

150. Children and adolescents have effectively been granted rights protecting them from all acts of discrimination and opening up new areas for participation, such as the right to free, active and full participation in the family and community, and in social, school, scientific, cultural, sporting and recreational life, and to gradual incorporation into active citizenship.<sup>47</sup>

151. Indigenous children and adolescents, too, are protected under the Act: "The State shall guarantee to all indigenous children and adolescents educational regimes, plans and programmes which promote respect for, and the conservation of, their own cultural life, the use of their own language and access to knowledge generated by their own cultural group. The State shall make sufficient provision for financial resources to enable this obligation to be met."<sup>48</sup>

### **Programmes, plans and projects to eliminate various forms of discrimination**

152. Various intersectoral programmes, plans and projects have been developed or adapted to help in eliminating various forms of discrimination, through the bodies mentioned below.

153. Incorporation of a rights perspective into the programmes run by the bodies of the Ministry of Health and Social Development, such as the National Children's Institute and the National Autonomous Service for the Comprehensive Care of Children and the Family (SENIFA).



154. Coordination with the Ministry of Health and Social Development to develop the special protection and care plan for children and adolescents in situations of [omitted in original] and Street Children.
155. Incorporation of the principle of comprehensive protection into the curricula of the various levels and sectors within primary, secondary and vocational education.
156. Design of the “*Moral y luces*” (Morality and enlightenment) project to guarantee the right to education of adolescents nationwide serving socio-educational sanctions.
157. Formation of Ministry of Education, Culture and Sports-National Council for Children’s and Adolescents’ Rights monitoring and coordination committees in 24 educational areas (24 states), which drew up action plans for the promotion of the human rights of children, adolescents and families in each state. The main strategy in these action plans is to promote, publicize and provide training in the human rights of children and adolescents through three programmes: (a) living together in school and community; (b) adapting the curriculum; and (c) education ombudsmen. One concrete outcome of these plans has been the establishment and launch of 79 education ombudsmen’s offices around the country. The aim of these plans is to comprehensively guarantee the right to education of all children and adolescents and reduce the occurrence of situations of arbitrary exclusion and discrimination in educational establishments.
158. Coordination of implementation of the National Education Plan, with special emphasis on indigenous and rural children and adolescents in schools and on children and adolescents deprived of a family environment.
159. Coordination of initiatives directed towards the conclusion of an agreement; and preparation of plans for the protection of child and adolescent workers.
160. Participation and follow-up: national programme for child and adolescent workers.
161. In 2003 alone, 14 coordination meetings on care and protection were held with the Public Prosecutor’s Office, the Office of the Ombudsman and the independent public defender system, in line with initiatives in areas such as health, identity, adolescent workers, education, street children, sexual abuse and commercial sexual exploitation. As can be seen, the Government is taking a proactive approach to the defence of rights, ensuring the realization of rights through preventive action. A priority in this context is the training of public defenders.
162. Meetings and technical working groups to produce an initial document on guidelines for programmes on prevention, protection and social rehabilitation and integration.
163. Meetings and technical working groups to coordinate action to standardize approaches to care and the implementation of protective measures.
164. Meetings and technical working groups to coordinate action to draft and implement protection programmes.

165. Coordination with care institutions to standardize the approaches used in adapting protection plans, programmes and projects and the adolescent criminal responsibility system.

166. In the areas of research, consultation, promotion and establishment of national priorities for the comprehensive protection of children and adolescents, seven eco-regional events around the National Economic and Social Development Plan and the Strategic Protection Plan (2000-2006) were held in the cities of Cumaná, Barquisimeto, Barinas, San Cristóbal, Puerto Ayacucho, Maracay and Ciudad Bolívar, with the participation of State and private bodies and citizens' networks, in the protection regions; the aim was to analyse the situation of children's and adolescents' rights at the national level, exchange experiences, strengthen the protection networks and plot the progress made by the administrative bodies that make up the protection system.

167. Implementation of the Ministry of Education, Culture and Sports-National Council for Children's and Adolescents' Rights National Plan for Human Rights Promotion, Dissemination and Training, through a workshop entitled "Human rights education in teacher training in primary I and II schools in the capital region".

168. Project "*Los derechos a mi medida*" (Rights in my size). This project, which involves educators, families and promoters, aims to publicize and defend children's rights in pre-school establishments nationwide. One of the initial strategies is to establish national, regional and municipal networks for communication and action on rights and comprehensive care for children, by linking schools up with state and municipal ombudsman's offices and rights councils.

169. "Pre-school education, a basic human right." A joint project to be developed by the National Council for Children's and Adolescents' Rights and the Ministry of Education, Culture and Sports, to guarantee the right to pre-school education as a basic right.

170. National Plan on Identity. During the past year, the National Council for Children's and Adolescents' Rights, the United Nations Children's Fund (UNICEF), the Ministry of Health and Social Development and the Ministry of the Interior and Justice have launched a series of joint initiatives to ensure the registration and identification of Venezuela's children and adolescents. Not only does the plan safeguard the right to an identity of large segments of the country's child and adolescent population, it will also, as it continues during the current year, set up hospital birth-registration units that will enable children born in hospitals and health centres to be registered and identified, thereby protecting their right to an identity.

171. Analysis, awareness-raising and training project on the rights of children and adolescents living on the Colombia-Venezuela border. The aim is to make a comprehensive, in-depth study of the situations of threats/impairment/violation of the rights of children and adolescents on Venezuela's western border, and at the same time raise awareness and provide training to members of the protection system and border communities, empowering the main actors involved in safeguarding and protecting the rights of children, adolescents and families living on the Colombia-Venezuela border. The project is currently in the analysis phase.

**Policy guidelines on prevention of discrimination against  
children and adolescents (2000-2003)**

172. In this area, guidelines and directives are understood to mean policies to safeguard the rights of children, adolescents and families and to facilitate the cultural, institutional and paradigmatic changes needed in order to build citizenship. The National Council for Children's and Adolescents' Rights has developed the following guidelines to help prevent situations of exclusion and discrimination.

173. Guidelines to ensure no-cost procedures for obtaining identification papers for children and adolescents. These guidelines aim to safeguard the no-cost principle for procedures and actions relating to children and adolescents, as set forth in the Convention on the Rights of the Child and the Organization Act for the Protection of Children and Adolescents, and in accordance with the doctrine of social justice that lies at the heart of the Venezuelan Constitution. The application of the no-cost principle to all procedures affecting children and adolescents ensures that this group can obtain documentation without finding themselves discriminated against or excluded from procedures of various kinds by reason of social or economic inequities.

174. Guidelines to protect children's and adolescents' right to sport, rest, leisure, play and recreation. These guidelines are designed to help guarantee these rights to all children and adolescents on a comprehensive basis.

175. Guidelines to guarantee the enforceability of human rights and the application of measures of protection in matters affecting children and adolescents. These guidelines aim to enable citizens to claim and exercise their rights in the interests of all children and adolescents.

*Note: This information on the development of guidelines, plans, projects, programmes and publicity campaigns does not cover all the work carried out by the National Council for Children's and Adolescents' Rights from 2000 to date. It covers initiatives developed or implemented to prevent situations of exclusion or discrimination that may affect Venezuela's children and adolescents and at the same time safeguard and protect children's and adolescents' rights on a basis of equality and inclusion.*

176. The National Council for Children's and Adolescents' Rights has established guidelines to ensure priority and preferential allocation of resources to areas related to children's and adolescents' rights and guarantees and to comprehensive care policies and programmes, within state and municipal budgets. Accordingly, rules have been laid down to ensure fair distribution in the transfer of resources from the National Child and Adolescent Protection Fund to state and municipal child and adolescent protection funds. This ensures that funds intended for the protection of children's and adolescents' rights are transferred on a rational, not an exclusive or discriminatory, basis.

177. The resources allocated to the National Protection Fund to finance child and adolescent protection programmes and projects are transferred to municipal and state funds under the terms of financing and co-financing agreements, following rules designed to reduce the impact of

income-distribution inequalities and offset the high cost of implementing protection programmes, initiatives and services in sparsely-populated areas. There are thus two phases of distribution.

178. Distribution phase I: The National Protection Fund allocates the majority of its resources (60 per cent) to state and municipal funds, while 40 per cent of its funds goes to finance national and regional programmes.

179. Distribution phase II: Resources are shared between states and municipalities in accordance with the following criteria: (a) the state's human development index; (b) the state and municipal budget allocation from the National Budget Office; (c) number of children and adolescents by state and municipality; (d) the socio-economic situation in municipalities; and (e) population density.

180. Resources may be transferred from the National Protection Fund to state and municipal protection funds in order to strengthen or establish comprehensive protection programmes and projects for children, adolescents and families in the following areas: prevention and treatment of abuse and commercial sexual exploitation; child abuse; labour exploitation; drug addiction; protection for breastfeeding; adolescent pregnancies; identity; family placement; and sheltered housing; as well as other priorities for social action to prevent violations of rights, exclusion and discrimination, facilitate the restoration of violated rights and promote the social reintegration of children and adolescents rather than entrenching their situation of exclusion or discrimination.

181. Guideline developed and approved: "Instruction for registering national, regional and international programmes". This instruction sets out the rules for registering national or international programmes that will impact positively and comprehensively on Venezuela's child and adolescent population, while preventing the establishment of programmes that may be discriminatory.

182. Application of technical directives regarding pre-school education: adaptation of the pre-school curriculum to the rights-based doctrine of comprehensive protection for children and adolescents.

183. With the Ministry of the Interior and Justice, preparation of joint directives to protect the no-cost principle for official documents such as identity cards, birth certificates and travel authorizations, as provided for in the Convention on the Rights of the Child and the Organization Act for the Protection of Children and Adolescents under the no-cost principle. Application of the no-cost principle ensures that children and adolescents can obtain essential official documents without suffering any form of discrimination.

184. Approval of the General Directives on the Protection of Children and Adolescents from Sexual Abuse and Commercial Sexual Exploitation (*Official Gazette*, No. 37,815, of 11 November 2003). These guidelines contain provisions on prevention, the restoration of children's and adolescents' rights violated through sexual abuse and commercial sexual exploitation, and the social rehabilitation of victims.

185. Guidelines on the suitability of information put out by the media for children and adolescents (*Official Gazette*, No. 36,980, of 26 June 2000). The aim is to protect children and adolescents from television programmes which broadcast information inconsistent with a healthy development and upbringing. The guidelines also aim to protect children and adolescents from messages that transmit discriminatory values, and from discrimination and violations of their rights on the part of the media.

186. Eight preliminary draft guidelines developed on protection for adolescent workers, disability, education, sport, culture, identity and health.

