



**Convention on the  
Rights of the Child**

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COMMITTEE ON THE RIGHTS  
OF THE CHILD

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 44 OF THE CONVENTION**

**Second periodic reports of States parties due in 1997**

**BOLIVARIAN REPUBLIC OF VENEZUELA\* \*\***

[4 December 2006]

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\* For the initial report of the Government of Venezuela see document CRC/C/3/Add.54; for its consideration by the Committee see documents CRC/C/SR.560, 561 and 568 and CRC/C/15/Add.109.

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## Introduction

1. To analyse the situation of children and adolescents in Venezuela, it is essential to take into consideration three factors - poverty, family breakdown and social exclusion. These interrelated elements are changing and developing within social systems worldwide to an extent that is becoming critical. They are also the three main issues facing Venezuela and Latin America in general, and solving them will require national and international consensus.

2. On the first element, it is worth recalling that by 2002, the poverty rate in Venezuela had dropped to 55.3 per cent of the total population;<sup>1</sup> based on that figure, the aim is to reduce poverty to 25 per cent by the year 2015. By the end of 2003, poverty had begun to decrease steadily as a result of the measures and different social programmes the Government was implementing to tackle poverty and encourage investment so as to reduce the inequalities that were preventing Venezuelan families from enjoying their social rights and public services.

3. However, the country is still in the midst of economic recovery. In 2001 and 2002, recovery was particularly unsteady owing to the unrest that opponents of President Chávez's legitimate Government were stirring up in the media, and the ensuing political, social and economic instability. The resulting wave of protests triggered a coup d'état and an oil-sector strike, the economic repercussions of which were felt until 2003. This situation was detrimental to the workforce, and it prompted the President to monitor results constantly in order to construct a development model appropriate to the revolutionary transformation process with a view to reducing poverty and establishing the social balance that the people demand.

4. The family, a flexible structure that subtly adapts in response to internal and external influences, has been particularly affected by this political, economic and social situation. It is the fundamental realm where the human life cycle begins, and it provides a unique space for the development of family members, where crucial experiences of success and failure, illness and health are gained. It is the space where human beings develop according to the rules, customs and patterns of interpersonal relationships and coexistence in the home. Family breakdown as a result of factors on which people's everyday lives depend - the social, economic and political situation - leads to exclusion from social progress and better standards of living and well-being. This is the context in which children and adolescents are growing up.

5. By taking social measures, the Government seeks to increase general well-being with a view to improving people's standards of living in terms of literacy, health, education, job

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<sup>1</sup> "In this second period (1997-2002), the poverty rate went from 75.5% in 1996 to 45.3% in 2001, and extreme poverty from 42.5% to 16.9% over the same period. There was therefore a downward trend in poverty in 2002, but thereafter, owing to several political events such as the oil-sector strike of December 2001, the coup d'état in April 2002 and the oil-sector strike of December 2002 (...) the poverty level increased, reaching 55.3% that year - equivalent to 13.9 million people, with an extreme poverty rate of 25% - equivalent to 6.9 million people. The target is to reduce these figures by 2015." *Source*: "Achieving the Millennium Development Goals", Bolivarian Republic of Venezuela, pp. 34 and 35.

creation and labour training, culture, sport and recreation, nutrition and access to good quality products, and the establishment of cooperatives and a network of alternative news media.

6. These issues are in line with a social policy that is directly linked to economic policy. Its aim is to generate human resources and a social and institutional environment that will provide the social capital and encourage the social cohesion that the Republic demands.

7. Placing social policy within the context of public management has provided immediate results and the foundations are being laid for the country we wish to build. By implementing policy based on the principles of equity and social justice, we aim for equal conditions and opportunities for all Venezuelans of both sexes.

8. In this context, the Government has been seeking alternative ways to meet the needs of the Venezuelan family, starting with children's and adolescents' welfare in accordance with the Convention, and especially the principle of comprehensive care. This principle guides all action on plans, programmes and projects to transform the living conditions of children and adolescents and their families, recognizing that they are full, active legal subjects.

9. The bodies in charge of policy on children and adolescents follow these guidelines, which are also set out in the Constitution, the Protection of Children and Adolescents (Organization) Act, and the Radio and Television Social Responsibility Act, and backed up at the operational level by the strategic contents of the Strategic Social Plan. These bodies are helping to institute a new form of management based on institutional co-responsibility and equitable distribution of services, directing social investment towards a model of society and ethics that favours children and adolescents. This new, highly operational and participatory model has reduced the equity gap by expanding the coverage of programmes of care for children. This has guaranteed their rights, facilitating access to efficient, effective services and generating care systems suited to the needs children and adolescents have in different regions, ethnic groups and social classes. Since 1999, measures taken for the protection, development, survival and participation of children and adolescents have focused on increasing their dignity, social inclusion and quality of life.

10. The Ministry of Health is also currently undergoing deep change, including a modernization process based on a redefinition of its competencies. The main care model will be based on a comprehensive focus on the person, family and community, to strengthen primary health care and reinforce efforts to promote health, encouraging elements that protect life and healthy behaviour. Participation by organized society is essential in this endeavour.

11. Health promotion in this new structure is a cross-cutting concern that runs through all activities that focus on the cycle of life, with children and adolescents remaining the priority. It is implemented through the Misión Barrio Adentro (Shanty-towns project) in conjunction with the Ministry of Health, which takes the lead on primary health care, setting social policy through a new mode of public management based on the principles of equity, cost-free status, solidarity, accessibility, universality, co-responsibility and social justice.

12. The Misión Barrio Adentro is turning into the axis of social policy, where measures, plans and social programmes, and primary health-care services meet, providing essential care

accessible to all. It is the core of the national public health system and is the embodiment of social and economic development, promoting social and community organization.

13. Based on this new model, which draws together all institutional activities related to social development and health, Venezuela intends to:

- (a) Ratify the concept of human development and human rights embodied in the Protection of Children and Adolescents (Organization) Act;
- (b) Defend and promote that Act and foster civil society's support to promote the entry into force of the Act;<sup>2</sup>
- (c) Set up a national protection system comprising all the strategic agencies concerned with children, such as: 266 Protection Councils, Councils for Children's and Adolescents' Rights (24 State Councils for Children's and Adolescents' Rights), 321 Municipal Councils for Children's and Adolescents' Rights, Child and Adolescent Protection Courts, 245 Children's Ombudsman's Offices, which were set up in response to public demand, and several public institutions;
- (d) Establish 21 State Child and Adolescent Protection Funds and 159 Municipal Child and Adolescent Protection Funds;
- (e) Set up a national child protection network made up of prosecutors specializing in cases involving children, a monitoring and appraisal system for policies that target children, and protection funds and institutions.

## I. GENERAL MEASURES OF IMPLEMENTATION

### Article 4

14. In August 2005, to give effect to the rights of the child as set out in the Constitution, the National Assembly began the process of reforming the Protection of Children and Adolescents (Organization) Act. The reformed version is awaiting a second reading and approval before being implemented. Thereafter, the legal process will ensue: presidential veto, promulgation and publication in the *Official Gazette*.

15. There are three dimensions to this reform process, concerning policy and operations, as follows:

- (a) Bringing the Act into line with the text of the Constitution. While the Act was promulgated in 2000, it was drawn up during the second half of the 1990s. It represented progress and includes provisions that are in line with the Convention on the Rights of the Child, but is nonetheless based on the 1961 Constitution;

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<sup>2</sup> From the report "Follow-up to the World Summit for Children", Bolivarian Republic of Venezuela, Office of the First Lady, February 2001, p. 12.

(b) Filling several administrative and institutional lacunae which have kept the system in legal and administrative limbo over the last five years, such as the issues of secondment, legal personality, authority and administrative council;

(c) Improving the procedural content of the Act, which the jurists at the Supreme Court of Justice consider lacking in mechanisms for timely trials and oral proceedings as provided in the Constitution, particularly with regard to due process. The focus of the reform is on the jurisdiction of the protection court and the procedures and organization of the justice system, particularly the Child and Adolescent Protection Courts, and the roles and authority of its multidisciplinary staff; the work, roles and authority of the Public Prosecutor's Office; the Public Defender's Office and how the Office of the Ombudsman can be brought into proceedings; Child and Adolescent Protection Court hearings; and adoption and placement of children and adolescents.

16. This year (2005), the reform of the Act has been under debate in the context of the national child protection system, since substantive changes to the Act have implications for the workings of the national governance system of the National Council for Children's and Adolescents' Rights. Additional meetings were held on this issue in July and August 2005.

17. The President has made several observations and proposals, including:

(a) A critical discussion of the Protection of Children and Adolescents (Organization) Act and the National Council for Children's and Adolescents' Rights, combined with a request to members of the National Assembly for urgent action to bring the Act into line with the broad national objectives of transformation and change;

(b) An assessment of how the Ministry of Health is managing provision for street children, and the need to address the issue of street children in Venezuela;

(c) A commitment on the part of the entire Government and the nation's forces for change to tackle problems that obviously affect the lives of those at social risk.

18. The National Assembly therefore endorses the reform, including the proposal made by the President at the high-level meeting in Fuerte Tiuna on 12 and 13 November 2004.

19. The reform of the Act is socially and politically significant because it increases the management capacity of the Government to address the rights of children and adolescents in Venezuela, based on two fundamental instruments: the Constitution, and the Convention on the Rights of the Child, as provided for in article 78 of the Constitution.

#### **Article 42: Mechanisms to disseminate the principles and provisions of the Convention**

20. In order to ensure that the principles and provisions of the Convention on the Rights of the Child are widely known, the Ministry of Education and Sport set up a Liaison Office and established a Follow-up and Liaison Committee in conjunction with the National Council for Children's and Adolescents' Rights.<sup>3</sup> The Committee came into being on 17 June 2002 through

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<sup>3</sup> [Footnote immaterial to English text.]

Resolution No. 195, with the purpose of publicizing and promoting policies, plans, programmes, projects and activities to do with comprehensive care, survival and participation of all children and adolescents. Some of the functions of the Liaison Committee are to:

- (a) Support exchanges of information among institutions on efforts to guarantee the enjoyment and full exercise of children's and adolescents' rights and obligations in education and sport;
- (b) Monitor the management of inter-institutional arrangements between the Ministry of Education and Sport and the National Council for Children's and Adolescents' Rights in order to guarantee the implementation, follow-up, monitoring and evaluation of public management under the principle of co-responsibility and democratic participation;
- (c) Publicize and promote policies, plans, programmes, projects and activities to do with comprehensive care, survival and participation of all children and adolescents in full exercise of their rights and obligations linked to education and sport.

21. Another committee was established in 2002 to provide follow-up and liaison between the education authorities and the protection system. The commissions that have been set up are in charge of coordinating all measures taken by regional and local bodies to promote and implement policies, plans, programmes, projects and activities under the principle of the protection of children's and adolescents rights.

#### **Article 44**

22. The basic law that protects the rights of children and adolescents is the Protection of Children and Adolescents (Organization) Act, which provides guidance on five main areas:

- (a) Legal framework, based on guaranteeing the human and social rights of children and adolescents;
- (b) Institutional framework, to strengthen and reform the formulation, implementation, execution and evaluation of comprehensive childcare policies;
- (c) Programme framework, which involves designing plans, policies and programmes for comprehensive childcare, sharing responsibility with various social partners;
- (d) Institutional framework, with a focus on distributing resources for comprehensive childcare;
- (e) Financial framework, i.e. cooperation between national, multilateral and bilateral bodies.

23. To comply with the demands of the Convention, the Venezuelan Government set up the National Council for Children's and Adolescents' Rights to oversee the national child protection system. This is a public body with its own legal personality, and functions completely independently from other public bodies. Its purpose is to deliberate, advise and audit, and it comprises representatives of both the public sector and civil society. It upholds children's and



adolescents rights through “comprehensive care”, sharing responsibility with the State, civil society and families. It functions on the basis of respect for and encouragement of administrative decentralization.<sup>4</sup>

24. In order to guarantee that Venezuelan children and adolescents enjoy their rights and fulfil their obligations,<sup>5</sup> changes have been made to the legal and institutional frameworks, including the establishment of a child protection system, made up of:

- (a) Administrative bodies:
  - (i) The National Council for Children’s and Adolescents’ Rights;
  - (ii) State Councils for Children’s and Adolescents’ Rights;
  - (iii) Municipal Councils for Children’s and Adolescents’ Rights;
  - (iv) Protection Councils for Children and Adolescents;
- (b) Legal authorities:
  - (i) Child and Adolescent Protection Courts;
  - (ii) The Civil Appeals Division of the Supreme Court of Justice.

25. Public Prosecutor’s Office: Oversees compliance with the law. The prosecutors are specialists in the field and take the place of the Juvenile Procurator.

26. Care institutions: These are public institutions responsible for carrying out programmes, measures and punishments. They can be either associations or organizations, and public, private or mixed.

27. Children’s Ombudsman’s Offices: The Government is setting up an Office of the Ombudsman, incorporating a special office to deal with cases involving children and adolescents.

28. Programmes: A series of activities for children and adolescents run by individuals or bodies for education, protection, care or training purposes, social investment, or strengthening emotional ties or other values. The child protection system runs programmes in the following

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<sup>4</sup> All information on the National Council for Children’s and Adolescents’ Rights was provided by the Council itself, which oversees the Protection of Children and Adolescents (Organization) Act.

<sup>5</sup> The Protection of Children and Adolescents (Organization) Act provides that there should be a complete system of bodies, entities and services called the “national protection system”.

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.

29. According to information provided by the National Council for Children's and Adolescents' Rights, by 2004 the child protection system extended to 266 Protection Councils and 245 ombudsman's offices; the number of municipal protection funds had grown to 159 of which 90 per cent were operational but only 70 per cent had been allocated sufficient resources. Resource allocation is based on the policies and action plans developed by the National Council for Children's and Adolescents' Rights (see graph in annex I).

30. The child and adolescent protection fund draws together all financial and other resources for the implementation of programmes, initiatives and services for the protection and care of children and adolescents at the national, state and municipal level. Under the terms of the Protection of Children and Adolescents (Organization) Act, programmes operate in each jurisdiction as autonomous services and have no legal personality.