### **Main provisions of domestic law on special indigenous rights**

187. With regard to the indigenous population, the National Institute of Statistics (INE) recognizes a total of 35 original indigenous groups, but Venezuela also has some 21 indigenous groups originating from the Andean region. Migration by these assimilated Andean groups brings the total to 56 ethnic groups in Venezuela.

188. In 2001, Venezuela conducted its 13th housing and population survey. This included for the first time a census of indigenous communities, which was taken using two methods: the housing and population survey itself, in which 354,400 people stated that they belonged to an indigenous people; and a census of those who thought of themselves as distinct ethnic groups, occupying a given geographical area and with indigenous communities, which registered 178,383 people. Together these figures total 532,783 indigenous inhabitants spread throughout the national territory and accounting for 2.3 per cent of the overall population. The variables considered are still being analysed and more details from this census of indigenous communities are awaited.

189. The greatest geographical concentrations of indigenous peoples are to be found in Venezuela's border states: Apure, Amazonas, Bolívar and Zulia, with a very high concentration in Delta Amacuro State. Somewhat smaller indigenous groups are to be found in the states of Sucre, Monagas, Anzoátegui and Trujillo; and there are other small groups of original and assimilated indigenous people in the national capital as a result of internal migration and migration from the Andean region.

190. The indigenous peoples of the upper Orinoco and the Casiquiare and Guainia-Río Negro basins have problems of various kinds: land; biodiversity; and the environmental and cultural impact of spreading illegal mining and indiscriminate logging. Such activities, and particularly indiscriminate gold mining in indigenous territories, put indigenous children and adolescents at risk in various ways. Water courses and tributaries are poisoned by the mercury used in gold prospecting, which not only destroys the ecology but also endangers the lives of the children, adolescents and families living in the vicinity. Gold prospecting also has a cultural impact on indigenous communities, who slip into ways of life and patterns of coexistence completely at odds with their custom of living in harmony with the environment. In the main centres of illegal gold prospecting, there is also evidence that indigenous children and adolescents are subjected to labour exploitation and the worst forms of child labour, including servitude and slavery, child prostitution, trafficking and sale.

191. Logging, too, has a significant environmental impact. Indiscriminate felling of trees on the outskirts of or close to indigenous communities disturbs the ecology of the flora and fauna and ultimately affects the indigenous communities. The sociocultural and ethno-environmental impact of illegal gold prospecting and logging represents a violation of the rights of the indigenous peoples and particularly those of indigenous children and adolescents.

192. There has been a decline in such patterns in recent years, although the fact is that these peoples have suffered many years of structural violations of their rights and are still under pressure from the dominant Creole culture and the Western model of natural resource exploitation. The various development projects under way in their territories - which are superb ecosystems with high biodiversity and a wealth in water resources - continue to pose a serious threat to their survival; these include mining, logging, large-scale hydroelectric dams, oil and gas drilling and adventure tourism.<sup>49</sup>

193. Yet the situation is improving. The Government of the Bolivarian Republic of Venezuela has from the outset faced up to the need to alter the patterns of discrimination that have worn the indigenous populations down, using regulations and public policy to guarantee their rights as a people and prevent racial discrimination against them; the foremost guarantee being the one provided in the Constitution, whose preamble emphasizes the multi-ethnic, multicultural nature of Venezuelan society, and which - for the first time in a Venezuelan Constitution - recognizes the existence of the indigenous population, as a people and a community, as set forth in title III, chapter VIII, "On the Rights of Indigenous Peoples", the section dealing with indigenous peoples' social rights:

The right to intercultural bilingual education;

The right to health;

The right to traditional medicine;

The right to traditional economic practices;

The right to participate in the national economy as workers;

The right to vocational training;

The right to participate in training programmes and to benefit from technical and financial assistance services to reinforce their economic activities; and

The right to participate in political life.

194. Recognition is also given to their modes of social, political and economic organization, their cultures and customs, their languages, religions and habitat, and their right to collective ownership of the lands they occupy, which are essential to the preservation of their ways of life.

195. With regard to effective public policy measures aimed at drafting laws and regulations to eliminate all forms of racial discrimination, even beyond the legal sphere, one important aspect of the recognition of indigenous peoples is the issue of the exploitation of natural resources on

indigenous lands, which is subject to prior information and consultation with the communities concerned,<sup>50</sup> taking into account their specific circumstances and their collective rights, including the right to their ancestral lands; this is reinforced by the Indigenous Peoples Habitat and Lands Demarcation and Protection Act,<sup>51</sup> whose purpose is set forth in article 1, as stated below.

196. To regulate the formulation, coordination and execution of policies and plans relating to the demarcation of the habitat and lands of indigenous peoples and communities in order to guarantee the right to collective ownership of their lands as established in the Constitution of the Bolivarian Republic of Venezuela.

197. This development constitutes in itself an act of restitution of indigenous peoples' ancestral heritage, and is further reinforced, in order to prevent any discrimination against this group, in the Organization Act on Indigenous Peoples and Communities,<sup>52</sup> the aim of which will be to develop the constitutional rights of Venezuela's indigenous communities and peoples, as well as the rights established in the international agreements, declarations, conventions, covenants and treaties signed by the Republic, indigenous people being understood to mean: "The original inhabitants of the country, who conserve their specific cultural identities, their languages, their territories and their own institutions and modes of social, economic and political organization, which distinguish them from other sectors of the national population".<sup>53</sup>

198. The objective is to protect and safeguard indigenous peoples' life and sustainable development by establishing mechanisms to connect them with the State.

199. The Bolivarian Constitution is the source of inspiration for other laws; article 122, for example, is of particular importance, guaranteeing as it does the right to comprehensive health care and the recognition of traditional medicine: "The indigenous peoples shall have the right to comprehensive health care that takes account of their practices and culture. The State shall recognize their traditional medicine and alternative therapies, subject to the principles of bioethics".

200. This is established in the draft health bill, which recognizes that, in the area of health, apart from expressly establishing the right of indigenous peoples to their traditional medicine, in recognition of the multi-ethnic nature of Venezuelan society, and emphasizing equality, solidarity and universality, health policies must be designed and implemented with a view to eliminating the gaps between the various sectors of the population in general, and in particular the gaps between the indigenous peoples and the rest of the population in the area of health.

201. The draft health bill refers to the national public health system and lays down quite categorical and specific principles to guard against all forms of discrimination; these include: universality, equity and membership of cultural and linguistic groups, with special emphasis on respect for the ethnic specificities of the population.

**Article 1.** In realizing the constitutional right to health, the national health system shall be guided by the following principles:

**Universality:** Everyone has the right to health protection, to which end access shall be guaranteed to health services and programmes with no discrimination whatsoever and on a basis of effective equality.

**Equity:** The distinct needs of the various population groups shall be recognized and respected, with the aim of reducing the health inequities associated with geographical location, social class, gender, and membership of ethnic or other population groups.

**Membership of cultural and linguistic groups:** Health policies, plans, services and programmes shall be designed and implemented taking account of Venezuela's cultural diversity and recognizing the multi-ethnic, multicultural and multilingual nature of the State.<sup>54</sup>

202. Applying these principles, health care provision shall be adapted as appropriate for age, sex and ethnicity. The statutory health plans at the national, state and municipal levels shall specify concrete initiatives to be taken to reduce or eliminate inequalities associated with ethnicity; and health services and programmes must be adapted with the help of the communities concerned, in order to take into account their economic, geographical, social and cultural circumstances, and traditional preventive health methods, health practices and medicines, especially in indigenous communities.<sup>55</sup>

203. In addition, in view of the fact that the indigenous population is multilingual in what, under the Constitution, are official languages ("The indigenous languages are the official languages of the indigenous peoples and shall be respected throughout the Republic as a part of the cultural heritage of Venezuela and of humanity as a whole"<sup>56</sup>) - although many indigenous people do not speak Spanish well - health services and programmes should consider the use of oral and written indigenous languages during implementation in the various communities.

204. Among the most important aspects of this draft bill in relation to efforts to eliminate all forms of racial discrimination by introducing into government policies effective measures to combat the prejudices that underlie racial discrimination, are the following articles on the rights of indigenous peoples (title V, "Individual Rights and Duties"; section on indigenous peoples' right to traditional medicine):

**Article 167.** Indigenous peoples shall have the right to use their traditional medicines and health practices in maintaining and restoring health. This right extends to the protection of plants, animals and minerals used for those purposes. This right shall not restrict the right of those peoples to access to all health institutions, establishments, services and programmes, with no discrimination whatsoever.

205. The State shall guarantee the conservation and regulation of traditional indigenous medicine and shall regulate research in this area, without prejudice to the rights of indigenous peoples to collective intellectual ownership of such knowledge.

206. In line with the principle of comprehensiveness, traditional indigenous medicine shall be encouraged as a contribution to the comprehensive health care of the entire Venezuelan people.



#### IV. ARTICLE 4

##### A. Protection of indigenous people

207. Throughout the colonial history of Venezuela and during part of its Republican period, the cultures and forms of existence of the indigenous peoples were looked down on and stigmatized as being “uncivilized”, the result being that discrimination in respect of the indigenous peoples prevented their individual and collective development and contributed to the loss of their cultural heritage and their ancestral territories.

208. The firm determination of the indigenous people to conserve and transmit their culture and territories to future generations, however, has enabled them to survive until now and has given rise to a change in social attitude towards these cultures both nationally and internationally.

209. On the basis of this premise and the 1999 Constitution, the Bolivarian Republic of Venezuela acknowledged constitutionally and for the first time the existence of the indigenous peoples and communities, with their own social, political and economic organization, their cultures, conventions, customs, languages, religions, habitat and lands, and guaranteed their right to bilingual intercultural education, health and other inherent human rights.

210. Their ethnic identity is also acknowledged and guaranteed, as the Constitution of the Bolivarian Republic of Venezuela establishes in article 56 when it stipulates that: “Every person has the right to his own name, to the surnames of his father and mother and to know their identity. The States shall guarantee a person’s right to investigate his maternal and paternal origins. Every person has the right to be registered at birth in the civil register free of charge and to obtain public documents proving his biological identity in accordance with the law. These shall not contain any mention of filiation.”

211. It is important to mention that this article of the Constitution has been reinforced in practice in favour of the indigenous peoples, in the regulations set out in Presidential Decree No. 2,686, published in the *Official Gazette*, No. 37,817, of 13 November 2003; this contains the Regulations under the Organization Act on the Identification of Indigenous Persons, which sets out the norms and procedures for providing these Venezuelans with an identity document issued by the Ministry of the Interior and Justice, which is the competent body for the purpose.

212. Another relevant aspect of indigenous matters is the recent publication of the Indigenous Peoples Habitat and Lands Demarcation and Protection Act, whereby the Venezuelan State effectively acknowledges the right of collective indigenous ownership of the ancestral and traditional lands they have occupied all their lives and which are inalienable, imprescriptible, unattachable and not transferable, in accordance with the provisions of article 119 of the Constitution of the Bolivarian Republic of Venezuela, thus obviating the constant pressures and abuses visited on these peoples on their own land, caused by activities which disturb the normal course of their lives and their cultural development.

213. It is important to note the promotion of the discussion in the National Assembly on the Indigenous Peoples and Communities Bill, among the actions taken by the national executive to

eradicate more than five centuries of discrimination against the indigenous peoples which have kept them apart from the rest of Venezuelan society; this Bill will develop the mechanisms to ensure all the rights recognized and guaranteed to these Venezuelans by the Constitution of the Bolivarian Republic of Venezuela.

214. A new aspect of the current legal order, introduced in the year 2000, is the principle of participation by the citizens in the exercise of government or participatory democracy, as a form of exercising the political rights of all Venezuelans of both sexes in the Republic.

215. Participatory democracy, as a political model of government, aims at bringing the structures of government closer to the population, in order to distribute the exercise of power and involve citizens in the political life of the country; its intention is also to avoid the formation of closed groups or elites governing in isolation, on the basis of interests which do not correspond to those of the majority of the population, bypassing the basic needs of society and truncating the development of the nation.

216. For Venezuela, participatory democracy has become the basic instrument for eradicating all types of discrimination, in that it establishes a new scheme which sets out the equality of all citizens in the exercise of political power and equality of participation in the organs of government and in drawing up public policies in such a way that the differences which may exist between individuals become irrelevant for this type of government, thus permitting the preservation of a democratic and social State subject to the rule of law and justice that guarantees human rights and promotes individual and collective development.

217. The article of the Constitution that favours indigenous peoples and communities by giving them the right of political participation and special representation in the National Assembly and in State and local deliberative bodies where there is an indigenous population merits particular emphasis. As stipulated in article 125 of the Constitution of the Bolivarian Republic of Venezuela, indigenous people are guaranteed participation in the Government's legislative bodies, and are incorporated into these bodies on an equal footing with a view to ensuring that all sectors of the Venezuelan nation are represented in them.

### **B. Draft legislation, public policies and activities**

218. On 17 July 2002, at the ninth meeting of the Andean Council of Ministers of Foreign Affairs (Lima, Peru), decision No. 524 was adopted establishing the forum on the rights of indigenous peoples as a consultative body within the Andean Integration System. This is an endeavour to promote and support the active participation of indigenous peoples in the economic, social, cultural and political aspects of subregional integration. Particular mention should be made of the inclusion and participation as full members of this forum of the ombudsmen's offices of each member country of the Andean Community. The establishment and first working sessions of the forum are expected for 2004.

219. The Indigenous Peoples and Communities Bill is awaiting approval pending a second reading in the National Assembly. Recently, the Standing Committee on Indigenous Peoples of the National Assembly and the National Indian Council of Venezuela (CONIVE) promoted and coordinated a series of workshops and national, regional and local meetings, with the

participation of public and private bodies, indigenous organizations and communities and human rights specialists in order to complete the last stage of consultations, analyses and recommendations for its final adoption.

220. The bill seeks to develop and guarantee the rights of indigenous peoples recognized in the Constitution of the Bolivarian Republic of Venezuela and the international treaties, agreements and conventions duly signed by the Republic. It propounds the recognition of the indigenous peoples as holding the rights to their habitat and as legal persons; it establishes mechanisms to supplement the Indigenous Peoples Habitat and Lands, Demarcation and Protection Act; it guarantees the right to a safe and healthy environment and to participation in the handling, administration and conservation of natural resources within the habitat; it recognizes traditional forms of existence and traditional economies; it establishes a prohibition on the transfer and unjustified relocation of indigenous populations and, when such actions are exceptionally considered necessary, they may only be carried out with the full consent of those concerned; it recognizes the right of indigenous peoples to participate in the preparation, implementation and monitoring of policies affecting or benefiting them, ensuring their broad and effective participation in all national, regional and local bodies; their conventions and customs will be taken into account in the election of indigenous representatives to the National Assembly and other bodies; a special system is stipulated for issuing identity documents; provision is made for the strengthening of indigenous cultures through the implementation of intercultural and bilingual education based on their needs, the promotion of their cultural values and the use of their own names; all government programmes are required to be adapted to the specific aspects of their culture; space is guaranteed in the mass media to disseminate their cultural values; the activity of religious organizations is prohibited without the prior consent and authorization of the respective indigenous communities.

221. With regard to social rights, the bill is based on the diverse cultures in order to ensure respect for the different types of indigenous families arising out of their own systems of relationships and marriages, and gives validity to marriages and adoptions based on these customs with the same effects as in civil law; the incorporation of traditional medicine into the national health system is stipulated; indigenous shamans and healers are guaranteed the use of their knowledge and procedures for preventive and curative purposes; it is stipulated that all health programmes and services must be planned with the direct participation of the indigenous peoples; the bill also contains a series of articles on labour protection for indigenous citizens who are to benefit from all the advantages contained in existing laws in this regard.

222. With regard to the administration of justice, the authority of indigenous peoples is recognized to administer courts within their habitat; this means recognizing their institutions and procedures for regulating, resolving and punishing any transgression of their laws. The majority of these indigenous systems are essentially based on reparation, on a basis of dialogue, mediation, compensation and reparation of damage; they are not restricted merely to trying the individual in isolation, but involve both the offender's and the victim's family and community. The issue here is the power of the indigenous authorities to administer justice within their habitat and only in respect of their members.

223. Lastly, through a special act, it proposes the establishment of a governing body for indigenous policies in Venezuela. This act will serve as the legislative framework for indigenous

matters, and will establish the main features and criteria that will serve as guidelines for the preparation of all laws or legal provisions dealing with specific topics concerning indigenous peoples and communities.

224. Another pertinent bill is the Indigenous Peoples Education and Language Use Act, which has been approved in first reading and is awaiting final approval. The Act acknowledges and promotes the traditional education of the indigenous peoples and lays down the guidelines and bases for bilingual intercultural education, regulates the running of the services relating to this education system and sets out the general norms regulating the institutional use, preservation, defence and encouragement of indigenous languages. It is based on the principles enshrined in the Constitution on the right of indigenous peoples to their own education and to an education system in keeping with their specific cultural features, principles and values, as well as their right to the official use of their languages, and to their protection and dissemination as the cultural heritage of the nation and of mankind.

225. With regard to specific policies and programmes, the Department of Indigenous Education of the Ministry of Education, Culture and Sport has been focusing its work on formulating technical criteria for standardizing the use of indigenous languages in the formal education system; on the presentation of the methodology for drawing up education projects; on holding consultations with the indigenous peoples concerning the official use of their languages; on publishing teaching materials; on holding a national conference on indigenous teaching experiences; on implementing Presidential Decree No. 1,795 on the mandatory use of indigenous languages in all public and private education institutions in urban and rural areas with an indigenous population; and on the official establishment of the National Council on Indigenous Education, Culture and Languages and the Technical Advisory Council of the Department of Indigenous Education.

226. In the area of health the National Coordination Group for Indigenous Health, which answers to the Ministry of Health and Social Development, was recently established and had special resources approved (Bs. 3 billion) for 13 comprehensive health programmes for indigenous peoples, to be initiated and implemented as from 2004.

227. Lastly, the national executive established the Guaicaipuro mission (2004) to reinforce and coordinate special policies and resources for indigenous peoples, giving priorities to the areas of demarcation of land, sustainable and ethno-development projects and indigenous migration to urban areas.

### **C. Right to freedom of religion and worship**

228. Freedom of religion and worship exists in Venezuela, both in the newest version of the Constitution and as a social reality. The organs of government do not interfere at all in the observance of the various faiths and religions professed and practised in Venezuela, nor do they make it mandatory for Venezuelan citizens to belong to a specific faith or religion, the only restrictions on this right being morals, public order and decency, in accordance with article 59 of the Constitution of the Bolivarian Republic of Venezuela.

229. The Government has reiterated its willingness, through the Department of Justice and Worship of the Ministry of the Interior and Justice, to remain receptive to all faiths and religions

existing in Venezuela and has thus begun to change the pattern of the State's approach to activities of this nature, avoiding supervision or intervention by the national executive, whose role is only to keep a watchful eye on morals, public order and decency, all of which must be respected.

#### **D. Legal and regulatory provisions on the elimination of racial discrimination**

230. The Education Organization Act acknowledges education as a right for everyone, and therefore prohibits discrimination in any of its forms:

**“Article 6.** All persons have the right to education in keeping with their capacities and aspirations, adapted to their vocation and in line with the requirements of national or local interests, without discrimination of any kind based on race, sex, belief, economic and social position or any other kind. The State shall establish and support institutions and services adequately provided to ensure the fulfilment of the obligation devolving on it and services for the guidance, assistance and comprehensive protection of the pupil in order to ensure that the education system gives of its maximum in social terms and provides effective equality of educational opportunities.”

231. The Health Organization Act for its part establishes the principle of universality as the basis for the functioning of health services, which means that “everyone has the right to accede to and receive health services without discrimination of any kind” (art. 3). Supplementing this, article 69 provides that patients have the right to “respect for their dignity and privacy, without discrimination on geographical, racial, social, sexual, economic, ideological, political or religious grounds”.

232. In matters of employment the Labour Organization Act establishes the prohibition of discrimination as a general principle:

**“Article 26.** All discrimination in conditions of work on the basis of age, sex, race, civil status, religious belief, political affiliation or social status is prohibited. Offenders shall be punished in accordance with the laws. The special provisions to protect motherhood and the family and those intended to protect children, the elderly and the disabled shall not be considered discriminatory. (...) Paragraph 1: Offers of employment may not contain particulars contradicting the provisions of this article. (...) Paragraph 2: No one may be discriminated against in his right to work because of his criminal background. The State shall ensure the establishment of services for the rehabilitation of former prisoners.”

233. With regard to children and adolescents, the Organization Act for the Protection of Children and Adolescents expressly acknowledges the right to equality:

**“Article 3.** Principle of equality and non-discrimination. The provisions of this Act apply equally to all children and adolescents, without any discrimination on grounds of race, colour, sex, age, language, ideas, conscience, religion, beliefs, culture, political or other kind of opinion, property, social, ethnic or national origin, disability, illness, birth or any other condition of the child or adolescent, or of their parents, representatives or guardians, or of their relatives.”