31. Some of the resources for the child and adolescent protection funds come from:

(a) Budget allocations under the national, state or municipal budget, as appropriate. In 2003, 13 joint funding agreements were signed with State Protection Funds and 47 with Municipal Protection Funds;

(b) Additional allocations approved by national, state or municipal legislation;

(c) Allocations of non-financial resources by the nation, the states and the municipalities, as appropriate;

(d) Donations, assistance, contributions, grants, transfers, bequests or any sort of legal allocation from natural persons or national, international, governmental or non-governmental bodies;

(e) The interest earned on investments of available resources, the returns from sales of material and publications, or from awareness-raising, promotional or training events on the rights and guarantees enshrined in the Protection of Children and Adolescents (Organization) Act;

(f) Fines levied for breaches of that Act;

(g) Income arising out of agreements, accords and contracts made with public or private, national or international entities;

(h) Income arising out of protection orders when the Government, states or municipalities fail to allocate the resources referred to in the previous item, or when such allocations are irregular or insufficient; and

(i) Income from other sources constituted by law.

32. The 2004 social sector budget was set on the basis of the gross domestic product (GDP), with some 20 per cent earmarked for central government, so that fiscal balance can be sought in the medium term, eliminating the perennial shakiness of the public finances.<sup>6</sup> The drive for efficiency is based on the relationship linking the budget to the planning, budget allocation and performance audit processes. With the implementation of a programme to overhaul public finance, the new budget formulation systems do not allow allocation of expenditure unless quantifiable goals have been defined. In addition, a set of pilot performance indicators are being developed, as provided for under the Constitution and the Public Sector Financial Administration (Organization) Act. This enables results-based expenditure assessment.<sup>7</sup> With regard to national budget allocations, the programme structures of the bodies responsible for implementing social policy are being reviewed.

33. This budget allocation seeks to establish a new order in the public management of social policy, conducive to meeting the social demands of the most vulnerable while building the new socialist State by making eradicating poverty a priority, in addition to attaining the Millennium Development Goals laid down by the United Nations and its Member States. Taking this approach from 2006 onwards, the budget for the State social sector is solely allocated to broad-based projects.

34. Budget allocations to the ministries in the social sector reflect the administrative measures taken by the National Executive to ensure that all children and adolescents fully and effectively enjoy their rights and safeguards at the national, state and municipal levels (see annex II, table 1). One way of ensuring constant coordination between the economic and social policies forged by the Government is through the Social Cabinet, comprising the Ministries of education and sport; culture; health; participation and social development; labour; infrastructure; planning and development; the environment; and the interior and justice. The Cabinet makes the feasibility of these policies clear by assessing, controlling and monitoring their impact on the population.

35. The national, state and municipal authorities must abide by the Constitution and the Protection of Children and Adolescents (Organization) Act when formulating and administering the budget, guided by the principles of the best interests of the child and the overarching priority of providing comprehensive care to this sector of the population. At the same time, they must follow the guidelines provided by the Convention on the Rights of the Child.

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<sup>6</sup> This strategy is being continued this year as a fiscal balance mechanism complying with the constitutional principle of fiscal responsibility. It falls within the national budget's multiannual framework of an expenditure path appropriate to a non-oil financial deficit at a sustainable level of 10.6 per cent of GDP. Tax policy seeks to recover and boost non-oil tax receipts by supporting legal and administrative action to put an end to various forms of tax evasion and fraud.

<sup>7</sup> Department of Planning and Budgetary Matters, Ministry of Health. Web page: <http://www.ms.gov.ve/msds>.

36. The measures taken to protect the most disadvantaged children and adolescents from the adverse effects of economic policies are based on establishing and enhancing programmes to reduce inequality.

37. With regard to the state- and municipal-level budgets for the Child Protection System, the National Council for Children's and Adolescents' Rights sets forth guidelines ensuring that funds are allocated for children's rights and safeguards under comprehensive care policies and programmes (see annex II, table 2). These guidelines are based on the Protection of Children and Adolescents (Organization) Act, which specifies in article 137 that the Council's functions include: "(j) Requesting the competent authorities to take action and allocate resources to deal with specific problems affecting children and adolescents; (k) Expressing an opinion on the percentage of the national budget that should be earmarked for implementing basic and welfare social policies in order to ensure the rights and guarantees enshrined in this Act."

38. With regard to the demands and expectations of those operating the protection system and the process of advising the rights councils at the national level, rules have been laid down to ensure fair distribution when transferring resources from the National Child and Adolescent Protection Fund to its state and municipal counterparts. These rules have varied over time on the basis of institutional experience.

39. 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.

*Distribution phase I:*

40. 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 go to finance national and regional programmes.

*Distribution phase II:*

41. 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. Transfers of resources from the National Protection Fund are intended for financing programmes, projects, initiatives and services.

42. The Fund began transferring resources in 2002, and 1,716,684,951 bolivares were transferred in that year. These were earmarked for projects and programmes with the following purposes:

- (a) Preventing and responding to child prostitution;
- (b) Preventing and responding to maltreatment and sexual abuse;

- (c) Preventing and responding to labour exploitation;
- (d) Protecting breastfeeding;
- (e) Encouraging recreation;
- (f) Responding to and monitoring indigenous children and adolescents; and
- (g) Promoting the right to an identity.

43. In 2003, a total of 2,781,212,419 bolivares were transferred for projects and programmes with the following purposes:

- (a) Overall nutritional health;
- (b) Strengthening the family;
- (c) Rehabilitation and prevention in the health area;
- (d) Preventing and responding to teenage pregnancy, sexual guidance;
- (e) Preventing and responding to domestic violence and maltreatment;
- (f) Social education programmes;
- (g) Placements with families;
- (h) Sheltered housing;
- (i) Preventing and responding to drug addiction and alcoholism in children and adolescents;
- (j) Rehabilitation and prevention;
- (k) Legal protection;
- (l) Rehabilitation and prevention for children and adolescents with special needs;
- (m) Rights education and training;
- (n) Training for community workers, teachers and “community mothers” in responding to children and adolescents;
- (o) Road safety for children and adolescents;
- (p) Fostering and enhancing education, recreation and culture;
- (q) Identity; and
- (r) Tracing and reintegration into the family.

44. Statistics on the population with disabilities were gathered in the National Population and Housing Census undertaken by the National Statistical Institute (INE) in 2001. The disabled population is disaggregated by sex, without specifying ages. The data do show the percentage of Venezuelans with disabilities and the nature of those disabilities (see annex II, table 3). Children and adolescents account for 3.4 per cent of this population.

45. Despite shortcomings in the gathering and compilation of statistics in Venezuela, the national institutions specializing in this field have, with the Government's approval, sought to introduce alternative solutions to ease the problem. These include the current change of management at INE to bring it gradually into line with the requirements of the national transformation outlined in the Constitution and President Hugo Rafael Chávez Frías' strategic guidelines. Equally important is the legally binding decree on State statistical services drawn up by the Ministry of Defence through its Statistics Department. It is intended "to serve as a modern legal framework that establishes and determines the scope and purpose of the statistical responsibilities of the State pursuant to the mandate and role established by the Constitution and the law, which define the substance of its everyday operation. Once promulgated, it will amend the obsolete existing legislation on statistical information ...".<sup>8</sup>

46. The crisis brought about by the national strike in 2002 caused incalculable losses to the nation, and was accompanied by capital flight as a consequence of the exchange rate controls decreed in that year. The situation caused a shortage of medical supplies in particular, and was the main obstacle to providing optimal no-cost care, particularly to children and adolescents with HIV/AIDS. Nevertheless, the Ministry of Health maintained the ban on charging users of health services for the care that they received, and focused on expanding the health-care network to encompass the low-income population through the Misión Barrio Adentro. This is currently being set up as the springboard for the national public health system and is in the third stage of implementation. As a result, it has become possible to identify and care for children and adolescents with HIV/AIDS which, it has been observed, most affects the 25-30 years age group (60 per cent of all cases). Perinatal transmission is the main source of infection in children aged under 2 years, with 162 cases in boys and 142 cases in girls in 1999.<sup>9</sup>

47. Access to medical supplies improved significantly in 2003 after reagents and vaccines were purchased through the Comprehensive Cooperation Agreement on Health signed by the Bolivarian Republic of Venezuela and the Republic of Cuba.

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<sup>8</sup> "Explanatory commentary on the legally binding decree on State statistical services", Ministry of Defence/Statistics Department. Web page: <http://www.mindefensa.gov.ve/ESTADISTICA/>

<sup>9</sup> Official figures submitted by the Venezuelan Programme of Education and Action in the Field of Human Rights (PROVEA), according to the October 2002/September 2003 annual report on the situation of human rights in the Bolivarian Republic of Venezuela.

48. With regard to prevention through sexual and reproductive education, the programme has been extended to “Bolivarian” schools and basic and general secondary schools, thereby benefiting 1,383 schools, 14,557 teachers and 263,014 pupils in 2002, according to figures from the Ministry of Education and Sport.

49. The children of immigrant families enjoy all constitutional rights and duties and are protected by the laws of the Republic, particularly the Aliens and Migration Act, No. 37,944, which was adopted on 24 May 2004 and published in the *Gaceta Oficial*. Article 13 establishes that “aliens in the territory of the Republic shall have the same rights and obligations as nationals, the only restrictions being those established in the Constitution and laws of the Bolivarian Republic of Venezuela”.

50. Furthermore, immigrants shall be landed, lodged and maintained at the State’s expense during a period of time set forth in the Regulations to the Act. Should serious illness prevent them from changing accommodation after such time, subsequent accommodation and maintenance costs shall be borne by the State. In such cases, immigrants suffering from illnesses may be taken to hospitals designated for such purposes. However, should the illness be unduly long or prove to be contagious, the Federal Government may take such measures as it deems opportune to send the immigrant back. Those persons who came for the colonies that the State is establishing shall have the right to accommodation and maintenance free of charge until sent there, without prejudice to the Executive’s right to send them back.

51. Immigrants have the right to be transported, along with their baggage, free of charge, to the place in the Republic where they are going to take up residence.

52. They are also permitted to import, free of all taxes, their garments, clothing, household furniture, farming implements and the tools of their trade, and one hunting weapon per adult immigrant, up to the value set by the Executive.

53. Immigrants shall not be required to pay any sum of money for entering the territory, either as a tax or as a deposit.

54. Article 69 of the Constitution recognizes and guarantees the right to asylum and refugee status.

55. The procedure for determining refugee status is set forth in the Refugees and Asylum-Seekers Act, chapter III, title II.

56. Article 14 reads: “Any application for recognition of refugee status 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 Commission for Refugees. Applications may be made verbally and subsequently ratified in writing to the Commission. Applicants shall receive the necessary guidance on the procedures to follow. Officials approached by an applicant shall act in accordance with the principle of non-refoulement and immediately transmit the application to the Commission so that it can decide whether to accord refugee status. The Commission shall provide the applicant with

an interpreter, if necessary. In addition, if they should so request it, the Commission shall permit applicants to be advised in their actions by a representative of the Office of the United Nations High Commissioner for Refugees or human rights organizations.”<sup>10</sup>

57. Any application for recognition of refugee status must be submitted by the person concerned to the national authorities (civil or military) or to the Office of the United Nations High Commissioner for Refugees, who shall immediately transmit it to the National Commission for Refugees for processing.

58. During the term of office of the current President of the Republic, Hugo Rafael Chávez Frías, considerable advances have been made in refugee-related matters over the last six years. One of the most significant achievements is that the right to asylum and refugee status has been recognized and guaranteed under article 69 of the Constitution. Furthermore, the Refugees and Asylum-Seekers Act, which was promulgated on 28 August 2001 and published in the *Gaceta Oficial* on 3 October 2001, established the National Commission for Refugees and set forth the procedures to be followed by the governmental bodies and officials responsible for enforcement.

59. In spite of the internal difficulties that the State had to confront during 2002 and early 2003 (a coup d'état in April and a lock-out at the PDVSA oil company), regulations pursuant to the Refugees and Asylum-Seekers Act were promulgated in July 2003, and in August of that year, the members of the National Commission for Refugees were appointed and sworn in by the President of the Republic.

60. Further progress in protecting refugees was made by establishing four decentralized Commission offices, known as Technical Secretariats for Refugees. Three are strategically located in the States bordering the Republic of Colombia - Apure, Táchira and Zulia - where the largest numbers of refugee applications are made, with a view to providing constant assistance and an immediate response to applicants.

61. The Office of the Ombudsman has a special office responsible for all matters relating to the rights of children and adolescents.

62. According to information supplied by the Supreme Court, in 2003, the protection system employed 5 public defence counsel in the high courts of justice, 111 in the criminal courts and 74 in protection tribunals. Nevertheless, great concern about this matter in legal circles and at the National Council for Children's and Adolescents' Rights has led to the creation of a commission to strengthen the Protection of Children and Adolescents (Organization) Act. The objectives of the commission include bringing the organizational model and the infrastructure of the courts into line with the Act, training judges and judicial officials in its application, and amending the parts of the Act concerned with enforcement.

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<sup>10</sup> Information taken from the Office of the Ombudsman's web page at <http://www.defensoria.gov.ve>.



63. Statistics from the Scientific, Criminal and Forensic Investigation Unit (CICPC) show 719 cases of abuse and exploitation of children and adolescents in 2002 and 334 cases from September 2003 to May 2004 (see annex II, table 4).
64. Schemes to benefit children include the “Bolivarian” schools, which follow a comprehensive education model targeting the most deprived children at the preschool and basic (first to sixth grade) levels. They seek to provide the population with a comprehensive, good-quality education at no cost by extending the school day and offering medical and dental services, a balanced diet and artistic, sporting and recreational activities, complemented by other activities to reinforce learning.
65. Some 559 schools were applying this educational model in 1999; 2,976 schools around the country have now joined, thereby reducing exclusion from schooling, since 600,000 children are being educated in this way. This year, it was reported that 596,300 children have enrolled for this new form of schooling.
66. Furthermore, the Bolivarian schools seek to help to shape and develop schoolchildren’s physical, psychological and social potential by including educational activities to promote health, prevent illness and protect the environment, which means that Bolivarian schools are also health-promoting schools.
67. The first phase of Bolivarian education begins with nursery education or “Proyecto Simoncito”, which “seeks to attain the comprehensive development of children between the ages of 0 and 6 years or until they begin the first grade of basic education, with a view to ensuring their rights to full development, in conformity with the type of citizen that we want to shape in a democratic, participative, active, multi-ethnic and multicultural society. It lays stress on the right to a comprehensive, good-quality education in conditions of equity and social justice, as enshrined in the Constitution of the Bolivarian Republic of Venezuela”. It lasts from conception until children begin basic education, where the foundations are laid for shaping citizenship, learning, emotional development and intelligence and the capacities for coexistence and tolerance, as part of the principle of social and cultural diversity. Proyecto Simoncito is one of the strategies formulated by the Ministry of Education and Sport as part of the State policy for the comprehensive care of children and adolescents.<sup>11</sup>
68. The benefits of Proyecto Simoncito are as follows:
- (a) At the social and economic level, it:
    - (i) Benefits the most vulnerable sectors of the population and thereby helps reduce social, cultural, economic and gender inequality;
    - (ii) Reduces and prevents child maltreatment, sexual abuse and domestic violence;
    - (iii) Helps reduce morbidity and mortality rates;

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<sup>11</sup> Taken from the web page: <http://www.me.gov.ve>.