**E. Draft legislation, including measures for the promotion of equality and positive discrimination**

234. A series of preliminary draft bills and bills are listed below concerning norms including measures to promote equality or anti-discriminatory measures, in their respective spheres of action:

**Indigenous Peoples and Communities Bill.** Its purpose is to develop the rights of indigenous peoples and communities recognized in the Constitution of the Bolivarian Republic of Venezuela and in the international human rights instruments ratified by Venezuela.

**Draft indigenous peoples' education and language use bill.** Its aim is to recognize and promote the traditional education of the indigenous peoples and establish the guidelines and bases for bilingual intercultural education; regulate the services linked to this education system; and indicate the general principles governing the institutional use, preservation, protection and development of indigenous languages.

**Women's Right to Gender Equity and Equality Bill.** It proposes to ensure that all women in the national territory can exercise and enjoy their rights to the full.

**Radio and Television Social Responsibility Bill.** Its objectives include ensuring the dissemination of information and material of social and cultural importance to children and adolescents, with a view to the progressive and full development of their personality, aptitudes and mental and physical capacity, and of respect for human rights, for their parents, for their cultural identity, for civilizations other than their own, and for the undertaking of a free and responsible existence; they also include an adequate degree of education in human and social awareness and understanding, peace, tolerance, equality of the sexes and friendship among peoples, ethnic groups and persons of indigenous origin, which will contribute in general to establishing the social awareness of children, adolescents and their families.

**Aliens and Migration Bill.** On 14 August 2003 the National Assembly approved this bill in first reading with a series of changes, discussed and approved by the technical forum, to make it more viable. It is currently pending a second reading in plenary in the National Assembly.

235. The innovations contained in this bill include a procedure for the application of such sanctions as expulsion and deportation; the competent body is ordered to justify any expulsion measure; the bill also establishes equality in the exercise of rights with nationals, except for existing legal and constitutional restrictions, but with particular emphasis on protecting the exercise of the right of aliens to effective judicial protection, which guarantees their human rights.

236. The bill also proposes the establishment of government bodies which will monitor and register all aspects of migration and alien status. The aim of this future act will be to provide the

Venezuelan State with an appropriate means of regulating the intensive flows of migrants to Venezuela, by governing all aspects of the admission, entry, stay, registration, exit and re-entry of aliens, and their rights and obligations.

237. Articles 1 to 6 establish the objective of the bill, the definition of aliens, its sphere of application and relevant exceptions, the competent authority and, lastly, categories of aliens for the purpose of their entry to and residence in Venezuela.

238. Title II describes the admission requirements for aliens and the criteria for their non-admission to the territory of the Republic, the rules for the entry to and exit of all persons from the national territory, the passport as the indispensable requirement for entering and remaining in the country, the authorization required for representatives of religions and faiths to enter the country when the purpose of their stay is to engage in religious activities, and, lastly, the controls by the competent authority in ports, airports and border zones.

239. Title III describes the rights protecting aliens on an equal footing with Venezuelan nationals, the additional duties established by the Constitution and the laws required of them during their stay in the country and their specific right to effective legal protection.

240. Title IV refers to the work permit to be obtained by foreigners recruited to work in Venezuela; it sets out the procedures for the recruitment of foreign workers; it regulates the requirements for persons recruited by State companies and, lastly, the duration of the visa issued to foreigners recruited in Venezuela.

241. Title V establishes the National Aliens Register and the duty of registering in it any change in the civil status of aliens or their detention; the duty of employers to report the recruitment and working conditions of aliens recruited; the duty of the owners of accommodation and passenger and tourism transport companies to keep a register of aliens and subsequently transmit it to the National Aliens Register.

242. Title VI establishes the National Migration Commission, the purpose of which is to advise the national executive in the implementation and operation of the law.

243. Title VII describes the system of offences and punishments and the administrative procedure applicable for deportation or expulsion; the rights of aliens to whom punishments have been applied; the legal obligation to justify the expulsion of aliens; and the authority of the competent body to enforce expulsion.

244. Lastly, title VIII describes the system of offences and criminal responsibility applicable, including the criminal responsibility of officials with regard to migration and the status of aliens.

#### **Participation and contribution of the Office of the Ombudsman to the Aliens and Migration Bill**

245. The Ombudsman's Office participated actively in all the meetings convened by the technical forum of the National Assembly's Standing Foreign Policy Committee, where this bill was drawn up; it used clear and relevant legal bases to oppose some proposed norms that were considered as violating human rights and contributed experience, revision and know-how in this regard through its appointed officials.

246. The Ombudsman's Office also proposed the inclusion of 10 articles in the bill; these were accepted and incorporated and concern the establishment of a procedure for the application of sanctions to foreigners who commit offences, completely consistent with the guarantees inherent in due process enshrined in article 49 of the Constitution.

**Most relevant aspects of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families incorporated into the Aliens and Migration Bill**

247. Generally speaking, the Aliens and Migration Bill includes the stipulations of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and gives them the same standing in the exercise of their rights as any national of Venezuela.

248. Although Venezuela has not yet ratified this Convention, it deals generally with the agreement of the States parties concerning the protection of the fundamental rights of migrant workers and their families and incorporates guarantees providing protection against slavery, servitude, forced labour and other individual and economic guarantees for these workers; it also takes account of their rights, for example, freedom of expression, thought, conscience and religion, which can be found in the majority of our constitutions and are widely covered in this case by the Constitution of the Bolivarian Republic of Venezuela.

249. A noteworthy aspect of the Convention is the stipulation in article 18 that migrant workers must have the right to equality with nationals of the State concerned before the courts and tribunals.

250. It is important to mention that Venezuela's Aliens and Migration Bill incorporates the stipulations of this Convention in the following text:

**“Article 13.** Aliens in the territory of the Bolivarian Republic of Venezuela shall have the same rights as nationals, the only restrictions being those established in the Constitution of the Bolivarian Republic of Venezuela and the laws.”

251. This legislation covers all aliens in the Republic with no distinction as to whether or not they have legal status and gives them all the rights and guarantees recognized in the Venezuelan Constitution.

252. Article 15 of the bill clearly sets out the stipulations of article 18 of the Convention in question and more especially incorporates it as follows:

**“Article 15.** Right to effective legal protection. Aliens have the right to effective legal protection in all acts concerning them or in which they are involved with regard to their status as aliens. In the administrative procedures concerning the status of aliens the guarantees set out in the Constitution of the Bolivarian Republic of Venezuela and the laws on the administrative procedure shall be complied with in all cases, particularly in respect of the publicizing of the acts, contradictions they contain, the hearing of the person concerned and the justification of the decisions. The administrative acts and



decisions adopted with regard to aliens shall be appealable in accordance with the provisions of this Act and the act governing administrative procedures, insofar as they are applicable. Similarly, the implementation of administrative acts relating to the legal status or situation of aliens shall conform to the relevant provisions of this Act or those contained in the act governing administrative procedures, insofar as they are applicable.

### **Judgements relating to the principle of equality and non-discrimination**

253. Two extracts of judgements on the right to equality or the prohibition of discrimination are given below:

Judgement No. 1,197 of 17 October 2000, handed down by the Constitutional Chamber of the Supreme Court of Justice: “(...) the subjective right to equality and non-discrimination is taken to mean the obligation of the public authorities to provide equal treatment to persons in de facto analogous or similar situations, that is to say, that this right implies in principle that all citizens enjoy the right to egalitarian treatment by the law and that discrimination is accordingly prohibited. Not all unequal treatment is discriminatory, however; only treatment that is not based on objective and reasonable causes is discriminatory, but the lawgiver may introduce differences of treatment, provided that they are not arbitrary, that is to say, when they are justified by the real situation of the individuals or groups. For this reason the right to equality is only violated when equals receive unequal treatment, and consequently what the Constitution prohibits is inequality of treatment in identical situations. (...) As a conclusion of the foregoing, this Chamber considers it necessary to point out that the clause concerning equality before the law does not prohibit unequal treatment of a citizen or group of citizens, provided that the following conditions obtain: (a) the citizens or groups are actually and effectively in de facto different situations; (b) the inequality of treatment pursues a specific end; (c) the end pursued is reasonable, that is to say, that it is admissible from the standpoint of constitutional rights and principles; and (d) due proportion is kept, that is to say, that the legal consequence constituted by the unequal treatment is not completely out of proportion to the de facto circumstances and the end justifying it. If the above-mentioned conditions are met, the inequality of treatment shall be admissible and shall constitute a constitutionally lawful differentiation.”

**First Administrative Court.** Judgement of 21 June 2000. Case: *Carlos Alberto Galiano Peña v. Miguel Van Der Dijis Ruiz*. “The Court observes that the appellant contends an alleged violation of the right to equality. In this regard, the interpretation of the jurisprudence of both the Supreme Court and this Court has established that the right to equality and not to be discriminated against is designed to ensure that no exceptions or privileges are established that exclude certain persons from what is granted to others in similar circumstances, that is to say, that no differences from which legal consequences derive are established between persons who are effectively in the same situation or are de facto assumed to be in that situation. (...) It should be noted that a complaint of the violation of this right firstly requires the complainant to prove equality or similarity of his circumstances vis-à-vis another person or persons (equality of equals) serving as a means of comparison, and secondly, that notwithstanding the foregoing, the entity indicated as the offender has treated him differently to the detriment of his constitutional rights (...).”

## ARTICLE 5

### A. Protection of refugees and asylum-seekers

254. The right of refuge and the right of asylum are recognized in the Constitution of the Bolivarian Republic of Venezuela, which stipulates in article 69: “The Bolivarian Republic of Venezuela recognizes and guarantees the right to asylum and refuge.” Internationally, Venezuela has signed and ratified the Protocol relating to the Status of Refugees of 1967, supplementing the Geneva Convention relating to the Status of Refugees of 1951.

255. These principles are fully developed in the Refugees and Asylum-Seekers Organization Act, which entered into force on 3 October 2001. This Act sets out the substantive definitions and the organizational guidelines for the right of refuge and asylum from the point of view of human rights and in relation to the pertinent international instruments.

256. In accordance with the Act, the State of Venezuela considers as a refugee any person recognized as such by the competent authority, once the relevant legislation has been complied with. The Act sets out three basic principles contained in international instruments concerning refuge: no sanction, non-refoulement and family unity. These principles support the recognition of the status of refugee from the standpoint of the progressive and interdependent nature of human rights.