- (iv) Helps strengthen the family as the primary institution for socialization and community organization;
  - (v) Increases achievement at school by enhancing child development at the stage of maximum intellectual growth and development;
  - (vi) Curbs expenditure in the education sector, since fewer schoolchildren repeat a grade and are excluded; and
  - (vii) Encourages the overall shaping of the citizen that begins during the first years of life, since it provides an opportunity for meaningful experiences leading to coexistence and respect for the individuality and culture of others.
- (b) At the political level:
- (i) The State fulfils its mandate under the Constitution;
  - (ii) The country wins international political recognition by meeting its commitments under the Education For All Plan; and
  - (iii) There is acknowledgement of an Educator State that meets the expectations and ensures the social rights of all Venezuelans.
- (c) At the educational level:
- (i) It operates from conception until the age of 6, or until the beginning of basic education (the most vulnerable stage of the life cycle);
  - (ii) Child development problems are detected at an early stage and can receive a timely response;
  - (iii) The principal mediating roles are played by the family, child carers and classroom and community teachers;
  - (iv) Classroom, family and community strategies are used alongside the mass and alternative media, thereby enabling coverage of most of the population;
  - (v) The educational environment is the school, the home, community care and childcare centres and the community at large; and
  - (vi) Comprehensive care is provided by networking with governmental and non-governmental organizations (National Autonomous Service for the Comprehensive Care of Children and the Family (SENIFA), municipalities, governments, missions, health centres, etc.) and the School Food Programme.

69. By 2003, 100 Simoncito centres had been opened and 22,302 children aged between 0 and 6 years had enrolled.

70. Official and unofficial organizations report growing interest in recording cases of abuse and maltreatment of children and adolescents. In terms of discovering the scale of the issue, there is a persistent problem of underreporting, since the complaints reaching the bodies responsible for opening legal investigations and/or providing comprehensive care in such cases tend to relate to serious injuries, which are less common.

71. Article 62 of the Protection of Children and Adolescents (Organization) Act defines the role of civil society in publicizing children's rights and safeguards: "The State, with the active participation of society, must ensure continuing programmes to publicize children's rights and safeguards in schools, high schools and other educational establishments."

## II. DEFINITION OF THE CHILD

### Article 1

72. The State defines a child in accordance with article 2 of the Protection of Children and Adolescents (Organization) Act: "A child is understood to be anyone under twelve (12) years of age. If there are doubts as to whether a person is a child or an adolescent, he or she shall be presumed to be a child until proven otherwise. If there are doubts as to whether a person is an adolescent or aged over 18 years, he or she shall be presumed to be an adolescent until proven otherwise."<sup>12</sup>

73. An adolescent is understood to be anyone aged 12 years or over and under 18 years.<sup>13</sup> At this stage of life, people are highly biologically, psychologically, emotionally, socially and culturally vulnerable. It is a period of rapid physical development and growth in which adolescents acquire new capabilities, face new situations and demonstrate particular skills and potential in the adaptation process when seeking identity and independence. In order to comply with the Convention on the Rights of the Child, the State has adopted the term "children and adolescents" in place of "minors", as used in the various laws and programmes concerned with this sector of the population.

74. The adolescent population represents 21 per cent of the total population of Venezuela; 2.2 per cent belong to indigenous peoples.

75. The Venezuelan adolescent population displays marked inequality of opportunities determined by domestic factors related to social class, gender, ethnic origin and geographical area. Such a situation merits the formulation of an outward-looking policy and new alternatives in education, social protection, employment and participation in decision-making and in efforts to safeguard their quality of life and health so that they can become and remain independent.

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<sup>12</sup> Ibid.

<sup>13</sup> Protection of Children and Adolescents (Organization) Act, title I, article 2 (Definition of the child and the adolescent). *Gaceta Oficial* No. 5,266, 2 October 1998.

The State has therefore given constitutional force to the rights of children and adolescents.<sup>14</sup> Article 78 of the Constitution states: “Children and adolescents are full subjects of law and shall be protected by specialized courts, bodies and legislation which shall respect, guarantee and implement the content of this Constitution, the law, the Convention on the Rights of the Child and any other relevant international treaties which the Republic has signed and ratified. The State, families and society shall give absolute priority to ensuring their full protection, and to that end shall take into account their best interests in decisions and actions concerning them. The State shall promote their progressive incorporation into active citizenship, and shall establish a national system for the full protection of children and adolescents.”

76. The minimum marriageable age for men is 16 years, and for women, 14 years, as stated in article 46 of the Civil Code: “Marriage may not be entered into by women below the age of fourteen (14) years nor by men below the age of sixteen (16) years.”

77. Although there are no rules explicitly stating the age of sexual consent, it can be inferred from article 260 (Sexual abuse of adolescents) of the Protection of Children and Adolescents (Organization) Act that from adolescence (in the Bolivarian Republic of Venezuela, an adolescent is considered to be anyone aged between 12 and 18 years), sexual consent exists. No reference is made to sexual orientation. Article 50 of the Protection of Children and Adolescents (Organization) Act recognizes the rights of all children and adolescents to sexual and reproductive health, stating that they have the right to be informed and educated about these matters in accordance with their level of development, in order to enjoy responsible, healthy, consensual and risk-free sexual conduct and parenthood. Articles 259 and 260 penalize sexual acts with children, and non-consensual sexual acts or complicity in non-consensual sexual acts with adolescents.

78. One of the great advances of the Protection of Children and Adolescents (Organization) Act is the safeguards it offers of sexual and reproductive rights combined with the rights to health, education, information and protection of maternity.<sup>15</sup> The Act calls for a range of programmes in welfare; support and guidance; family placement; rehabilitation and prevention; identification; training and skills development; localization; shelter; communication; socio-educational; promotion and defence; and culture.

79. With respect to the right of adolescents to recognize their children, article 222 of the Civil Code stipulates that: “Children having attained 16 years of age can validly recognize their offspring; they can also do so earlier with the authorization of their legal representative or, in the absence of the latter, the competent judge, who shall take such measures as he or she deems opportune in each case.”<sup>16</sup> The legal system facilitates applications to the authorities concerned.

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<sup>14</sup> Constitution of the Bolivarian Republic of Venezuela, chapter V (Social and family rights). Articles 75, 78, 79 and 89 set forth the rights of children and adolescents.

<sup>15</sup> Protection of Children and Adolescents (Organization) Act, articles 33, 41, 44, 45, 48, 50 and 124 (d).

<sup>16</sup> Civil Code, 1982.

Article 56 of the Constitution provides: “Every person has the right to a name, to the family names of his father and mother and to know the identity of his father and mother. The State 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 remark qualifying the filiation.”

80. Article 25 of the Protection of Children and Adolescents (Organization) Act states that: “All children and adolescents, regardless of their filiation, have the right to know their parents and to be cared for by them, except when this might be contrary to their best interests.” Article 27 (Right to maintain personal relations and direct contact with parents) establishes that: “All children and adolescents have the right to maintain, on a regular and permanent basis, personal relations and direct contact with both parents, even when the parents are separated, except when this might be contrary to their best interests.”

81. Regarding the minimum age for enlistment into the Navy, on 14 August 2001, the Minister for Foreign Affairs requested that the National Assembly consider a bill approving the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts.<sup>17</sup> This instrument’s overarching goal is to increase the protection of children with a view to avoiding their participation in armed conflicts, and, at the same time, to raise the minimum age for enlisting into the Armed Forces and directly participating in hostilities to 18 years. The National Executive approved this protocol in 2001.

82. As regards the minimum age of employment, article 96 (Minimum age) of the Protection of Children and Adolescents (Organization) Act states that “the age of 14 years is established throughout the territory of the Republic as the minimum age of employment”. Article 247 of the Labour Organization Act<sup>18</sup> also prohibits the employment of minors under 14 years of age in industrial, commercial or mining companies, establishments and facilities; in its first paragraph, it establishes that “the National Children’s Institute, or, failing that, the labour authorities, may in particular, duly justified circumstances, authorize the employment of minors under 14 years and over 12 years provided that they undertake tasks befitting their physical condition and that their education is guaranteed”.

83. The age of criminal liability is not set by the Code of Criminal Procedure. Only the Protection of Children and Adolescents (Organization) Act establishes whether an adolescent is criminally liable for a punishable act.<sup>19</sup>

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<sup>17</sup> National Assembly Act approving the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts, 23 August 2001.

<sup>18</sup> Labour Organization Act, title V (Special regimes), chapter I (Employment of minors and apprentices).

<sup>19</sup> Article 528 (Liability of adolescents). Adolescents who commit punishable acts shall be answerable according to the degree of their guilt in a differentiated manner to that of an adult. The difference consists of the specialized jurisdiction and the punishment that may be imposed.

84. Rules governing the consumption of alcohol and other substances by children are not defined in the Protection of Children and Adolescents (Organization) Act. Article 51 merely establishes protective measures against alcohol, narcotic drugs and psychotropic substances: “The State, with the active participation of society, shall ensure policies and programmes preventing the illicit use of alcohol, narcotic drugs and psychotropic substances. It shall also provide continuing special care programmes for rehabilitating children and adolescents who are dependent on or consumers of these substances.” The Illicit Trafficking and Consumption of Narcotic Drugs and Psychotropic Substances (Organization) Act<sup>20</sup> does not set a minimum age, referring only to a ban on selling medicines to children and adolescents.<sup>21</sup> Article 44 (Incitement or inducement to consumption) states: “Anyone who incites or induces consumption of narcotic drugs, psychotropic substances, or other substances causing physical or mental dependency, shall be punished by a fine of three thousand taxation units (3,000 TU) and, if the offence is repeated, by a term of imprisonment of four to six years.” Article 47 (Incitement to consumption) states: “Anyone who, by deceit, threat, or violence, induces a person to consume substances referred to under this Act, shall be punished by a term of imprisonment of four to six years.”

85. In the case of drug trafficking, article 46 (Aggravating circumstances) states: “The offence of trafficking in all the forms provided for under articles 31, 32 and 33 of this Act, shall be considered aggravated if committed: (1) Against children and adolescents, persons with mental or physical disabilities, or indigenous peoples.” Lastly, article 65 defines and establishes the law governing jurisdiction over and proceedings against children and adolescents: “Any child or adolescent who commits any of the punishable acts provided for under this Act shall, pursuant to article 2 of the Protection of Children and Adolescents (Organization) Act, be subject to protective measures if a child, or to criminal proceedings if an adolescent, and be heard by the competent court.”

86. The usual school leaving age for basic education is 14 years, and for secondary education, 17 years.<sup>22</sup>

87. The usual school day is as follows: in preschool, the day lasts from 8 a.m. to noon or 7 a.m. to 11 a.m. For the first and second grades of basic education, it runs from 7 a.m. to 12.20 p.m. or 12.30 p.m. to 5.20 p.m. From the seventh grade onwards, there is a choice of hours. In general secondary education, the school day is the same as for basic education. For adult education,

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<sup>20</sup> *Gaceta Oficial*, No. 38,337, 16 December 2005. Bolivarian Republic of Venezuela.

<sup>21</sup> Article 22 (Prohibition on selling medicines to children and adolescents). Under no circumstances shall any medicines containing the psychotropic substances and narcotic drugs to which this Act refers be sold to children and adolescents. Failure to comply with this provision shall be punished by a fine equivalent to two hundred taxation units (200 TU). If the offence is repeated, pharmacists shall be punished by a suspension of their licence to practise for a period of two years and their establishments closed for the same period, without prejudice to the criminal penalties provided for under title III, chapter II (Common offences), of this Act.

<sup>22</sup> Ministry of Education and Sport, Education (Organization) Act, *Gaceta Oficial Extraordinaria*, No. 2,635, 28 July 1980.

the school day begins at 6.30 p.m. and finishes at 10 p.m. The Venezuelan school year begins in the second fortnight of September and continues until July of the following year.<sup>23</sup>

88. The Venezuelan education system is organized in the following manner.

89. Nursery education includes preschool education for the population aged between 0 and 5 years 11 months. It is taught in two phases - kindergarten and preschool - with the active involvement of the family and community. Encompassing conventional and non-conventional care, it is available nationwide. Conventional care is included in the national education system, whereas the non-conventional part is covered by special programmes such as Plan Simoncito. This provides comprehensive care in the areas of diet, education, health, recreation and protection of the rights of children aged between 0 and 5 years 11 months who belong to marginalized sectors of society. The "A teacher in your home" programme (supported by the Bernard Van Leer Foundation), run by volunteers, is operating in the States of Yaracuy, Falcón, Sucre, Trujillo and Portuguesa. It includes the design and publication of four leaflets aimed at the family as a means of buttressing the teachers' work. A CD containing traditional children's songs, stories and legends has also been produced for distribution among the community. Toy libraries have been made available for work with significant adults and children. With the support of 60 public and private bodies, 123 local social networks have been organized and encouraged.

90. The Ministry of Education and Sport has signed various agreements to extend the coverage of the Nursery Education Network, such as:

(a) A project to forge conventional and non-conventional strategies at the preschool education level as a mechanism for providing comprehensive care to the population between 0 and 6 years of age in marginal urban communities, with support from the Organization of American States;

(b) A project to provide non-conventional care for children aged 0 to 6 years who are not in school, supported by the United Nations Children's Fund (UNICEF); and

(c) Execution of the agreement between the Ministry of Education and Sport and the Metropolitan University for training and enhancing the technical and pedagogical skills of 60 teachers working in children's and family centres, two of which are in Vargas State and three are in Caracas.

91. Basic education, the second level of the national education system, comprises nine years of conventional education, broken down into three stages, each involving three years of school attendance (see annex II, tables 5 and 6).

92. General secondary and vocational education is the third educational stage before higher education. It includes training for secondary school graduates and vocational technical training in particular fields (see annex II, table 7).

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<sup>23</sup> According to the Ministry of Education and Sport.

93. With regard to teenage pregnancies, INE statistics on live births by age of mother for 2002 show that 21.06 per cent of pregnancies occurred in children and adolescents and 1.01 per cent of births are estimated to have been to mothers aged under 15 years. In the case of mothers aged between 15 and 19 years, the figure is put at 20.05 per cent.

### **III. GENERAL PRINCIPLES**

#### **A. Principle of non-discrimination (art. 2)**

94. The social policy model founded on the principles of equity and social justice has brought about improvements in living conditions, particularly among those living in poverty, as called for in the Millennium Development Goals. The State is working (with increased effort since mid-2003) to promote respect for indigenous peoples, children, adolescents, adults and older people living in poverty by adding and expanding its “missions” as a means of training Venezuelans, particularly those living in areas to which access is difficult.

95. The State has given constitutional force to the principle of non-discrimination, as stated in the articles below.

96. Article 19 of the Constitution states: “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.”

97. Article 20 establishes that: “Everyone has the right to the free development of his personality, with no limitations other than those deriving from the rights of others and the requirements of public and social order.”

98. Article 21 states: “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.”



99. Article 3 (Principle of equality and non-discrimination) of the Protection of Children and Adolescents (Organization) Act establishes the following: “The provisions of this Act apply equally to all children and adolescents, without any discrimination made on the basis 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.”

100. With regard to refugee children, the Refugees and Asylum-Seekers Act<sup>24</sup> makes reference to the human rights instruments ratified by Venezuela. This implies express recognition of the fact that protection for refugees and asylum-seekers must be comprehensive, operating not only within the specific framework of refugees<sup>25</sup> and asylum, but also within general human rights legislation. The direct consequence of this statement is that the human rights of refugees (whether applicants or those recognized as such) must be respected and guaranteed at all times.<sup>26</sup>

101. The Act enshrines the principle of family unity as a means of protecting the family and in particular, minor children, who will be covered by their mother or father’s refugee status. Should the applicant be an unaccompanied minor, he or she will receive special State protection.

102. Article 2 (Fundamental principles) recognizes and guarantees the right to asylum and refuge, pursuant to the following principles:

(a) All persons may seek refuge in the Bolivarian Republic of Venezuela on the strength of well-founded fears of being persecuted for the reasons and conditions established in the Protocol relating to the Status of Refugees;

(b) All persons may seek asylum in the Bolivarian Republic of Venezuela, or in its diplomatic missions, warships or military aircraft abroad, if they are persecuted for political reasons or offences in the conditions established in the Refugees and Asylum-Seekers Act;

(c) No persons seeking refugee status or asylum shall be rejected or subjected to any measure that would require them to return to a territory in which their life, their physical integrity or their freedom might be at risk, as a result of the reasons given in the Refugees and Asylum-Seekers Act;

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<sup>24</sup> See the Refugees and Asylum-Seekers Act, article 14.

<sup>25</sup> This should be understood as the applicable normative framework in Venezuela, both for domestic legislation and for international instruments recognized to be applicable in the country.

<sup>26</sup> Such guidelines are considered in article 1 (Object of the Act), which reads “... to regulate matters relating to refuge and asylum in accordance with the terms enshrined in the Constitution of the Bolivarian Republic of Venezuela and in international instruments pertaining to refuge, asylum and human rights ratified by the Republic, as well as to determine the procedures to be followed by the governmental bodies and officials responsible for compliance therewith”.

(d) No authority shall be able to impose any form of penalty, on account of their illegal entry into or presence in the territory of the Republic, on persons seeking refugee status or asylum according to the terms of the Refugees and Asylum-Seekers Act;

(e) No discrimination shall be permitted on the basis of race, sex, creed, political opinion, social condition, country of origin or grounds that, in general, have the purpose or effect of nullifying or hampering the recognition, enjoyment or exercise, on an equal footing, of the status of refugee or asylum-seeker for anyone who so requests it; and

(f) The unity of the refugee or asylum-seeker's family shall be guaranteed, with special protection for refugee children and adolescents who are unaccompanied or who have been separated from the family group, under the terms established by the Refugees and Asylum-Seekers Act.

103. Article 8 (Family unity) states: "As regards the protection of the unity of the refugee's family, protection is extended, when required, to the parents, the spouse or the person with whom the refugee has a stable de facto union, and their under-age children. The situation of other family members shall be assessed individually."

104. Most of the refugee population is made up of people fleeing from Colombia as a consequence of the internal conflict involving groups outside the law, exacerbated by the problem of drug trafficking. This situation provides some indicators about the position in Venezuela of Colombian refugees, the most vulnerable sectors of society and the main sorts of violation they undergo. It also shows how the State bodies must assess applicants' credibility, recognizing that they must enjoy the human rights established under the Constitution and other international and inter-American instruments ratified by the country. Particular stress must be put on the rights to life, physical integrity, freedom of movement, due process, just remedies, employment and the right to seek and be granted refugee status and asylum.

105. It should therefore be said that the State accepts refugees, persons seeking refugee status, immigrants and temporary residents without any form of discrimination. It avoids creating refugee camps and speeds up political and social integration by means of general plans for development with a view to attaining the Millennium Development Goals.

106. To this end, the State has implemented a series of social programmes known as "missions" to deal effectively and efficiently with the problem of social exclusion. These programmes cover both applicants for refugee status and refugees, boosting their independence and furthering their participation in community activities, and thereby bolstering the ability of refugees to integrate locally.

107. The Indigenous Health Coordination Office, part of the Ministry of Health, is seeking to improve care for children belonging to indigenous groups while respecting their cultural specificities. It has signed a series of agreements with the Dr. Arnaldo Gabaldón Institute of Higher Studies, with backing from the socio-anthropology department at the University of Zulia, the municipality of Maracaibo, the Fundación Amerindia Amazonas and Yonna-LUZ, to hold a first course on Indigenous Peoples and Intercultural Issues in Health, seeking consensus on the construction and definition of a national health system with a cultural basis. The Ministry of Education and Sport is designing and establishing technical guidelines on appropriate

implementation of plans and programmes targeting indigenous peoples and communities and the specific nature of culture, language, uses, customs, organization and habitat, in addition to the rights of the indigenous peoples and communities established under the Constitution, the law and the international agreements and treaties ratified by the Republic.

108. Conventions already ratified include International Labour Organization (ILO) Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (1989). That Convention relates to coordinated and systematic action to protect the rights of the indigenous peoples of the Americas and respect for their integrity.<sup>27</sup> The internal regulations of the Ministry of Education and Sport require the Ministry's indigenous policy to be coordinated on the basis of "specialized technical criteria, pursuant to the current legal regime, international recommendations and the indigenous peoples' right to participation" (art. 82, para. 3).

109. The National Council for Children's and Adolescents' Rights intends to bolster the protection system by establishing and strengthening community and indigenous ombudsmen's offices throughout the country. A budget of 850 million bolivares has been earmarked to begin the process in 10 Indigenous Ombudsmen's Offices.

110. As regards children with disabilities, the Constitution guarantees the rights of persons with disabilities, thus ordering inclusion, integration and respect for the potential of this sector of the population. Progress has been made with regard to comprehensive care and eliminating inequalities for all persons who live in the country under such conditions.<sup>28</sup>

111. This right is also recognized in article 29 (rights of children and adolescents with special needs) of the Protection of Children and Adolescents (Organization) Act. "All children and adolescents with special needs have all the rights and guarantees enshrined in and recognized by this Act, as well as those that are inherent to their specific circumstances. The State, the family and society shall guarantee them the full development of their personality to their maximum potential, and the enjoyment of a full and dignified life."

112. The State, with the active participation of society, must guarantee children and adolescents with disabilities:

- (a) Comprehensive welfare, rehabilitation and integration programmes;

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<sup>27</sup> Ministry of Education and Sport, article 2.1, agreement approved by the National Assembly on 22 December 2000. *Gaceta Oficial* No. 37,305.

<sup>28</sup> Constitution of the Bolivarian Republic of Venezuela, article 81. All persons with disabilities or special needs have the right to the full and autonomous exercise of their capacities and to integration within their family and the community. The State, with the mutually supportive participation of families and society, shall ensure respect for their human dignity, equal opportunities and satisfactory working conditions, and shall promote their training, education and access to employment appropriate to their condition, in accordance with the law. The right of the deaf and speech-impaired to express themselves and communicate through Venezuelan sign language is recognized.

(b) Care, guidance and welfare programmes for their families;

(c) Continuing publicity, guidance and social promotion campaigns on their specific circumstances, with a view to their care and integration.

113. The general population census carried out by the National Statistical Institute between October and November 2001, indicated some 3 million persons with disabilities. However, according to estimates by the World Health Organization (WHO), there are roughly 3.5 million inhabitants with some kind of disability or impairment in Venezuela - 10 per cent of the population.

114. Article 81 of the Constitution refers to the rights of the disabled and in response the Ministry of Health has drafted a national plan for the prevention of disabilities and for support and rehabilitation, with the main emphasis on community support. Venezuela has been a pioneer of the community rehabilitation model which is now to be integrated into the comprehensive health-care model, using the structure of the Misión Barrio Adentro project.

115. The State is responsible for guaranteeing respect for the dignity and equal opportunities of persons with disabilities. To carry out this constitutional mandate, one of the duties of the Office of the Ombudsman is to “support and protect the rights and legitimate, collective and broad interests of individuals”. Furthermore, an Office of the Special Ombudsman for Persons with Disabilities has been established to provide support, and, at the same time, to promote, oversee and defend human rights. The tasks of that Office are to:

(a) Study scientifically the human rights situation of persons with disabilities;

(b) Establish a national system to ensure that the human rights of persons with disabilities are respected and guaranteed;

(c) Encourage citizens with disabilities and the community to defend their rights;

(d) Check that rights and safeguards are being observed in different public and private bodies, and certify compliance;

(e) Supervise compliance with the procedures and decisions that address threats to and violations of rights and safeguards;

(f) Create a culture of respect, collaboration and openness, in everything relating to the human rights of persons with disabilities;

(g) Support, uphold and defend the rights of citizens with disabilities and guarantee the restoration of violated rights;

(h) Establish relationships with national and international, public and private bodies, and with the community to contribute to the fulfilment of other objectives;

(i) Conduct education and awareness-raising for public and private entities and the community on questions relating to persons with disabilities;

(j) Run a nationwide information programme on matters of concern to persons with disabilities;

(k) Conduct education and training for the personnel of the Office of the Ombudsman on the protection of the rights of persons with disabilities;

(l) Work with other units of the Office of the Ombudsman on preventive policies addressing the day-to-day lives of persons with disabilities.

116. The National Council for the Support of Persons with Disabilities (CONAPI) is the body responsible for drafting policy on persons with disabilities, it works to guarantee human and social rights and to strengthen the right to participation through the following activities:

(a) The creation of State comprehensive care councils for persons with disabilities (there are currently eight nationwide);

(b) The registration of persons with disabilities (at present 4,000 people have registered);

(c) The establishment of organizations for persons with disabilities and/or their families (there are at present six groups);

(d) The creation of 15 municipal councils for the comprehensive support of persons with disabilities.

117. The above activities give effect to article 21, paragraph 2, of the Constitution of the Republic.

118. In 2001, the number of children and adolescents infected with HIV/AIDS totalled 400 nationwide, indicating an increase of 32.5 per cent. Among babies under 1 one year old, 32 cases were reported, representing an increase of 40.62 per cent over the previous year; there were 24 cases among 1- to 4-year-olds, an increase of 58.34 per cent over the preceding period; 13 cases among 5- to 9-year-olds, an increase of 84.62 per cent; 6 cases among 10- to 14-year-olds, a decrease of 14.29 per cent from the previous year; and 325 cases among 15- to 24-year-olds, an increase of 28.62 per cent over the preceding period.

119. In 2002, the infected population totalled 447 children and adolescents, a 10.52 per cent increase. Among babies under the age of 1 year, 43 cases were reported, representing an increase of 25.59 per cent by comparison with the previous year; there were 30 cases among 1- to 4-year-olds, an increase of 20 per cent over the preceding period; 14 cases among 5- to 9-year-olds, an increase of 7.15 per cent; 17 cases among 10- to 14-year-olds, an increase of 64.71 per cent; and 343 cases among 15- to 24-year-olds, an increase of 5.25 per cent over the preceding period.

120. In 2003, a total of 345 cases were detected, a decrease of 22.82 per cent. Among babies under 1 year old, 47 cases were reported, an increase of 8.51 per cent by comparison with the previous year; there were 18 cases among children aged between 1 and 4 years, a decrease of 40 per cent; 9 cases among children aged between 5 and 9 years, a decrease of 35.72 per cent; 9 cases among 10- to 14-year-olds, a decrease of 47.06 per cent over the previous year; and 262 cases among 15- to 24-year-olds, a decrease of 23.62 per cent over the preceding period.

121. One policy undertaken by the State to combat HIV/AIDS, a major public health concern, was a preventive health campaign carried out between 2000 and 2003, involving the free distribution of male and female condoms (9 million male and 100,000 female condoms). In 2004, antiretroviral drugs were provided free to a total of 12,546 adult and child patients. Through the HIV programmes of the Venezuelan Social Security Institute and the Ministry of Health, 48,494 reagent kits for the diagnosis of HIV and other sexually transmitted infections (STIs) and 1,616,000 HIV tests for the serological filtering of blood donors were provided, costing a total of 56,497,808,461 bolivares.

122. The cost of treating the target population under the HIV/AIDS programme has increased from 32 billion bolivares in 2000, covering free treatment for 800 patients, to 60 billion bolivares in 2004, which has made it possible to provide treatment to 12,546 patients with this disease (see annex II, table 8).

123. With regard to the children of single parents, articles 25 and 26 of the Protection of Children and Adolescents (Organization) Act<sup>29</sup> establish the right of children to know their parents and to be cared for by them, as well as the right to be raised in a family.