257. The National Refugees Commission was established under the Refugees and Asylum-Seekers Organization Act; this body is empowered to guide and coordinate the action needed to provide protection, assistance and legal support to persons seeking refuge. It also hears and takes decisions on cases of determination of refugee status, or the cessation or loss of this status, and rules on measures of expulsion of refugees in accordance with the procedures and criteria established in the Act and in the international instruments in force (art. 13).

258. The application for recognition of the status of refugee must be submitted by the person concerned, or through a third party, to the civil or military government authorities or to the Office of the United Nations High Commissioner for Refugees, for transmission to the National Refugees Commission. The application may be made verbally and then ratified in writing for the Commission. The information supplied will then be checked; its confidentiality is ensured. When the Commission receives the application, it will issue the applicant with a provisional document to guarantee his temporary stay in the national territory until a decision is taken on the recognition of his status as a refugee (art. 16). A ruling will be given on the application within a continuous period of 90 days.

259. If the application is rejected, justification must be given, the applicant notified and the UNHCR Office informed. If it is approved, the Commission will notify the Ministry of the Interior and Justice so that the corresponding identity document can be issued (art. 18). This document will be valid not only for remaining in the country legally but also for engagement in any gainful employment and in the case of children and adolescents it is valid for study in educational institutions (art. 19). Any person whose application is rejected may appeal to the

Commission within 15 working days of notification. The Commission must take a decision within a continuous period of 90 days. Once the review procedure by the Commission to which this Act refers has been exhausted, the person may apply to the administrative courts (art. 21).

260. When aliens are recognized by the competent authorities as having this status, they will be known as refugees. They may take up residence in Venezuela and benefit from the principles of no sanction, non-refoulement and family unity. Asylum is also extended to the parents, the spouse or the person with whom the refugee has a stable de facto union and under-age children. The Act permits the situation of other family members to be assessed individually. Refugees enjoy the same rights as aliens, with the restrictions established in the Constitution and other laws of the Republic (art. 22). The Republic must provide them with all facilities for formalizing their naturalization (art. 26).

261. With regard to the expulsion system, refugees may only be expelled from the national territory when they engage in acts which perturb public order or affect national security. The act of expulsion must be justified and the individual in question notified so that he can make use of the remedies for which the law provides. The Commission must inform the UNHCR Office of its decision to expel a refugee and he must be granted a period of 60 days within which he can make arrangements for legal admission to another country (art. 29).

262. No sanctions will be applied to refugees illegally in the country of refuge provided that they have arrived directly from the country where they were threatened and present themselves without delay to the authorities (article 31 of the Convention relating to the Status of Refugees of 1951 and article 6 of the Refugees and Asylum-Seekers Organization Act). Venezuela accepts the principle of non-refoulement and non-expulsion and to that end prohibits the expulsion of applicants for refuge and refugees present at the borders of territories where their life is in danger. A refugee considered as a danger to national security or public order, however, may not invoke the advantages of this provision (article 156.4 of the Constitution of the Bolivarian Republic of Venezuela and article 27 of the Refugees and Asylum-Seekers Organization Act).

263. The regulation and monitoring of transit is based on the presumed arrival in Venezuela of persons intending to stay in the country temporarily. The National Refugees Commission will coordinate with the representatives of UNHCR in notifying the Public Prosecutor's Office and the Ombudsman's Office in order to make an official report of the voluntary decision of such persons to remain temporarily and subsequently leave Venezuelan territory (Refugees and Asylum-Seekers Organization Act, art. 34). With reference to the measures applicable to people smugglers, the Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the United Nations Convention against Transnational Organized Crime, now being debated in the National Assembly, needs to be approved.

264. In accordance with the Refugees and Asylum-Seekers Organization Act, the State's activity should be directed at preserving family unity, cooperating in order to obtain the necessary information to reunite children and adolescents with their families (where they are separated from them) and providing them with protection and humanitarian assistance (art. 2.6). Refugees and asylum-seekers may apply for reunion with their parents, spouses or the person with whom they have a stable de facto union and their under-age children; the situation of other family members will be assessed individually (art. 8).

265. The Refugees and Asylum-Seekers Organization Act establishes the following cases of mass arrivals on the national territory in article 32: (a) persons using the national territory as transit for re-entering the territory from which they come; (b) persons desiring to remain temporarily on Venezuelan territory who do not wish to apply for refuge; (c) persons wishing to apply for refuge in Venezuela. It may be observed that the State is legally required to guarantee admission in the event of mass arrivals and provide humanitarian assistance to meet the basic needs of these persons.

### **B. Right to free access to the system of justice**

266. As from the year 2000, Venezuela initiated a reform of the justice system with, as the principal change, free access to the system of justice, whereby persons who consider that their human rights have been violated or discriminated against in any way by the State's public or private institutions can have access to the agencies for the administration of justice and lodge their appeals or petitions, as provided in article 26 of the Constitution of the Bolivarian Republic of Venezuela, which states that: "All persons have access to agencies for the administration of justice in order to assert their rights and interests, even where these are collective or broad; they have the right to the effective protection of these rights and to obtain a prompt decision concerning them. The State guarantees free, accessible, impartial, appropriate, transparent, autonomous, independent, responsible, fair and speedy justice, without undue delays, formalities or unnecessary repetitions."

267. The right of access to agencies for the administration of justice is established as a fundamental right in Venezuela today, since it gives a legal basis to a democratic and social State subject to the rule of law and justice and also serves as a legal underpinning for the political and legal system, in that it permits application to be made for the protection of citizens' rights and interests when an act may adversely affect the free interaction of social forces, or State activity to be controlled when it exceeds its competence, this implying that it essentially requires no positive legal justification for its exercise.

268. In this sense, free justice is a new approach with greater social content for the national Government in that it strengthens the relations between the State and its citizens and aims at preventing the predominance of financial factors in people's access to the courts.

269. In addition, article 254 of the Constitution sets out an express prohibition on collecting rates or fees or requiring any charge for services provided by the judiciary, which means that the capacity of access without discrimination of individuals with few resources to the system of administration of justice has increased, thus reinforcing equality before the law and conserving their right to a defence; the aim of all of this is to build a just and peace-loving society.

270. The Bolivarian Government of Venezuela has also established that the administration of justice should be considered to be a public service, since it justifies the very existence of the State and should be provided uninterruptedly. This changed the whole pattern of the judicial system in Venezuela.

### C. Labour rights of aliens and their equal participation in the country

#### Legal regime governing aliens in Venezuela - general information

271. Department of Civil Registration and Aliens statistics for 1990 on migratory movements by nationality show that 1,035,797 foreigners entered the country. In 1991 this figure increased to 1,141,142 and in 1992 decreased to 1,029,381. In 1993 the figure decreased to 516,616 entering and 536,941 leaving. In 1994 the number decreased to 412,752 entering and 465,927 leaving; in 1995, 287,359 entering and 367,988 leaving were recorded. For the year 1999, the figures increased again to 485,606 entering and 752,726 leaving.

272. The most important laws on this subject are the Aliens Act of 1937 and the Immigration and Colonization Act of 1966. In the National Assembly a new, carefully thought out naturalization bill has now been approved in first reading. This reflects recognition of the urgent need to update and align domestic law on immigration with the international human rights instruments that Venezuela has signed and ratified, and with the Constitution, and the pressing need to draw up comprehensive immigration policies.

273. Likewise, there is recognition of the need for a single body with overall responsibility for issues relating to immigration and the updating of the various sources of information on immigration and of immigration records.

274. With the aim of updating and adapting the legislation, in 2000 the Regulations for the Issuance of Visas by the Ministry of the Interior and Justice, the Ministry of Foreign Affairs and the Ministry of Labour were published in the *Official Gazette*, No. 5,427 (special edition), of 5 January 2000. Later, the Decree constituting the Organization Act on Civil Registration (Act No. 1454 of 20 September 2001) was published in the *Official Gazette*, No. 37,320, of 8 November 2001. The aim of the Decree Law is to regulate and guarantee the registration of all persons in the country, including resident aliens.

275. Venezuela has ratified the most important international and regional instruments on the subject, as well as important bilateral agreements. The main international instruments include: the Universal Declaration of Human Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the American Convention on Human Rights; the Convention on the Rights of the Child and the International Labour Organization (ILO) Convention concerning Migration in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers. The principal regional instruments include: the Cartagena Manifest; the Peace Act; the Lima Act; the Andrés Bello Agreement; the Simón Rodríguez Agreement; decisions 94, 113, 116, 148, 359, 397, 398 and 440 of the Commission on the Cartagena Agreement; the Quito Declaration. With regard to bilateral agreements, Venezuela has signed major social security agreements with European countries such as Spain, Italy and Portugal; and with the aim of examining the situation in border areas concerning the movement and residence by their respective nationals in border areas, has signed agreements with neighbouring countries such as Colombia (Tonchalá Treaty, 6 November 1959).

276. The policies on aliens adopted by the national executive, in consistent respect for equality and human rights, encompass activities to regularize residence by aliens in our territory.

277. The aim of this policy is to regularize the legal status of aliens by offering them an opportunity to become integrated into Venezuelan society without the stigmatization that generally attaches to such persons.

278. Reflecting the nature of Venezuelan society, and our tradition of welcoming immigrants and respecting multiculturalism, something inherent in our society, the Regulations on the Regularization and Naturalization of Aliens in the National Territory have recently been issued (*Official Gazette* of 3 February 2004) in acknowledgement of the social claims of aliens, thereby guaranteeing their equal participation in the life and development of the country.

### **Right to nationality**

279. The Constitution provides in article 32 that the following persons are Venezuelans by birth: persons born in the territory of the Republic; any person born in foreign territory whose father and mother are Venezuelan by birth; any person born in foreign territory to a Venezuelan father by birth or a Venezuelan mother by birth, provided that the person establishes residence in the territory of the Republic or expresses a wish to acquire Venezuelan nationality; any person born in foreign territory whose father or mother is Venezuelan by naturalization, provided that the person establishes residence in the territory of the Republic before the age of 18 years or expresses a wish before the age of 25 years to acquire Venezuelan nationality.

280. Article 33 of the Constitution recognizes that the following persons are Venezuelans by naturalization: aliens who have resided in Venezuela for an uninterrupted period of at least 10 years, with the exception of those persons previously of Spanish, Portuguese, Italian, Latin-American or Caribbean nationality, for whom the length of residence is reduced to 5 years; aliens married to a Venezuelan for a minimum of 5 years after the date of the marriage; aliens who are under age at the time of the naturalization of the parent exercising parental authority, provided that before the age of 21 years they express their wish to acquire nationality and have 5 years' uninterrupted residency in the country.