### **B. Best interests of the child (art. 3)**

124. In October 2002, the follow-up and liaison committee of the National Council on the Rights of the Child and Adolescents of the Ministry of Education and Sport (MED-CNDNA) and a follow-up and liaison committee between the education authorities and the protection system were set up in the states of Portuguesa, Táchira, Mérida, Trujillo, Yaracuy, Falcón, Sucre, Bolívar, Zulia, Guárico, Anzoátegui, Monagas, Delta Amacuro, Carabobo, Cojedes, Barinas, Lara, Aragua, Miranda, Distrito Capital, Apure y Amazonas, and Vargas. Each state drafted a plan of action to promote the human rights of children, adolescents and families, following an analysis of the progress made with regard to those rights. Each plan of action comprises three programmes: (a) a school and community relations programme; (b) a curricular adaptation programme; and (c) an education ombudsman programme.

125. In each state the participants include the state councils on the rights of children and adolescents (CEDNA), municipal councils on the rights of children and adolescents (CMDNA), education authorities and other local agencies who have worked for the rights of children and adolescents. A plan of action was established for the different education authorities throughout the country, with a strategic focus on promoting, raising awareness of and providing training on the human rights of children and adolescents.

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<sup>29</sup> The Protection of Children and Adolescents (Organization) Act, article 25 (Right to maintain personal relations and direct contact with parents): “All children and adolescents, regardless of their filiation, have the right to know their parents and to be cared for by them, except when this is contrary to their best interests.” Article 26 (The right to be raised in a family): “All children and adolescents have the right to live with, be raised by and develop in their family of origin. Exceptionally, in cases where that is impossible or contrary to the child’s best interests, they have the right to live with, be raised by and develop in a foster family, in accordance with the law.”

126. The Bolivarian Government recognizes the constitutional status of the Convention on the Rights of the Child and considers the fundamental principles of the doctrine of protection to include:

(a) The fact that children and adolescents are full subjects of law and should be considered citizens of the Republic;

(b) Best interests;

(c) Absolute priority;

(d) The fundamental and priority role of the family in the life of children and adolescents;

(e) The joint responsibility of the State, the family and society in the comprehensive care of children and adolescents.

127. The principles and standards regarding children, adolescents and the family set forth in the Constitution are clearly in agreement with and adapted to the Protection of Children and Adolescents (Organization) Act. The Constitution also provides for the creation of a decentralized, participatory national system for the comprehensive care of children and adolescents.<sup>30</sup>

128. Protection councils are responsible for providing support and guidance to the families of children and adolescents, and to that end they establish ad hoc measures for each case in order to uphold children's rights and safeguards in the family environment.

129. The visiting arrangements for children of separated parents and the determination of the child's permanent residence in divorce cases are under the jurisdiction of the protection courts and are provided for in articles 387 and 390 of the Protection of Children and Adolescents (Organization) Act. Article 387 (Establishing visiting arrangements) states the following: "Visiting arrangements should be established by mutual agreement between the parents, taking into account the child's views. If no agreement can be reached or if it is repeatedly violated, affecting the interests of the child or adolescent, the judge, taking account of those interests and acting summarily, on the basis of any technical reports that he might consider necessary and having listened to the opinion of the child or adolescent's guardian, will establish the visiting arrangements that he considers most appropriate. Those arrangements can be reviewed at the request of one of the parties whenever necessary for the wellbeing or safety of the child or adolescent, following the procedure laid out in this Act." Article 390 (Non-return of the child) establishes that: "Any father or mother who abducts or illegally retains a child, when the other parent or a third person has been granted custody, must be given a legal warning to return the child to the guardian, and must answer for any loss or injury caused to the child by their action and reimburse all costs involved in returning the retained child."

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<sup>30</sup> Protection of Children and Adolescents (Organization) Act, article 62; Constitution, article 78.

### C. Right to life, survival and development

130. Chapter V, on Social and Family Rights, of the Constitution of the Bolivarian Republic of Venezuela, establishes the following.

131. Article 75: “Children and adolescents have the right to live with, be raised by and develop in their family of origin. If that is impossible or contrary to the child’s best interests, they have the right to live with, be raised by and develop in a foster family, in accordance with the law.”

132. Article 78: “Children and adolescents are full subjects of law and shall be protected by specialized legislation, bodies and courts, which shall respect, guarantee and implement the substance of this Constitution, the Convention on the Rights of the Child and any other relevant international treaties which the Republic has signed. The State, the family and society shall give absolute priority to ensuring their full protection, and to that end shall take into account their best interests in actions and decisions concerning them ...”<sup>31</sup>

133. The doctrine of comprehensive care, the conceptual expression of the Convention on the Rights of the Child, establishes the procedure for all action taken by public institutions considered to be relevant to guaranteeing the rights of Venezuelan children and adolescents.

134. The right to life is protected through the prior, clear, well-defined establishment of criminal offences and by applying punishment proportionate to the offence committed and the extent to which a legally protected right has been violated or threatened, thereby guaranteeing the liberty and the life of the adolescent.

135. About 4,000 children with heart problems are born in Venezuela every year,<sup>32</sup> approximately 80 per cent of whom are likely to require appropriate treatment in the first months or years of their lives.

136. Given the high incidence of congenital heart disease and the health-care crisis experienced over the last few years because of the oil strike, an increasing number of patients are waiting for surgery.

137. Adding to this problem is the limited number of hospitals in Venezuela that deal with these cases. In Caracas, there is the J.M. de los Ríos Children’s Hospital, the national referral centre for children with heart disease. Inland, Ascardio in Barquisimeto is the referral centre for the region, principally for diagnosis; cases are then referred to the Razetti clinic in the same city under a strategic agreement. In Mérida, the Central Hospital deals with very few cases

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<sup>31</sup> Constitution of the Bolivarian Republic of Venezuela. Pursuant to *Gaceta Oficial* No. 5,453 of 24 March 2000, articles 56 and 75 to 78 of the Constitution contain principles such as the best interests of the child, the right to identity and children as subjects of law. These principles are ratified in articles 8, 17, 26, 30, 53, 67 and 82 of the Protection of Children and Adolescents (Organization) Act.

<sup>32</sup> No statistics are available from the National Statistical Institute, this figure refers to the patients treated in Ministry of Health health-care centres nationwide.



comprehensively and completely. And in Maracaibo, the University Hospital also deals with few cases given the size of the facilities and the caseload handled. Nevertheless, between them these centres operate on approximately 400 cases per year.

138. Faced with this situation, the Ministry of Health, the National Council on the Rights of Children and Adolescents, the Metropolitan Council and an organization of the relatives of children with congenital heart disease have discussed and agreed upon measures to strengthen the health-care centres specializing in congenital heart disease: the city mayor's office is refurbishing the system of electrical power at the J.M. de los Ríos Hospital, a new cooling system is being provided for the operating theatre, the hospital is getting new lifts, 31 nurses are being contracted to the Cardiovascular Surgery Service, a minimum of 5 to 7 surgical slots per week are being earmarked for the treatment of children, minor repairs are being carried out to the Cardiovascular Surgery Service, and computers are being provided to register and update information on children with congenital heart disease in the hospital. The Ministry of Health is pledging to hire and maintain new teams, including a haemodynamics team (responsible for catheterization), to completely renovate the Cardiology Service and to allocate 399 million bolívares to cover the immediate costs of 86 surgical interventions at the Children's Hospital. Furthermore, it is guaranteeing a constant flow of funding in order to cover the costs of surgical interventions and eliminate the practice of directly charging the patient for medical supplies. In addition, the Autonomous Pharmaceutical Manufacturing Service (SEFAR-SUMED) and the Venezuelan Social Security Institute have offered inter-institutional support.

139. This action demonstrates the priority placed by the Venezuelan State on the restitution of the rights to health and to life to more than 500 children affected by congenital heart disease.

140. Each hospital must draft an annual performance agreement forecasting the institution's situation and the needs, objectives and goals to be worked on during the year with the resources provided by this fund.

141. Hospitals are supposed to provide support and a timely, comprehensive, universal, and fair response at no cost to these patients; to identify and inform patients of the preoperative steps required in order to be added to the waiting list for treatment; to update the waiting lists for surgery and to provide regular information on the funding available from the Ministry of Health for cardiovascular surgery.<sup>33</sup>

142. Children's deaths caused by the security forces during anti-riot operations: the measures taken to register children's deaths and causes of death are based on the process of registering and monitoring deaths and causes of death carried out by hospitals nationwide, and by the prefectures and civil registry offices in their respective areas. In cases where an investigation into the cause of death is required, the Public Prosecutor's Office, through the public prosecutors for protection, and the Ministry of the Interior and Justice, through the Scientific, Criminal and Forensic Investigation Unit, and the Department for Investigations into Crimes against Life, which is attached to the Investigation and Protection Division for Children, Adolescents, Women and the Family, and the Office of the Medical Examiner (*Medicatura Forense*), are responsible

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<sup>33</sup> Information from the website of the Ministry of Health, 2001.

for carrying out the relevant investigations in order to establish legal responsibility. At present, the Government is not aware that any children have died as a result of the actions of the security forces during anti-riot operations.

143. According to data from the Scientific, Criminal and Forensic Investigation Unit, 521 children were murdered between September 2002 and July 2003: 460 boys and 61 girls (see annex II, table 9).

#### **D. Respect for the child's point of view**

144. Article 67 (Right to freedom of expression) of the Protection of Children and Adolescents (Organization) Act reads: "All children and adolescents have the right freely to express their opinion and to spread ideas, images and information of all types without prior censorship, whether orally, in written format, in artistic form or through any other medium of their choice, subject only to the limits established by the law to protect their rights, the rights of others and public order."

145. Article 80 (Right to have an opinion and to be heard) states the following: "All children and adolescents have the right to: '(a) express freely their opinion on matters in which they have an interest; (b) have their opinions taken into account according to their level of development. This right extends to all areas that influence the development of children and adolescents, including: the State, the family, the community, society, science, culture, sport and recreation. First paragraph: The personal and direct exercise of this right is guaranteed to all children and adolescents, especially in administrative or judicial proceedings that may lead to a decision affecting their rights, safeguards and interests, subject only to such limits as their best interests require.'"

146. The second paragraph establishes that: "In administrative and judicial proceedings, children and adolescents shall attend in the manner most appropriate to their personal situation and level of development. In cases involving children and adolescents with special needs, the presence of persons who, because of their profession or a special relationship of trust, are able to transmit objectively the child's or adolescent's opinion, shall be guaranteed. Third paragraph: When the personal exercise of this right is not in the best interests of the child, the right will be exercised by the parents, representatives or guardians, provided that they are not one of the interested parties and have no conflicting interests with the child or adolescent, or by other persons who, because of their profession or a special relationship of trust, are able to transmit objectively the child's or adolescent's opinion. Fourth paragraph: The child's or adolescent's opinion shall be binding only when the law so establishes. No one can force children or adolescents to express their opinion, particularly in administrative and judicial proceedings."

### **IV. CIVIL RIGHTS AND FREEDOMS**

#### **A. Name and nationality (art. 7)**

147. The registration of a birth is the first legal step towards the State's recognition of a child's existence. Registering the birth determines the child's citizenship, so that the rights, privileges and services offered by the State to its citizens are fully applicable to them.

148. The Constitution establishes the right to nationality as a fundamental principle: recognizing a child as a Venezuelan enables them to enjoy all their constitutional rights and duties.<sup>34</sup>

149. Article 16 (right to a name and nationality) of the Protection of Children and Adolescents (Organization) Act states that all children and adolescents have the right to a name and a nationality. Furthermore, articles 17 and 18<sup>35</sup> state that children have the right to an identity from birth so that by law they must be registered immediately after they are born, using a free, simple and quick process. Adolescents who were not registered in due time can also use this process.

150. Article 464 of the Venezuelan Civil Code establishes that “within 20 days following the birth, the birth should be registered with the highest civil authority of the parish or municipality”.

### **B. Preservation of identity (art. 8)**

151. The Ministry of Health, committed to implementing the social rights set out in the Constitution and using the policy on comprehensive care for children and adolescents as a framework, has designed, in partnership with the Ministry of the Interior and Justice, UNICEF and the National Council on the Rights of the Child (CNDNA), the “I am Venezuelan” programme, the purpose being to guarantee children’s right to identity through timely inscription in the civil register of births at the health-care centres operated by the national health system, so that Venezuelan children and adolescents can start down the path to development as subjects of rights and obligations.

152. The registration of children is carried out according to the procedure laid down in the Protection of Children and Adolescents (Organization) Act: “When the birth takes place in a hospital, clinic, maternity hospital or other public health institution, the birth shall be registered with the highest public authority at the respective institution. The civil servant shall make four copies of the certificate, using forms provided for that purpose, which are duly numbered. One of the copies shall be given to the person presenting the child, the second shall be sent within the time limit established under article 20 of this Act to the highest civil authority of the parish or municipality in whose jurisdiction the birth took place, so that this authority can insert the

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<sup>34</sup> Constitution of the Bolivarian Republic of Venezuela, art. 32.

<sup>35</sup> Protection of Children and Adolescents (Organization) Act, article 17 (right to identification): “All children have the right to be identified immediately after their birth. To that effect, the State should guarantee that the registration of newborns be both compulsory and timely, establishing the filial link with the mother ... .” Article 18 (right to be registered in the civil register): “All children and adolescents have the right to be registered for free in the State’s civil register immediately after their birth, in accordance with the law. First paragraph: Parents, representatives or guardians shall register the children for whom they are responsible, as parents, representatives or guardians, in the State’s civil register. Second paragraph: The State shall guarantee a free, simple and quick process for the timely registration of children and adolescents in the State’s civil register. To that end, the resources required to carry out that registration shall be made available. Furthermore, specific measures shall be adopted to facilitate the registration in the State’s civil register of adolescents who were not registered in a timely fashion.”

registration in the records of the State's civil registry and certify it. The third copy shall be kept in a special file at the institution and the fourth shall be sent to the National Identification and Aliens Office."<sup>36</sup>

### **C. Freedom of expression (art. 13)**

153. Freedom of expression and opinion is guaranteed in Venezuela, whether that expression is oral, written or in any other form. The use of any medium of communication or dissemination without censorship is also guaranteed; full responsibility lies with the person exercising the right of self-expression (Constitution of the Bolivarian Republic of Venezuela, art. 57). Likewise, the confidentiality and inviolability of all forms of private communication are guaranteed by the Constitution; communications can only be intercepted by order of the competent courts and anything private which is unrelated to the legal proceedings has to remain confidential (art. 48).

154. In the Protection of Children and Adolescents (Organization) Act this right is clearly laid down in article 67 (right to freedom of expression). "All children and adolescents have the right freely to express their opinion and to spread ideas, images and information of all types without prior censorship, whether orally, in written format, in artistic form, or through any other medium of their choice, subject only to the limits established by the law to protect their rights, the rights of others and public order." Article 80 on the right to have an opinion and to be heard has already been covered in this report.

155. In 2002, the Community Learning Centres (CECODAP) ran a programme called "Así Somos" (the way we are) for children and adolescents, to go over the Radio and Television Social Responsibility Act and propose amendments to bring it strictly into line with the Protection of Children and Adolescents (Organization) Act. It was recommended that efforts to pass the Act swiftly efforts should be redoubled, seeking to involve different actors and promote the acceptance of the Act through citizen participation, since it was regarded as important to the development and growth of Venezuelan society.

### **D. Access to appropriate information (art. 17)**

156. As a measure of protection and support relating to the right to information (Protection of Children and Adolescents (Organization) Act, arts. 68 and 70 to 72)<sup>37</sup> from the various media sources to which children and adolescents have free access, the Venezuelan State has initiated a discussion on the reception and broadcasting of messages via the mass media, with the aim of

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<sup>36</sup> Protection of Children and Adolescents (Organization) Act, article 19 (registration of births in public health institutions).

<sup>37</sup> Protection of Children and Adolescents (Organization) Act, art. 68 (right to information). "All children and adolescents have the right to receive, seek and use all forms of information appropriate to their level of development and to select freely the medium and the information they wish to receive, subject only to the provisions of the law and the legal authority of their parents, representatives or guardians."

drafting appropriate guidelines on liability to society for the information transmitted, taking into account children's development and the rules laid down in the Protection of Children and Adolescents (Organization) Act.<sup>38</sup>

157. The promulgation of the Radio and Television Social Responsibility Act (*Gaceta Oficial* No. 38,081 of 7 December 2004) regulates service providers and access to national and international news sources in order to promote social, spiritual and moral well-being and the physical and mental health of children and adolescents. Furthermore, the regulatory content of the Act guides the production and dissemination of children's literature and its dissemination through the media to benefit, socially and culturally, the development of children and adolescents in the interests of the nation.

158. In the specific case of the guidelines for programming targeted at children and adolescents, the following time periods are established by law:

(a) Times for all users: only programmes suitable for all users, including children and adolescents without the supervision of parents, representatives or guardians, can be broadcast. Between 7 a.m. and 7 p.m.;

(b) Supervised period: programmes requiring the supervision of parents, representatives or guardians can be broadcast. Between 5 a.m. and 7 a.m., and between 7 p.m. and 11 p.m.;

(c) Adult period: programmes exclusively for adults (over 18 years old) to which children and adolescents should not be exposed can be broadcast. Between 11 p.m. and 5 a.m.

159. Furthermore, article 6 of the Radio and Television Social Responsibility Act sets out categories of language, health, sex and violence for the purpose of regulating their appropriate use in programming for children and adolescents, avoiding crude content, obscene images, or the disclosure of information, opinions or material opposing the prevention, treatment and eradication of the consumption of alcohol, tobacco, narcotic drugs and psychotropic substances, and the display of compulsive gambling, games of chance, and other addictive behaviours that could be witnessed by children and adolescents. It also regulates the broadcasting of programmes containing information, opinions or material relating to sexual and reproductive health, motherhood, fatherhood, the promotion of breastfeeding and artistic expressions of nudity in which the genitals are alluded to or shown, or dramatized sexual acts or practices without an educational purpose. It further governs the broadcasting of violent images or sounds; graphic descriptions of real or dramatized violence, or its consequences in an explicit and detailed manner; physical, psychological or verbal violence between members of a family, or against

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<sup>38</sup> Protection of Children and Adolescents (Organization) Act, art. 70 (media broadcasts appropriate to the needs of children and adolescents). "The national, State and local media have a duty to broadcast programmes aimed exclusively at children and adolescents, which are sensitive to their need for information on topics such as education, culture, science, art, recreation and sport. Furthermore, they should also promote the dissemination of the rights, guarantees and duties of children and adolescents."

children or adolescents, or women; sexual violence; violence as a central theme or for shock value; or programmes that present, promote, defend or encourage suicide or self-harm.

#### **E. Freedom of thought, conscience and religion (art. 14)**

160. The right to freedom of thought, conscience and religion is laid down in article 35 of the Protection of Children and Adolescents (Organization) Act. “All children and adolescents have the right to freedom of thought, conscience and religion. Parents, representatives and guardians have the right and the duty to guide children and adolescents in exercising this right, so that it contributes to their overall development.”

#### **F. Freedom of association and peaceful assembly (art. 15)**

161. The right of children and adolescents to freedom of association and peaceful assembly is legally protected by the Protection of Children and Adolescents (Organization) Act, which includes the following articles.

162. Article 82 (right to assembly): “All children and adolescents have the right to assemble, publicly or privately, for legal and peaceful reasons, without obtaining prior permission from the public authorities. Public assemblies shall be conducted in accordance with the law.”

163. Article 83 (right to protest): “All children and adolescents have the right to protest publicly and without weapons, in accordance with the law, subject only to the legal authority of their parents, representatives or guardians.”

164. Article 84 (right to freedom of association): “All children and adolescents have the right to associate freely with others for any legal purpose, whether social, cultural, sporting, recreational, religious, political, economic, work-related or of any other kind. This right includes, in particular, the right to: (a) take part in associations and their governing bodies; (b) promote and set up associations exclusively for children or adolescents, or both, in accordance with the law.”

165. The first paragraph states: “All children and adolescents may exercise this right personally and directly, subject only to the legal authority of their parents, representatives or guardians.”

166. The second paragraph establishes that: “For the purpose of exercising this right, all adolescents can set up, be part of and register non-profit organizations with legal personality by themselves, and carry out activities strictly connected with the aims of those organizations.”

167. The third paragraph goes on to stipulate that: “In order for organizations with legal personality comprised exclusively of adolescents to engage in any financial transactions, they should nominate, in accordance with their bylaws, a legal representative with full legal capacity to assume any responsibilities that may arise from the organization’s activities.”

#### **G. Protection of privacy (art. 16)**

168. The right of children and adolescents to have their privacy protected is established in article 65 (right to honour, reputation, self-image, private life and family privacy) of the Protection of Children and Adolescents (Organization) Act: “All children and adolescents have the right to honour, reputation and self-image.”

169. “Furthermore, they have the right to a private life and privacy in their family life. These rights cannot be subject to arbitrary or illegal interference.”

170. The first paragraph of article 65 states: “It is prohibited to expose or disclose, through any medium, images of children and adolescents against their will or that of their parents, representatives or guardians. Furthermore, it is prohibited to expose or disclose facts, images or information, through any medium, that damage the honour or reputation of children and adolescents or that constitute arbitrary or illegal interference in their private life or family privacy.”

171. The second paragraph establishes that: “It is prohibited to expose or disclose, through any medium, facts, information or images that permit the direct or indirect identification of children and adolescents who have taken an active or passive role in punishable offences, except when judicial authorization is given for reasons of security or public order.”

#### **H. Right not to be subjected to torture or cruel treatment (art. 37)**

172. Legislative measures: the right to inviolability of the person is enshrined in article 46 of the Constitution, which states that “every person has the right to have their physical, psychological and moral inviolability respected”. Article 54 specifically provides that nobody, women, children and adolescents especially, shall be subjected to slavery or servitude.

173. The legal provisions in Venezuela regarding violence against children and adolescents are contained, in essence, in the Protection of Children and Adolescents (Organization) Act, especially in the following articles.

174. Article 32: “All children and adolescents have the right to inviolability of the person. This right includes physical, psychological and moral inviolability.”

175. Article 33: “All children and adolescents have the right to be protected from all forms of abuse and sexual exploitation.”

176. Article 38: “No child or adolescent shall be subjected to any form of slavery, servitude or forced labour.”

177. Article 40: “The State shall protect all children and adolescents against illegal trafficking in national territory or abroad.”

178. Article 57: “School discipline shall be administered in a manner respectful of the rights, guarantees and duties of adolescents.”

179. Article 86: “All children and adolescents have the right to defend their rights in person. The personal exercise of this right shall be guaranteed to all children and adolescents before any person, authority, entity or body.”

180. Article 89: “All children and adolescents deprived of their liberty have the right to be treated humanely and with the respect deserving of their dignity as human beings. Furthermore, they enjoy all the rights and safeguards of children and adolescents, besides those specifically established in this Act, except for those restricted by the punishments imposed on them.”

181. Article 358: “Guardianship embraces custody, material support, care and the moral and educational guidance of children, as well as the authority to correct them in a manner appropriate to their age and physical and mental development. Guardianship requires direct contact with children and, therefore, the authority to decide on the children’s place of residence.”

182. Article 621: “The measures listed in the previous article - warning, imposition of rules of conduct, community service, probation, partial release, deprivation of liberty - serve an essentially educational purpose and will be supplemented, depending on the case, by family involvement and specialist support. The principles guiding these measures are respect for human rights, the comprehensive upbringing of the adolescent and a desire for adolescents to be able to live comfortably with their families and society.”

183. There are other legal provisions to protect children from all forms of violence, such as the Violence against Women and the Family Act, which in articles 4, 5, 6 and 7 defines violence against women and the family, physical violence, psychological violence and sexual violence.

184. Administrative measures shape and give direction to the national system for the protection of children and adolescents. The following measures are in place to fulfil its aims:

- (a) Protection and support policies and programmes;
- (b) Measures of protection;
- (c) Administrative and judicial protection bodies;
- (d) Support bodies and services;
- (e) Punishments;
- (f) Procedures;
- (g) Judicial protection measures;
- (h) Economic resources.

185. The State and society have a joint obligation to guarantee the formulation, execution and monitoring of these measures and children and adolescents have the right to demand the fulfilment of this guarantee.<sup>39</sup>

186. The social and educational measures take the form of projects and programmes to protect children and adolescents. They offer public guidance from the competent bodies and guide action to guarantee the rights and safeguards set forth in this Act.

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<sup>39</sup> Article 118 of the Protection of Children and Adolescents (Organization) Act, Caracas, Venezuela (Acts, decrees). Community Learning Centre (CECODAP), 2002, p. 121.



187. Child prostitution and the use of children in pornography are two of the most complicated and serious problems facing children in Venezuela. They particularly affect those who spend their nights on the streets owing to family strife and disintegration, the rupture of family and social values, and the fact that they cannot plan their lives to become dignified citizens, capable of strengthening their skills and abilities in order to take control of life and its circumstances.

188. National plans to eradicate sexual violence against children and adolescents were drafted as a result of initiatives by the State and civil society organizations and the activities involved are inspired by the Constitution, the Protection of Children and Adolescents (Organization) Act, and international treaties and commitments.<sup>40</sup> The objective is zero tolerance for sexual abuse and the use of children and adolescents in pornography.

189. Legislative measures to protect children and adolescents in cases of violence are established in the following articles of the Protection of Children and Adolescents (Organization) Act:

- (a) Article 30 (right to an adequate level of living);
- (b) Article 32 (right to inviolability of the person);
- (c) Article 33 (right to be protected from abuse and sexual exploitation);
- (d) Article 34 (forensic services);
- (e) Article 38 (prohibition of slavery, servitude and forced labour);
- (f) Article 40 (protection against illegal trafficking).

190. Administrative measures give shape to the national system for the protection of children and adolescents and make it work; the measures in place include:

- (a) Protection and support policies and programmes;
- (b) Measures of protection;
- (c) Administrative and judicial protection bodies;
- (d) Support bodies and services;
- (e) Punishments;
- (f) Procedures;

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<sup>40</sup> First World Congress against Commercial Sexual Exploitation of Children (Stockholm, Sweden, 1996). Not signed by Venezuela. Second World Congress on this issue, December 2001 in Yokohama, Japan. Regional consultation held in Costa Rica, February 2001.

- (g) Judicial protection measures;
- (h) Economic resources.

191. The State and society are jointly responsible for designing, implementing and monitoring these measures, and children and adolescents have the right to demand that they do so.<sup>41</sup>

192. Action is focused on the necessary harmonization of basic concepts; the inclusion of a gender-based approach; ensuring that children and adolescents are a priority for states; regulating and enforcing agreements to block child pornography websites; and criminalizing the distribution, production, export, transfer and advertising of child pornography.

193. On 28 November 2003, members of civil society and State organizations attending the First World Congress on Children and Adolescents' Rights signed the Declaration of Porlamar (Venezuela) in which they reaffirmed their commitment to the purposes and principles of comprehensive care and to strengthening the ongoing strategies for the implementation of the Convention on the Rights of the Child. The attention of States, children's rights movements, families and people throughout the world was also drawn to:

- (a) The importance of complying with the Convention on the Rights of the Child and its Optional Protocols on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography;

- (b) Encouraging legal and administrative reform to protect children from violent or pornographic websites and computer programmes and games that can adversely affect their development, taking into consideration the responsibilities of the family, parents, legal guardians and persons responsible for the care of the children.

194. In accordance with article 79 of the Protection of Children and Adolescents (Organization) Act,<sup>42</sup> the Municipal Children and Adolescents Council of the municipality of Guaicaipuro

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<sup>41</sup> Protection of Children and Adolescents (Organization) Act, article 118.

<sup>42</sup> Protection of Children and Adolescents (Organization) Act, article 79 (Prohibitions relating to the protection of the rights to information and a healthy environment). It is prohibited to:

- (a) Allow children and adolescents into shows, cinemas, video, television or multimedia facilities or other similar performance venues, and in public or private places showing broadcasts and productions classified as unsuitable for their age;

- (b) Sell or in any way provide to children and adolescents, or exhibit publicly, through any media in existence or to be created, books, magazines, audio-visual programmes and broadcasts, information on and contents of pornographic networks or which advocate violence or crime, promote or encourage the use of tobacco, alcoholic beverages, narcotic or psychotropic substances; or which affect their personal safety or mental or emotional health;

- (c) Disseminate through any mass media, during programmes for children and adolescents or all audiences, broadcasts, advertisements, propaganda or any form of publicity

drafted a resolution requiring the owners of Internet cafés to install Internet security devices to prevent children and adolescents from accessing pornographic information; this measure will apply nationally once it has been established as a binding standard by the National Council for Children's and Adolescents' Rights.