281. Venezuelan nationality is not lost by choosing or acquiring another nationality (Constitution, art. 34); Venezuelans by birth cannot be deprived of their nationality. Venezuelan nationality can only be revoked by means of a court judgement, in accordance with the law (Constitution, art. 35); Venezuelan nationality can be renounced. Once renounced, Venezuelan nationality by birth can be re-acquired if the person in question spends a period of at least two years in the country and expresses a wish to do so. Venezuelans by naturalization who renounce their nationality can re-acquire Venezuelan nationality by once again meeting the requirements set out in article 33 of the Constitution (Constitution, art. 36).

282. Article 37 of the Constitution provides that the State will promote the concluding of international treaties with regard to nationality, in particular with neighbouring countries and those mentioned in article 33.2 of the Constitution. Finally, article 38 provides that, pursuant to the above provisions, the law will establish substantive and procedural regulations relating to the acquisition, choice, renunciation and re-acquisition of Venezuelan nationality, and the revocation and annulment of naturalization.

### Labour regime governing aliens

283. Article 10 of the Labour Organization Act establishes the principle of territoriality; it states that official labour provisions applicable in the country apply to Venezuelans and aliens in respect of work performed or contracted for in Venezuela and may in no circumstances be waived by private agreements.

284. Article 15 provides that all enterprises, operations or establishments, of any nature, whether public or private, either in existence or in the process of being established in the territory of the Republic and, in general, all personal services where there is an employer and a workforce, shall be subject to these provisions.

285. Both national doctrine and judicial practice have established that, regardless of the place where the contract is signed, the law of the place where the activity is performed governs all situations deriving from the execution of the work contract.

286. In order to regularize the situation of migrant workers in Venezuela, the Ministry of Internal Affairs (known today as the Ministry of the Interior and Justice) determined, in its decision No. 545, that migrant workers and their under-age children who are nationals of any member country of the Cartagena Agreement yet do not have the benefit of an official visa authorizing them to remain in the country may do so, provided that they entered the country before 1 November 1992. The decision expressly covers foreign farm workers, commonly called *braceros* (farmhands), whose temporary stay in Venezuela is governed by other provisions of the Ministry of the Interior and Justice.

287. Aliens who are nationals of Cartagena Agreement countries whose migratory situation is regularized by the Department of Aliens are given an identity document known as a migrant worker's card, valid for one year from the date of issue. On expiry of this document, the migrant worker can apply for and obtain a temporary visa. In order to qualify for this temporary visa, the migrant worker must have remained in Venezuela without interruption during the validity of his identity card, must not have a criminal record, and must be able to show up-to-date proof of employment.

288. The Andean Labor Migration Instrument (decision 148 taken by the Commission on the Cartagena Agreement) provides that the fact that a person is undocumented or has been repatriated will not, in any circumstances, reduce their labour rights vis-à-vis an employer and that those rights will be determined by the national law of the country of immigration.

289. Lastly, the Regulations for the Issuance of Visas (*Official Gazette*, No. 5,427 (special issue), of 5 January 2000) provide that aliens with a tourist visa may not engage in gainful employment in Venezuela, but there is no provision that would jeopardize or penalize the employer if he were to give work to an unauthorized person.

290. Within the framework of the Andean Pact, the Cartagena Agreement led to the signing of the Simón Rodríguez Agreement, which aims at social and labour harmonization in the sub-region. The Andean Labour Migration Instrument (decision 116 of February 1977) provides that member States will endeavour to turn to labour centres in the Andean region with the aim of

ensuring recruitment of qualified migrant workers to meet employers' needs. The migrant worker will be authorized to bring his family into the country of immigration when it is verified that he has appropriate living accommodation for them. Failing that, his application can be refused.

291. The Presidential Commission on Selective Migration<sup>57</sup> aims to select and incorporate into Venezuelan society immigrants who are able to fill gaps in the labour market. With regard to this programme, decision 544 (*Official Gazette*, No. 4,508, of 30 December 1992) provides that persons who enter Venezuela with any type of visa can obtain an immigration visa if they feature on the Register of Direct Foreign Investment drawn up by the competent national body. It also provides that the persons who have entered Venezuela with a temporary working visa will be treated as immigrants (with a resident visa) if they have remained uninterruptedly in the country for one year.

292. Under ILO Conventions No. 111 and No. 143, States undertake to apply a national policy to promote and guarantee equality of opportunity and treatment in the areas of occupation and employment, social security, trade union and cultural rights and individual and collective freedoms. In domestic law, the Immigration and Colonization Act sets out two measures against discrimination concerning aspects relating to the encouragement of immigration: that immigrants should be assisted on arrival in Venezuela and that they should be exempted from military service if they adopt Venezuelan nationality (art. 7, para. 1); that they may be given uncultivated land to cultivate free of charge (art. 9).

### **Entering and leaving national territory**

293. All foreigners wishing to enter Venezuela must hold a passport valid for at least six months, issued by the competent authority of their country, and apply for a visa from the Venezuelan consular official (Aliens Act, art. 6), in accordance with the Regulations for the Issuance of Visas (art. 2). Under an international agreement based on reciprocity, passports valid for not more than one year held by foreigners who frequently have to enter and leave Venezuela on lawful business are accepted.

294. As a general rule, the Regulations for the Issuance of Visas must be complied with in order to obtain a visa; these Regulations result from a joint decision of the Ministries of the Interior and Justice, Foreign Affairs and Labour, published in the *Official Gazette*, No. 5,427 (special issue), of 5 January 2002. It is the responsibility of Venezuela's consular offices to deal with and decide on applications for entry to Venezuela in the following cases: a multiple-entry tourist visa valid for one year, permitting a stay of up to 90 days, which can be extended for the same length of time; non-resident visas, which include visas for business, investment, industrial concerns, family members of Venezuelans, pensioners, domestic servants, members of religious orders and workers. Each category requires specific documents. The above-mentioned decision sets out grounds for refusal of the visa in article 3.

295. The Aliens Act stipulates in article 37 that any individual who has taken up residence in the country by circumventing, defrauding or breaching the laws and regulations on admission may be the subject of an administrative expulsion measure. The expulsion is effected under a presidential decree, which establishes a period of 30 days for the individual expelled to leave the national territory and must be published in the *Official Gazette*.



296. With reference to labour legislation, the Labour Organization Act and its Regulations contain provisions ensuring the protection of workers against possible discriminatory practices based on age, sex or race, while the principle of preventing arbitrary discrimination in employment is embodied in domestic legislation; for the same reasons on 3 June 1971 the Venezuelan State ratified ILO Convention No. 111 concerning Discrimination in Respect of Employment and Occupation.

297. For the purposes of this Convention the term “discrimination” includes: Any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.

298. The Bolivarian Republic of Venezuela promulgated the Regulations on the Regularization and Naturalization of Aliens in the National Territory in Decree No. 2,823 of 3 February 2004, published in *Official Gazette*, No. 37,871, of 3 February 2004. This instrument reflects the prime importance of the welfare of the individual in the design and implementation of the State’s policies. The Regulations expressly cite the Ministry of Labour as the body associated with the implementation of its provisions and establish the principles of the State’s obligation to protect and guarantee human rights, dignity, fair and equitable treatment, no cost, a timely and adequate response and transparency and rapidity in the formalities of regularization or naturalization of non-nationals who apply; these principles and their objectives are bound up with those of the ILO Convention No. 143 concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers of 1975, ratified by the Republic on 17 August 1983.

299. There is also a link with the five thematic issues of Venezuela’s active participation in the Andean Community, namely: labour migration - in direct relation to the beneficiary (as object and subject) of decision No. 545 - the effects of which will have positive repercussions on social security, health and security in employment, encouragement of employment and vocational training.

300. Article 5 (e) (i) (ii) stipulates that: “... States parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: ... (e) Economic, social and cultural rights, in particular: (i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration”:

(a) The right to work as an inalienable right of all human beings is enshrined in article 87 of the Constitution of the Republic as follows: “Article 87: Every person has the right to work and the duty to work. The State shall ensure the adoption of the necessary measures so that all persons can obtain productive employment providing them with a decent and worthwhile existence and ensuring the full exercise of this right. It is an objective of the State to foster employment. The law shall adopt measures to ensure the exercise of the labour rights of independent workers. Freedom to work shall not be subject to restrictions other than those established by law;

(b) The right to the same employment opportunities, and to the application of the same criteria of selection in matters of employment, is embodied in article 26 of the Labour Organization Act;

(c) The right to choose a profession and employment freely, the right to promotion, to stability of employment and to all the benefits and other conditions of service, and the right of access to vocational training and refresher training, including apprenticeship, advanced vocational training and periodic refresher training, are conditions governing labour relations independent employment in the Venezuelan State and are rights embodied in articles 87, 88 and 89 of the Constitution and in article 2 of the Labour Organization Act;

(d) The right to equal remuneration, including benefits, and to equal treatment for equal work, as well as equal treatment in respect of assessment of the quality of work, can be found in article 91 of the Constitution: "... Equal wages shall be guaranteed for equal work" (ILO Convention No. 111, ratified by the Republic on 3 June 1971);

(e) The following International Labour Organization Conventions are in force in the State of Venezuela: Forced Labour Convention (No. 29), Migration For Employment Convention (No. 97), Abolition of Forced Labour Convention (No. 105) and Migrant Workers (Supplementary Provisions) Convention (No. 143).

301. Labour legislation contains norms intended to prohibit any type of discrimination, including racial discrimination. The role of the State vis-à-vis any type of race-based discrimination in employment, either in an established work relationship or possibly arising before the work relationship is established, is expressly to prohibit such discrimination. These norms can be found in article 26 of the Labour Organization Act and article 8 (e) of the Regulations implementing the Act.

302. With reference to subparagraph (ii): "The right to form and join trade unions":

(a) Trade union freedom: The exercise of this right, regarded as the right of workers and employers to exercise and enjoy freedom of association and organization, is not subject to any condition involving a worker's origin or race. The State has also ratified ILO Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize (ratified by the Republic on 27 September 1982).

#### **D. Rights of women**

303. Women constitute another social group to which the State of Venezuela has given increasing support in order to ensure their fair treatment. On 30 September 1998 the Government promulgated the Violence against Women and the Family Act and on 26 October 1999 the Women's Equal Opportunities Act, guaranteeing women full exercise of their rights and the development of their personality, abilities and capacity.

304. This legislation, five years after its promulgation, has been successful in substantially strengthening the position of Venezuelan women in society, since specialized agencies for the advancement of women have undertaken education and information campaigns which have had a considerable social impact.

305. The Ministry of the Interior and Justice has been active along with the National Institute for Women (INAMUJER) in efforts to ensure the effective protection of women, through the Scientific, Criminal and Forensic Investigation Unit, particularly with reference to the eradication of domestic violence and offences where the victims are for the most part women.

306. This legislation will permit better monitoring and registration of any excessive, uncontrolled or unassisted migratory movements and will prevent the adverse social and human consequences they bring in their wake, resulting from the existence of abusive or clandestine smuggling of labour.

307. Similarly, this legislation, in accordance with the content and objectives of ILO Convention No. 143, will permit the effective investigation of the illegal employment of migrant workers, and the determination and application of administrative, civil and criminal penalties. It will also ensure equal opportunities and treatment in employment and professional matters, social security, trade union and cultural rights and individual and collective freedoms for persons who are legally in Venezuela as migrant workers or members of their families.

308. It is one of the primordial objectives of the Government of the Bolivarian Republic of Venezuela to achieve equal opportunities for all citizens; equal opportunities for men and women are a key element to bringing into being a country where there is no discrimination. The Constitution of Venezuela contributes to this process by incorporating the gender perspective as a fundamental aspect of the defence of women's rights and embodies the principle of equality among men and among women, guarantees the protection of maternity and recognizes the value added contributed by housewives.

309. The Women's Equal Opportunities Act,<sup>58</sup> the objective of which is to "guarantee women full exercise of their rights and the development of their personality, abilities and capacity", promotes equal opportunities and non-discrimination against women, and defines in legal terms the meaning of discrimination against women.

... "Discrimination against women" shall be taken to mean:

(a) The existence of laws, regulations, decisions and any other legal act the spirit, content or effects of which express the predominance of advantages or privileges of men over women;

(b) The existence of actual circumstances or situations which detract from the situation of women and although protected by law are the product of the environment, tradition or individual or collective idiosyncrasies;

(c) The legal or statutory vacuum or shortcoming in a specific sector involving women, which hinders or blocks their rights.<sup>59</sup>

310. The Venezuelan State has a guiding body for women's policies, the National Institute for Women, which is responsible for directing, coordinating, supervising, implementing and assessing the main features, policies and concerns of the status and situation of women, the promotion of gender equality and the role of Venezuelan women as protagonists in the social and

political transformation of the country, in accordance with the stipulations of the Convention on the Elimination of All Forms of Discrimination against Women. The Institute's legal body for the defence and support of women's rights is the National Ombudsman's Office for the Rights of Women.

311. Another instance of progress in legislation concerning women, aimed at prohibiting racial discrimination and adopting appropriate measures to combat the prejudices which have given rise to it, is the Violence against Women and the Family Act (1998), the bases for which can be found in the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women,<sup>60</sup> which recognizes that violence against women is a violation of human rights; all Latin American countries have enacted legislation which enable this situation to be penalized; the Act adopting the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, has, in turn, led to the National Plan for the Prevention of Violence against Women and the Family 2000-2005, and to the setting up of the 800-Mujer<sup>61</sup> telephone line as a means of providing psychological and legal advice and dealing with cases of abuse and ill-treatment of women and the family, including children and adolescents.

312. Women are active participants in politics; Venezuelan women are to be found in senior decision-making posts, for example, in the Office of the Vice-President, as ministers in the Ministry of Labour, the Environment, Production and Trade and in the Ministry of Health and Social Development, and are also a significant presence in the National Assembly.

313. In accordance with the commitments made at the Fourth World Conference on Women,<sup>62</sup> which took into account five issues of top priority for Venezuela, including empowerment, education, poverty, health and violence, the National Plan for Women 1998-2003 was drawn up within a strategy framework meeting the objectives of the international Platform for Action together with the annual public sector operational plans, and seeks to reduce levels of poverty and obtain equal opportunities for men and women by including the gender approach in planning and preparing public policies. The Plan contains strategic areas and courses of action with regard to education, poverty, economy and employment, social and political participation, legislation and legal security, culture and mass media, violence, peasant and indigenous women, population with special needs and statistics.

314. The Ministry of Education, Culture and Sport for its part has set in motion a review of the school curriculum in order to include the gender perspective and non-discrimination on ethnic grounds in the curriculum and in educational methodology, in order to give women, indigenous people and the population of African origin a higher profile in the education system. Workshops have been organized with the participation of government (including the National Institute for Women) and non-governmental sectors as baseline organizations and experts.

315. Since 2002, State television has a slot every two weeks on channel 8 devoted to the National Institute for Women, dealing with topics of gender equality, non-discrimination against women and prevention of violence against women. Since 2004, the State radio (Radio Nacional de Venezuela) has had a weekly programme called "Focus on women" on the topic of gender and the promotion of women's rights (shortwave, international service). The same radio

station has a weekly one-hour programme on 630 AM to combat racial prejudices and promote non-discriminatory values to encourage the development of tolerance and respect for ethnic and gender differences. The programme is called “African heritage”.

316. Activities have also taken place for rural and indigenous women in the States of Delta Amacuro, Bolívar and Apure with the following objectives:

Establishment of links between organizations working on the topic of rural and indigenous women;

Circulation of the regulations and laws relating to women, specifically in the Constitution and the Land Act;

Promotion of the incorporation of women in regional production activities and fostering of their participation in decision-making.

317. It is important to emphasize the new conception of the Government’s social policy based on the Constitution of the Bolivarian Republic of Venezuela, which seeks “imperatively to meet the social needs of all individuals, by making possible the universalization of rights and the materialization of fair opportunities for better conditions of quality of life, essential for their full autonomy as human beings and as citizens”, as the National Economic and Social Development Plan 2002-2007 puts it in the chapter on social equilibrium.

318. A process of economic, social and institutional change has been initiated in Venezuela, with the emergence of new actors, areas for dialogue and political agendas involving broad sectors of the population. The major challenge for Venezuelan society is to construct a democracy of participation and social justice, by encouraging a model of fair development based on the individual and summoning the commitment and the ethical and political responsibility of the public authorities and of all citizens.

## **VI. ARTICLE 6**

### **A. Rights of the prison population**

319. Where the prison system is concerned, in order to implement article 272 of the Constitution of the Bolivarian Republic of Venezuela, the Ministry of the Interior and Justice has embarked on agreements with the various states, and established the State of Mérida Convention on 30 June 2003 to decentralize prison administration and provide better service. A series of education agreements have been made with various public and private institutes and universities to provide the prisons with educational activities for the reintegration of prisoners into society, thus ensuring their egalitarian treatment and promoting equal opportunities for this group of persons.

320. One of the goals of the Venezuelan State has been to introduce self-esteem courses for the prison population to prevent this social group from discriminating against itself - a determining factor in social integration - in order to initiate prisoners in the technical courses and formal studies which will provide them with the necessary know-how and capacities for training and development for employment.

321. It may be noted that the prison system, through the Prison Work Bank, an autonomous agency, has promoted, organized and inducted the active working prison population in cooperativism, in order to give them an opportunity for personal development and the progressive improvement of their activities.

## **VII. ARTICLE 7**

### **A. Cultural and linguistic relevance of health policies**

322. Article 168. Health policies and programmes for indigenous peoples shall accord value to the world view and the traditional medicine practices of each people and shall encourage their inclusion in health systems, particularly in states with an indigenous population. They shall also foster the use of indigenous languages in health care.

323. The organization of the national public health system shall be brought into line with the traditional indigenous organizations and institutions and the direct administration encouraged of health services and programmes.<sup>63</sup>

324. With regard to organization, the indigenous communities shall participate in the National Health System Advisory Council, the duties of which include that of advising the Minister for Health and Social Development on aspects of health.<sup>64</sup>

325. The right of indigenous peoples to their traditional medicine is established explicitly and it is stressed that health policies for indigenous peoples are to accord value to the world view and practices of traditional medicine of each ethnic group, encouraging their inclusion in health systems, particularly in states with an indigenous population. The State will also ensure the conservation and regulation of traditional indigenous medicine and research into its contribution to universal knowledge.

326. Another relevant aspect of the Health Act is the inclusion of a special norm on the urgent needs of certain indigenous groups exposed to a severe risk of biological extinction or an irreversible decline in population. The responsibility of the Ministry of Health and Social Development as the guiding body for health policies is engaged for designing and implementing a special health plan for these groups.

### **B. Ethnic groups in irreversible demographic decline**

327. The Ministry of Health and Social Development shall design and implement, with the participation of representatives of the indigenous peoples, a special health plan for ethnic groups exposed to a severe risk of biological extinction or an irreversible decline in population and shall maintain a special system for monitoring their health situation.<sup>65</sup>

328. In the political domain, the indigenous peoples have for the first time been given their own legislative representation in the National Assembly and in local and federal deliberative bodies in states with an indigenous population, thus giving them an opportunity to participate actively in politics, make their voices heard and have their rights reflected. This constitutes a guarantee of respect for their customs and traditions and for their ethnic and cultural identity:

“The indigenous peoples have the right to participation in politics. The State shall ensure indigenous representation in the National Assembly and in federal and local deliberative bodies in states with an indigenous population, in accordance with the law”.<sup>66</sup>

329. Particular mention should be made of the special acknowledgement of the indigenous peoples embodied in the Constitution, to the effect that “as cultures of ancestral origin they are part of the unique, sovereign and indivisible Venezuelan Nation, State and people” and that they “have the duty to safeguard national integrity and sovereignty”.<sup>67</sup>

330. In order to put a stop to racial discrimination at the social level, the thrust of public policies is the achievement of social justice with the aim of ensuring fair and universal enjoyment of social rights in a transformed society in which unsatisfied needs will be met and a decent quality of life will be ensured for persons who have been discriminated against for one reason or another, through comprehensive and systematic responses to the diversity and complexity of the social demands of (indigenous) population groups. The Government has committed itself to covering and resolving the needs of this community and to getting the better of unfairness, social injustice and racial discrimination.

331. In accordance with the programme of the Government of President Hugo Chávez Frías,<sup>68</sup> social equilibrium not only aims at correcting the enormous differences affecting Venezuelan society, with its huge burden of social exclusion and injustice, but pursues the full development of citizens in aspects relating to the exercise of democracy; in other words, the essence of this democratic revolution is to bind the purely political to all the everyday decisions affecting citizens’ lives by claiming back the public arena, and to safeguard the essential aspects and the rights that will confer protection against discrimination.

332. In this vein, the Ministry of Health and Social Development has planned strategies to tackle the grave social problems that have for years undermined entire populations because of factors of racial discrimination.