195. The prevention and treatment of child sexual abuse is the responsibility of all, through action coordinated by State bodies to promote involvement by the family, non-governmental organizations and the community. Responsibilities are assigned through a programme of work binding on all parties, which enables them to take a more active role in preventing sexual abuse and protecting children and adolescents who have been subjected to rape and abuse.

196. A total of 2,546 cases of sexual violence against children and adolescents as categorized by the Scientific, Criminal and Forensic Investigation Unit were reported to the Unit between September 2002 and September 2003; 1,928 cases of physical injury were reported between September 2003 and May 2004. Cases of sexual violence, according to the type of offence and gender of the victim, between September 2002 and September 2003, involved 348 boys and 2,198 girls, showing that girls and adolescent females were the most vulnerable population (see annex II, tables 10 to 12).

197. On the punishments that can be imposed for violence against children, the Protection of Children and Adolescents (Organization) Act stipulates:

198. Article 237 (Pornography involving children or adolescents): "Any person who produces or directs a play, television programme or film using a child or adolescent in a pornographic scene that does not involve explicit sex shall be punished by a fine of 10 to 50 months' income.

199. Paragraph 1: "The same penalty shall apply to any person who participates in the scene, under the conditions mentioned above, with a child or adolescent.

200. Paragraph 2: "The same penalty shall apply to any person who photographs or publishes a pornographic scene that does not involve explicit sex, involving a child or adolescent.

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which terrorize children and adolescents, affect human coexistence or nationality, or encourage children and adolescents to use offensive language - disregarding the dignity of persons and discipline, and fuelling hatred, discrimination or racism;

(d) Enable or authorize the participation of children and adolescents in public or private performances, plays and artistic works, films, videos, television, radio and multimedia programmes or rehearsals and production runs which are contrary to morals or may affect health, safety or life;

(e) Use children and adolescents in commercial advertisements which encourage immoral behaviour, bad habits, false values, which manipulate information for purposes contrary to respect for the dignity of persons or which promote or encourage the use or purchase of products that are harmful to health or considered unnecessary or luxurious;

(f) Accommodate children or adolescents unaccompanied by their parents or guardians or without the written permission of the latter or of the relevant authority in hotels, motels or similar facilities.

201. Paragraph 3: “In any event, the activity or broadcasting of the programme or recording shall be suspended.”

202. Article 253 (Torture): “Any public official who directly or indirectly inflicts severe pain or suffering on a child or adolescent with a view to obtaining information from the victim or a third party shall be sentenced to a term of imprisonment of one to five years.

203. Paragraph 1: “The same penalty shall apply to persons other than public officials who commit torture as here defined.

204. Paragraph 2: “If severe or very severe injury is sustained, the penalty shall be a term of imprisonment of 2 to 10 years.

205. Paragraph 3: “If death ensues, the penalty shall be a term of imprisonment of 15 to 30 years.

206. Article 254 (Cruel treatment): “Any person who subjects a child or adolescent under their responsibility or in their custody or care to cruel treatment through physical or psychological humiliation shall be sentenced to a term of imprisonment of one to three years.

207. Article 255 (Forced labour): “Any person who puts a child or adolescent to work under duress shall be punished by a term of imprisonment of one to three years.

208. Article 258 (Sexual exploitation): “Any person who promotes, organizes or earns income from the sexual activity of a child or adolescent shall be sentenced to a term of imprisonment of three to six years.

209. “If the offender has responsibility for or has the care or custody of the victim, the term of imprisonment shall be four to eight years.”

210. Article 259 (Sexual abuse of children): “Any person who engages or takes part in sexual activity with a child shall be sentenced to a term of imprisonment of one to three years.

211. “If the sexual activity involves genital, anal or oral penetration, the term of imprisonment shall be 5 to 10 years. If the offender has responsibility for or has the care or custody of the victim, the sentence shall be increased by a quarter.”

212. Article 260 (Sexual abuse of adolescents): “Any person who engages or takes part in sexual activity with an adolescent against his or her will shall be sentenced in accordance with the preceding article.”

213. Article 264 (Use of children or adolescents to commit offences): “Any person who commits an offence with the assistance of a child or adolescent shall be sentenced to a term of imprisonment of one to three years.”

214. Article 265 (Involvement of children or adolescents in criminal groups): “Any person who promotes, directs, participates in or earns income from associations set up to commit offences, to which children or adolescents belong or are recruited, shall be sentenced to a term of imprisonment of two to six years.

215. “If the offender has care or custody of or is responsible for supervising the child or adolescent, the term of imprisonment shall be four to eight years.”

216. Article 266 (Trafficking in children and adolescents): “Any person who promotes, assists or benefits from activities which involve sending a child or adolescent abroad without observing the legal formalities, for purposes of improper financial gain, shall be sentenced to a term of imprisonment of two to six years.”

217. Article 267 (Transfer of children or adolescents for gain): “Any person who transfers their child or a child in their care or custody to a third party for payment or reward shall be sentenced to a term of imprisonment of two to six years.”

218. Article 23 of the Special Act against Computer Crime punishes the distribution or exhibition of pornographic material without taking due precaution to protect children and adolescents; article 24 punishes the pornographic exhibition of children and adolescents.

219. Public campaigns involving children and adolescents have been conducted to raise awareness of and prevent torture or other cruel, inhuman or degrading treatment or punishment in childhood; the campaigns conducted since 1997 by the NGO Community Learning Centres are a good example:

(a) Short television programme. “Child abuse”: a 30-minute production on child abuse and the importance of eliminating it;

(b) The National Assembly for Children and Adolescents, which used the slogan “I am counting on you: towards a society without violence”, attended by 1,340 children and adolescents from different social backgrounds and situations who made proposals and set out commitments in a document entitled “Declaration of the National Assembly for Children and Adolescents 2000”;

(c) Short radio programmes on various issues, including: Refugee Version, Voices for Change (second series), Sexual Abuse, the Protection of Children and Adolescents (Organization) Act, Student Travel, Special Needs, Rights and Responsibilities, Participation, Abuse.

220. The National Children’s Institute has provided teaching and training for staff at institutions, services and facilities working with and for children with a view to preventing all forms of abuse. In 1997, training was provided to 1,100 staff members of the National Children’s Institute and NGO representatives in the following areas:

(a) Training workshop on Social and Legal Proceedings in Community Care Centres (60 participants);

(b) Training workshop on the Youth Rehabilitation and Supervised Recreation Plan (48 participants);

(c) Workshop on the Presentation of Youth Rehabilitation Projects, aimed at section directors (40 participants).

221. In 1998, the first workshop for the training of police officers and youth assistance officials of the National Children's Institute was organized; in 1999, the treatment programme personnel at Cojedes police station were trained in handling riots and 14 workshops on the development of youth rehabilitation plans for the year 2000 were held in the Capital District and the States of Monagas, Barinas, Aragua, Carabobo, Táchira, Bolívar, Anzoátegui, Yaracuy, Trujillo, Cojedes, Guárico, Delta Amacuro and Nueva Esparta.

222. In 2000, the training programme for technical and administrative staff and workers at National Children's Institute child and adolescent care centres was established under an agreement on "support for the social rehabilitation of minors in conflict with the law" in the framework of Convention No. VEN/B7-310-IB-97-100, implemented with European Union funding. The support material is used for campaigns mounted by the Community Learning Centres: (a) "How to educate without abuse", which provides information about abuse and helps to understand its complexity and causes, identify cases, and review people's use of words and actions; and (b) "Voices for Change", a bimonthly opinion poll performed in the country's main cities, reflecting the views of adolescents aged between 12 and 17 years on issues such as child abuse, self-esteem, sexually transmitted infections, new legislation, security and the right to defence, child labour and the environment.

## **V. FAMILY ENVIRONMENT AND ALTERNATIVE CARE**

### **A. Parental guidance (art. 5)**

223. The legal framework is provided by the Protection of Children and Adolescents (Organization) Act:

224. Regarding the right to personal, physical, psychological and moral inviolability, article 32, paragraph 2, says that the State, the family and society must protect all children and adolescents against any form of exploitation, abuse, torture and neglect that may affect their personal inviolability. The State must ensure the provision of free comprehensive support and care for children and adolescents whose personal inviolability has been infringed.

225. Article 26 (Right to be brought up in a family), paragraph 2, states that "the family shall provide an atmosphere of affection and security conducive to the comprehensive development of children and adolescents". Paragraph 3 defines the responsibility of the State and society to "ensure the provision of special programmes and measures for the protection of children and adolescents temporarily or permanently deprived of their families". Of children and adolescents with special needs, article 29 says that "the State, the family and society shall ensure their full personal development to their maximum potential, and a full and dignified life". With the active participation of society, the State shall provide them with:

- (a) Comprehensive welfare, rehabilitation and integration programmes;
- (b) Care, guidance and welfare programmes for their families;
- (c) Continuing public information, guidance and social promotion campaigns on their specific circumstances, with a view to their care and integration.

226. Article 30 (Right to an adequate standard of living) includes the enjoyment of:

(a) A nutritious and balanced diet, in terms of quality and quantity, which meets nutrition, hygiene and health standards;

(b) Clothing suitable for the climate and to protect health;

(c) Decent, safe, clean and healthy housing, and access to essential public services. Parents and guardians are required (para. 1) to ensure, within their capacity and financial resources, full and effective enjoyment of this right.

227. The State, by means of public policies, including material assistance and direct support programmes for children, adolescents and their families, shall bring about conditions that enable parents to fulfil this responsibility.

228. Regarding the right to inviolability of the person (art. 32), paragraph 2 says that “the State, the family and society must protect all children and adolescents against any form of exploitation, abuse, torture and neglect that may affect their personal inviolability. The State must ensure the provision of free comprehensive support and care for children and adolescents whose personal inviolability has been infringed”.

229. The Act clearly states that parents and guardians have the right and duty to guide children and adolescents in the exercise of the right to freedom of thought, conscience and religion so that it may contribute to their comprehensive development.

230. The health of children and adolescents is specifically addressed in article 42 of the Act (Responsibility of parents, guardians or carers with regard to health), which states that “Parents, guardians or carers are directly responsible for the health of the children and adolescents in their custody, guardianship or care. As a result, they shall comply with any medical instructions and tests prescribed in order to protect the health of children and adolescents.” Article 43 relates to the right of children and adolescents to information and education on the basic principles of preventive health care, nutrition, the benefits of breastfeeding, early learning, sexual and reproductive health, hygiene, environmental health and accidents and their own state of health, in accordance with their development. While not explicitly defining the role and responsibility of parents and guardians, it does establish the obligations of the State and society as backers of information and education programmes on these subjects aimed at children, adolescents and their families.

231. Article 81 (Right to participate) stipulates that the State, the family and society must create and encourage opportunities for participation by all children, adolescents and their associations.

232. Regarding the balance between work and education (art. 95), the State, the family, society and employers are required to ensure that working adolescents complete their compulsory education and really can continue their education.

### **B. Responsibility of guardians (art. 18)**

233. The legal principles relating to the responsibility of guardians as set out in the Code of Civil Procedure have been superseded by the principles and provisions of the Protection of Children and Adolescents (Organization) Act since all institutions responsible for childcare, such as courts and Child and Adolescent Protection Councils, are bound to uphold the best interests of the child.

234. Article 8 of the Act states that:

“The best interests of the child are a principle of interpretation and implementation of this Act, and must be observed in all decisions regarding children and adolescents. This principle is aimed at ensuring the comprehensive development of children and adolescents and the full and effective enjoyment of their rights and safeguards.

“Paragraph 1: In order to determine the child’s best interests in a particular situation, it is necessary to consider:

“(a) The opinion of children and adolescents;

“(b) The need to balance children’s and adolescents’ rights, safeguards and duties;

“(c) The need to balance the requirements of the common good and children’s and adolescents’ rights and safeguards;

“(d) The need to balance children’s and adolescents’ rights and safeguards and the rights of other persons;

“(e) The specific status of children and adolescents as developing persons.

“Paragraph 2: In accordance with the best interests of the child, when the rights and interests of children and adolescents conflict with other equally legitimate rights and interests, the former shall prevail.”

235. A mechanism to support the family in bringing up and caring for children exists within the Comprehensive Care Centre Programme run by the National Autonomous Service for the Comprehensive Care of Children and the Family, an organization now under the auspices of the Ministry of Education and Sport. Pursuant to the Government’s strategy, 583 million bolivars were invested in 2003 in the provision of household items - refrigerators, cookers, tables, fans and so forth - to the 21 NGOs running the Comprehensive Care Centre Programme in Portuguesa. This amount, allocated to 191 Comprehensive Care Centres, will benefit 5,730 children and 573 foster mothers. In the same year, an additional 11,006 children aged between 0 and 6 years were taken in, making a nationwide total of 311,593 children in care; furthermore, 10 Indigenous Comprehensive Care Centres (*janokos*) were built in the communities of Pajal, Guamalito, Boca de Guamal and Santo Domingo, Libertador municipality, and the communities of Boca de Tigre, Yabinoko and Dauwapa, Maturín municipality, to provide care for 400 children from the Warao ethnic group in the state of Monagas.



236. In the first quarter of 2004, an additional 262,056 children aged 0 to 6 years joined day care centres under the Comprehensive Care Centre Programme, which thus catered for 75 per cent of the population. Child care was developed in indigenous communities; 63 Comprehensive Care Centres were opened in the western region (Zulia - border municipalities of Mara, Páez and Machiques), providing care for 860 girls from the Wayúu and Añú indigenous groups and 2,210 girls from the Piapocos, Piaroas, Urripacos and E'ñapa indigenous groups. A further 73 Centres were opened in the Guayana region (Bolívar), in the form of *churuatas* (traditional shelters), and 10 *caneyes* (cabins) and 5 *enramadas* were built to host indigenous Comprehensive Care Centres in the western region (Zulia).

### **C. Separation from parents (art. 9)**

237. Article 360 of the Protection of Children and Adolescents (Organization) Act provides for custody in the event of divorce, legal separation, nullity of marriage or separate residence. This includes a provision that parents shall decide, by mutual agreement, which of them shall have custody of children aged over 7 years. Children aged 7 or under shall remain with the mother unless she does not have custody or it is appropriate, for health or safety reasons, that they should be separated from her temporarily or indefinitely. If the father and the mother cannot agree who should have custody, the matter shall be decided by the competent court. In the case of children aged 7 or under who cannot be placed in the custody of the mother, as indicated above, or at the mother's explicit request, the court shall decide whether custody should be granted.