333. The special indigenous community cooperatives project is currently being implemented for the comprehensive care of indigenous children; it has led to the creation of 613 day-care centres and the training of 1,315 mothers as carers in the indigenous communities with the aim of attending to a total of 15,770 children belonging to the Piapoco, Pemón, Baniva, Jivi, Yaruro, Panare, Bari, Añú, Wuajibo, Wuayúu, Yucpa and Japieno ethnic groups in the States of Bolívar, Amazonas, Apure, Delta Amacuro, Monagas and Zulia.

334. In the frontier State of Delta Amacuro, where the Warao ethnic group is the predominant indigenous population, the care strategy of the Ministry of Health and Social Development, through the National Autonomous Service for the Comprehensive Care of Children and the Family, has been to set up a day-care home programme for children, for the most part of indigenous origin, in the municipality of Antonio Díaz.<sup>69</sup> The day-care home programme is of great assistance to the Bajo Delta indigenous community since the homes look after and feed children between the ages of 0 and 6, and are a source of jobs for the community.

335. In the State of Amazonas, the Ministry, in coordination with representatives of 19 indigenous ethnic groups living in the state, is planning to sign a document to be known as the “La Esmeralda Charter” that recognizes the very important contribution of traditional indigenous medicine to medical practice.

336. It is worthy of note that this is the first time in Venezuela that an encounter of this kind has been held with shamans and captains, representing the ethnic groups, enabling the health authorities responsible for implementing the health policy - in this case the Ministry of Health and Social Development - to initiate a frank and open dialogue. This initiative is an endeavour to acknowledge and give fresh value to the know-how of the traditional medicine of the indigenous peoples, derived from their ancestral culture. It also fulfils a constitutional right set out in article 122 of Venezuela’s Constitution establishing the practice of this medicine with its customs and values.<sup>70</sup>

337. In the delivery of primary health care as a national health policy priority, the Ministry of Health and Social Development is making use of the Shanty-towns mission, the objectives of which include “Guaranteeing access of the excluded population to health services through a comprehensive health management model in order to achieve a better quality of life”. This public body with its national coverage will provide care to indigenous communities where the streamlining of the health-post network with the Shanty-town mission involves bringing 4,404 type I and II rural health posts and type I urban health posts into line with the proposed new management model, and the incorporation of the States of Amazonas, Delta Amacuro and Zulia where the great majority of indigenous people live.<sup>71</sup>

338. The aim is to forge links globally with the indigenous peoples and communities living in Venezuelan territory without excluding any social group or category. They cannot continue to be discriminated against nor can they be absent from the process of change unfolding in Venezuela. An endeavour is also being made to seize the moment and bring the Bolivarian peoples closer together in this context.

### **C. Recommendations to the public authorities by the Special Ombudsman for the protection of the rights of indigenous peoples**

339. Of the most pertinent recommendations of the Office of the Special Ombudsman for the Protection of the Rights of Indigenous Peoples mention may be made of the following:

#### **To the legislative branch**

1. Urgently expedite the approval and promulgation of the Indigenous Peoples and Communities Bill.

#### **To the executive branch**

1. Install the umbrella agency that will unify, coordinate and evaluate public policies for the indigenous population of Venezuela.
2. Increase and ensure financial resources for the Fund for Sustainable Care and Development of the Indigenous Population.



3. Apply for and approve the special resources required in the first half of 2004 to carry out a special registration to supplement the chapter on the 2001 indigenous census of the thirteenth general population and housing census in the following states and municipalities: Alto Orinoco, Manapiare, Maroa and Río Negro (Amazonas); Fernando Peñalver and Píritu (Anzoátegui); Achaguas, Páez, Pedro Camejo and Rómulo Gallegos (Apure); Cedeño, Gran Sabana, Heres, Raúl Leoni, Sifontes and Sucre (Bolívar); Antonio Díaz, Pedernales and Tucupita (Delta Amacuro); Aguasay, Caripe, Cedeño, Libertador, Maturín and Sotillo (Monagas); Benítez, Ribero, Sucre and Valdez (Sucre); Almirante Padilla, Catatumbo, Jesús M. Semprún, Machiques de Perijá, Mara, Páez and Rosario de Perijá (Zulia).

4. Ensure the participation of the representatives of the indigenous organizations and communities in these states and municipalities in the planning, implementation and follow-up of the special indigenous registration process.

#### **To the national, regional and municipal executive branch**

1. Promote and support fully self-managed and sustainable projects on the indigenous habitat and collective land, in order to ensure that the respective indigenous peoples and communities participate to the full and benefit collectively.

2. Approve the necessary special human, technical and financial resources to implement the first stage of the demarcation of the indigenous habitat and collective land for 2004.

3. Assign priority to the following states and indigenous peoples: Pumé, Jivi and Kuiva peoples (Apure); Kariña and Cumanagoto peoples (Anzoátegui); Yavarana, Yanomami, Jivi, Kurripako and Piaroa peoples (Amazonas); Pemón, Kariña, Eñepa and Mapoyo peoples (Bolívar); Yukpa, Barí, Wayúu and Añú peoples (Zulia); and Kariña, Warao and Chaima peoples (Monagas).

4. Ensure the substantial improvement and timely updating of the national programme/system for evaluating, measuring and following-up parameters and indicators of quality of life and comprehensive health care of the indigenous peoples and communities (nutrition, death rate, birth rate, epidemiological monitoring, vaccination).

#### **To the executive, legislative and civil branches of the Government**

1. Approve the special human and financial resources required to translate the Constitution into the indigenous languages, assigning priority in the first stage (for 2004) to the following: Wayúu, Yanomami, Warao, Pemón, Pumé, Kariña, Yekuana, Piaroa, Jivi and Yukpa.

2. For the purposes of articles 120 and 124 of the Constitution, it is a matter of urgency to formalize the following legal/administrative instruments:

Regulations implementing the Biological Diversity Act on access to genetic resources, subject to informed consent and a fair and equitable agreement on collective benefits;

System for the protection of intellectual property rights with regard to the traditional know-how of indigenous peoples and communities concerning biological diversity;

Regulations concerning the participation of indigenous peoples and communities in access to genetic resources and traditional knowledge of them.

### Notes

- <sup>1</sup> Constitution, art. 2.
- <sup>2</sup> Constitution, art. 136.
- <sup>3</sup> Constitution, art. 225.
- <sup>4</sup> Constitution, art. 186.
- <sup>5</sup> Constitution, art. 253.
- <sup>6</sup> Constitution, art. 273.
- <sup>7</sup> Constitution, art. 292.
- <sup>8</sup> Constitution, arts. 226-232.
- <sup>9</sup> Constitution, art. 236.
- <sup>10</sup> Constitution, art. 238.
- <sup>11</sup> Constitution, art. 239.
- <sup>12</sup> Constitution, art. 242.
- <sup>13</sup> Constitution, arts. 244 and 245.
- <sup>14</sup> Constitution, arts. 247-250.
- <sup>15</sup> Constitution, art. 252.
- <sup>16</sup> Constitution, art. 188.
- <sup>17</sup> Constitution, art. 193.
- <sup>18</sup> Constitution, art. 253.
- <sup>19</sup> Constitution, art. 255.
- <sup>20</sup> Constitution, art. 258.

<sup>21</sup> Constitution, art. 263.

<sup>22</sup> Constitution, art. 266.

<sup>23</sup> Constitution, art. 272.

<sup>24</sup> Constitution, art. 274.

<sup>25</sup> Commission on Human Rights resolution 1992/54 of 3 May 1992. Accredited with the International Coordinating Committee of National Human Rights Institutions.

<sup>26</sup> Constitution, art. 280.

<sup>27</sup> Constitution, art. 281.

<sup>28</sup> Constitution, art. 284.

<sup>29</sup> Constitution, art. 285.

<sup>30</sup> Constitution, arts. 287 and 288.

<sup>31</sup> Constitution, art. 289.

<sup>32</sup> Constitution, art. 293.

<sup>33</sup> Constitution, art. 19.

<sup>34</sup> Constitution, art. 22.

<sup>35</sup> Constitution, art. 23.

<sup>36</sup> Constitution, art. 25.

<sup>37</sup> Constitution, art. 26.

<sup>38</sup> Constitution, art. 27.

<sup>39</sup> Constitution, art. 29.

<sup>40</sup> Constitution, art. 30.

<sup>41</sup> Constitution, art. 31.

<sup>42</sup> Constitution, art. 339.

<sup>43</sup> *Official Gazette* of the Bolivarian Republic of Venezuela, No. 5,453 (special issue), 24 March 2000.

<sup>44</sup> Constitution (1999).

<sup>45</sup> Ibid.

<sup>46</sup> Ibid., title III, child and adolescent protection system.

<sup>47</sup> Ibid., art. 81.

<sup>48</sup> Ibid., art. 60.

<sup>49</sup> [justicaambiental@comunicante.rits.org.br](mailto:justicaambiental@comunicante.rits.org.br)

<sup>50</sup> Ibid., art. 120.

<sup>51</sup> *Official Gazette*, No. 37,118, 12 January 2001.

<sup>52</sup> Currently awaiting its second reading and adoption by the National Assembly.

<sup>53</sup> Indigenous Peoples Habitat and Lands Demarcation and Protection Act, art. 1, para. 3.

<sup>54</sup> Preliminary draft health bill, currently before the National Assembly for consideration and approval.

<sup>55</sup> Ibid., art. 34.

<sup>56</sup> Constitution, part I, Basic Provisions, art. 8.

<sup>57</sup> Decree No. 2,285. Establishment of the Presidential Commission on Selective Migration, 28 May 1992 (<http://www.acnur.org/biblioteca/pdf/0973.pdf>).

<sup>58</sup> Promulgated in September 1993.

<sup>59</sup> Women's Equal Opportunities Act, art. 6.

<sup>60</sup> Belén Do Para, 1994.

<sup>61</sup> In operation as from December 1999.

<sup>62</sup> Beijing, China, 1995.

<sup>63</sup> Draft health bill.

<sup>64</sup> Ibid., art. 12.

<sup>65</sup> Ibid., title VI, Transitional Provisions.

<sup>66</sup> Constitution, chap. VIII, Rights of Indigenous Peoples, art. 125.

<sup>67</sup> Constitution, art. 126.

<sup>68</sup> General Outline, National Economic and Social Development Plan 2000-2007.

<sup>69</sup> [www.msds.gov.ve](http://www.msds.gov.ve): “more day-care homes inaugurated in the Delta by the Bolivarian Government”, February 2004.

<sup>70</sup> [www.msds.gov.ve](http://www.msds.gov.ve): Encounter between shamans of Amazonas and the Ministry of Health and Social Development.

<sup>71</sup> Ministry of Health and Social Development: National coordination of primary health care/Shanty-town mission. Information Bulletin No. 1, 8 March 2004.

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