238. Many complaints about maintenance, custody and visiting arrangements have been reported to the State Councils for the Rights of Children and Adolescents nationwide as a result of family disintegration and irresponsible parenthood. The most frequent complaints are about maintenance, given the financial straits of the country's most vulnerable groups and the fact that most Venezuelan households consist of single women with children, usually belonging to the poorest social strata. This situation poses a threat to the survival and development of children and adolescents at the national level. Such complaints are most often brought before the Child and Adolescent Protection Courts in the Metropolitan District judicial division; 1,300 such cases were received in 2002 and 37.5 per cent of them were settled.

### **D. Family reunification (art. 10)**

239. Before family reunification, the child or adolescent is placed in a foster family<sup>43</sup> or a care institution whose objectives are defined in articles 396 and 397 of the Protection of Children and Adolescents (Organization) Act: "The purpose of placement in a foster family or care institution is temporary custody of a child or adolescent until a permanent protection measure has been decided upon. Custody shall be understood in the sense of article 358 of the Protection of

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<sup>43</sup> The foster family may consist of one or more persons. Alternative placement includes fostering, care and adoption, in accordance with the Protection of Children and Adolescents (Organization) Act.

Children and Adolescents (Organization) Act. In addition to custody, guardianship of the child or adolescent may be granted for certain acts. A child or adolescent shall be placed in a foster family or care institution when:

“(a) After the expiry of the period specified in article 127 of the Protection of Children and Adolescents (Organization) Act, the issue has not been resolved by administrative authorities;

“(b) It is impossible to initiate or continue care;

“(c) The individual’s parents have been deprived of parental authority or that authority has expired.”

#### **E. Recognition of child maintenance obligations (art. 27)**

240. Payment of maintenance for a child is one effect of legal or legally established filiation; maintenance is payable by the father or the mother to children who have not reached majority. This obligation must be fulfilled even if parental authority has been withdrawn or has expired, or the parent does not have custody of the child. The judge shall determine the amount of maintenance to be paid when the parental separation (divorce) order is made, or when parental authority is ordered, withdrawn or deemed to have expired, or when any of the measures provided for in article 360 of the Protection of Children and Adolescents (Organization) Act, as mentioned in the previous paragraph, is ordered.

241. Child maintenance provides for necessary support, clothing, food, housing, education, culture, health care, medicine, recreation and sport for the child or adolescent.

#### **F. Children deprived of their family environment (art. 20)**

242. The National Council for Children’s and Adolescents’ Rights attaches particular importance to special protection and care for children temporarily or permanently deprived of their family environment.<sup>44</sup> In order to give effect to this right, it applies the protection measures provided for in the Protection of Children and Adolescents (Organization) Act with respect to:

(a) Shelter;

(b) Placement in a foster family or care institution (see previous paragraph);

(c) Adoption.

243. Shelter (Protection of Children and Adolescents (Organization) Act, art. 127) is an exceptional, temporary measure ordered by the Child and Adolescent Protection Council whereby the child is placed in a foster family or care institution pending another administrative

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<sup>44</sup> Information provided by the National Council for Children’s and Adolescents’ Rights.

protection measure or a legal decision to place the child in a foster family or care institution should it not be possible for the child to return to his or her family of origin. If the case is not resolved by the administrative authorities within 30 days, the Child and Adolescent Protection Council must so inform the competent court in order to obtain a ruling.

### **G. Adoption**

244. Adoption is defined in article 406<sup>45</sup> of the Protection of Children and Adolescents (Organization) Act as “An institution for the purpose of providing a child or adolescent suitable for adoption with a permanent, appropriate foster family.” Accordingly, the procedures involved in international adoption, based on the international agreements and treaties signed by States parties in section IV of chapter III, are followed.

245. To give effect to this right, in October 2000, the National Council for Children’s and Adolescents’ Rights established state-level international adoption agencies as part of the Comprehensive Protection System for Children and Adolescents (*Gaceta Oficial* No. 3790 of 1 December 2000).

246. These agencies are entrusted with “ensuring that children and adolescents have an appropriate, permanent foster family, once all possibilities for them to return to their original families and/or be adopted in Venezuela have been exhausted. Thus their task is to provide national guidance on adoption, to analyse and assess the adaptability and suitability of individuals for adoption, and to conduct checks before and after international adoption with a view to ensuring an effective and appropriate process and ethical, transparent practice, recognizing that the best kind of adoption is adoption avoided by strengthening the family” (see annex I, figure 2).

247. In 2000, a total of 149 applications for international adoption were submitted, of which 49 have been completed and 100 are pending (53 applicants and 47 children placed abroad).<sup>46</sup> A total of 331 cases were processed in 2001, and 462 in 2002.

248. Action by the International Adoption Agency of the National Council for Children’s and Adolescents’ Rights is underpinned by:

- (a) The Constitution of the Bolivarian Republic of Venezuela (art. 75);
- (b) The Convention on the Rights of the Child;
- (c) The Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, ratified by Venezuela on 8 October 1996;
- (d) The International Private Law Act;

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<sup>45</sup> Protection of Children and Adolescents (Organization) Act, chapter III, regarding foster families. Section III sets out the conditions required to initiate an adoption procedure.

<sup>46</sup> Information provided by the National Council for Children’s and Adolescents’ Rights.

- (e) The Protection of Children and Adolescents (Organization) Act;
- (f) The Code of Civil Procedure;
- (g) The Civil Service (Legal Status) Act;
- (h) The Rules of Procedure of the National Council for Children's and Adolescents' Rights.

249. Neither the Protection of Children and Adolescents (Organization) Act nor the guidelines on implementation of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption provide for payment for adoption proceedings or exchanges with accredited agencies in other countries pursuant to adoption proceedings.

#### **H. Illicit transfer and non-return of children abroad (art. 11)**

250. Regarding authorization to travel abroad, the Protection of Children and Adolescents (Organization) Act states that every child and adolescent may travel with both or either one of his or her parents, provided that permission has been granted by the other parent, or with his or her sole legal guardian, where appropriate. Authorization to travel alone or with a third party must be given by the parents or legal guardian.

251. Should the parents or legal guardian be outside the country, the request should be sent through the Venezuelan Consulate in the country where the parents or guardian are located.

#### **I. Abuse and neglect, including physical and mental harm (arts. 19 and 39)**

252. In 1999, the Scientific, Criminal and Forensic Investigation Unit (formerly Technical Judicial Police) received 28 complaints of incest and 3 of incitement to prostitution nationwide. In 2000, the Unit received 12 complaints of incest nationwide, which suggests that sexual abuse and exploitation of children and adolescents are underreported. In fact, the National Children's Institute provided care to 696 child and adolescent victims of abuse, of which 69 per cent were cases of physical abuse, and 31 per cent, cases of rape or other forms of sexual abuse.

253. The figures for 2000 showed that 68 per cent of rapes occurred in the victim's home, 12 per cent occurred in another home and 10 per cent occurred in the street; 69 per cent of the rapists were relatives, 20 per cent were other adults and 6 per cent were other children or adolescents.

254. According to the complaints reported by the NGO National Agency for Complaints of Child Abuse (2000), victims of physical, mental and sexual abuse included children aged under 1 year and 77 per cent of victims were children and adolescents. The NGO Venezuelan Association for Alternative Sex Education noted that during the first quarter of 2001, the age of children receiving care after sexual abuse ranged from 18 months to 11 years, with an average age of 5.3 years; 71 per cent of those children were girls and 29 per cent were boys. The Association released figures for the first quarter of the same year showing that in 82 per cent of the cases of sexual abuse after which care was provided, victims were assaulted in their homes or at the home of a relative; 47 per cent of assaults were committed by a relative and 33 per cent were committed by a person close to the victim.

255. According to data from the Statistics Division of the Scientific, Criminal and Forensic Investigation Unit,<sup>47</sup> there were a total of 2,546 cases of sexual abuse of children and adolescents in 2002-2003.<sup>48</sup>

256. In 2003, a measure was introduced by the Venezuelan Government for the protection of marginalized children and adolescents, through a programme of the Ministry of Health and Social Development entitled “Comprehensive Care Plan for Street Children”. This began as a pilot project in Libertador Municipality, producing the following results:

(a) During the first, training, phase, 28 street educators were trained in making contact with, interviewing and following up street children and adolescents;

(b) During the next phase, contact was established with street children (60 girls and 90 boys) in the districts of Catia, Silencio, Sabana Grande, Plaza Venezuela, Los Chaguaramos, La Vega, Colegio de Ingenieros and Bellas Artes, and care was provided at facilities in Plaza Venezuela and Bellas Artes;

(c) Efforts are under way to build care facilities for street children under programmes run by the Ministry of Infrastructure and other government bodies (*Patio de Encuentro* centres, cultural centres and family protection shelters).

## VI. BASIC HEALTH AND WELFARE

### Articles 6, 23, 24, 26 and 27

257. Institutional arrangements for the provision of drinking water and sanitation in Venezuela are based on a legal instrument that establishes the framework for relations between providers and users of drinking water and sanitation services, and seeks to optimize the management of those services. This is the Drinking Water and Sanitation Services Provision (Organization) Act, published in *Gaceta Oficial* No. 5568 of 31 December 2001, which provides for structural change in the operation of the services relating to national authority and municipal responsibility. The new institutional set-up comprises:

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<sup>47</sup> [Footnote immaterial to English text.]

<sup>48</sup> The information available on this issue is contained in individual studies conducted by various organizations, including the Foundation Institute for Human Resources Research and Training in the Provision of Care to Children and Adolescents in Particularly Difficult Circumstances, with the document “Street children and child beggars in Venezuela”, which states that there are 9,000 child beggars - a figure based on estimations since no study had yet been conducted which covered all the most populated urban centres, capitals and major cities. The study, nevertheless, reveals the need to distinguish and identify the number of street children and the number of child beggars.

258. The National Agency for the Development of Drinking Water and Sanitation Services, the lead agency, will be responsible for developing policies and plans in this area and will function as an independent entity under the auspices of the Ministry of the Environment and Natural Resources.

259. The National Authority for Drinking Water and Sanitation Services will perform a regulatory function, operating as an independent institution under the auspices of the Ministry of Production and Trade.

260. It will draw up regulations to ensure the technical, financial and environmental sustainability of the services and the implementation of effective management methods that promote public and private participation in service provision.

261. At the national level, the National Drinking Water and Sanitation Management Company will be responsible for producing and selling bulk quantities of raw water or drinking water and for treating waste water in systems designated by the National Agency, and will also operate under the aegis of the Ministry of Production and Trade.

262. In accordance with the transitional provisions of the Act, HIDROVEN (the Venezuelan Water Authority) has the lead role in the process of sectoral change since, as stated in article 133, it must create the three above-mentioned institutions within two years and take on the functions assigned to the National Agency for the Development of Drinking Water and Sanitation Services and the National Authority for Drinking Water and Sanitation Services until they become operational. In the light of this mandate, HIDROVEN has adopted a transitional organizational structure, enabling it to perform the guidance and regulatory functions of service management and lay the basis for the future operation of the two institutions.

263. The Act assigns to the municipalities the authority to provide drinking water and sanitation services, and sets a five-year time limit on the transfer by HIDROVEN of these services, currently provided by the State.

264. As part of its functions, HIDROVEN must set up the economic and financial arrangements, which will comprise tariffs, subsidies and sectoral funding. The effective operation of these three components will ensure the financial sustainability of the services (see annex II, table 13).<sup>49</sup>

265. Child mortality: the Venezuelan Government has implemented policies and strategies for the comprehensive care of children and adolescents. These efforts have helped to reduce deaths per 1,000 children aged under 5 years. The infant mortality rate, in particular, decreased to 18.2 per 1,000 in 2002 (see annex I, figure 3 and annex II, table 14).

266. The trends in overall mortality rate, infant (neonatal and post-neonatal) mortality rates and birth rates registered between 1995 and 2002 were as follows: in 1995, the infant mortality rate was 23.7 per 1,000 registered live births; in 1996, this rate increased to 23.9 per 1,000; in 1999,

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<sup>49</sup> This information was obtained from <http://www.hidroven.gov.ve/institucionalidad.html>.

the rate was 19.1 per 1,000, closer to the goal of 17.29 per 1,000 live births; there was a significant decline in 2000 to 17.7 per 1,000; and in 2002, the rate was estimated to be 18.2. In 2001, mortality rates varied, either decreasing or increasing. For instance, the neonatal mortality rate was 11.0 per 1,000, showing a 4.55 per cent decrease compared to 2000; the post-neonatal mortality rate was 6.6 per 1,000, showing a 5.91 per cent increase; and the infant mortality rate decreased by 4.49 per cent. The observed decreases resulted from the social policies implemented by government institutions, particularly in relation to the child and adolescent population (see annex II, table 15).

267. With regard to the number of births per 1,000 women of childbearing age between 1998 and 2003, the average number of children per woman was 2.9 children in 1988, which gradually decreased to 2.69 in 2003. This downward trend is observed in all age groups considered in table 16 of annex II except for the 20- to 24-year-olds who have constituted a relatively stable childbearing group over the years: in 1999, the number of children per 1,000 women in this bracket was 159.96, decreasing by 1.82 per cent in 2002, and decreasing further to 152.96 children per 1,000 women in 2003 (see annex II, table 16).

268. This trend illustrates the effectiveness of the information provided to women of childbearing age through nationwide sexual and reproductive health training schemes. Information on contraceptive methods is provided in the context of these plans.

269. Although substantial progress has been made in legislative terms<sup>50</sup> to meet the information needs of adolescents, sex education and counselling, which should be provided by the family, institutions and society as a whole is still a matter of general dissatisfaction.<sup>51</sup>

270. Measures to control teenage pregnancy include the information programme on contraceptive methods for women of childbearing age, operated nationwide by the Ministry of Health and Social Development. According to ENPOFAN'98, the programme is based on the following observations:

(a) There is widespread knowledge among women of the contraceptive pill, followed by the condom, IUD, and sterilization, as methods familiar to some 9 out of 10 women, while other methods such as injections, vaginal methods and vasectomy are familiar only to 5 out of 10 women, alongside traditional methods such as rhythm and withdrawal. Some two out of three women of childbearing age have used a birth control method at least once;

(b) Only 15 per cent of adolescents have used contraception at least once, compared to more than 50 per cent of women aged 20 to 24 years. Some 9 out of 10 older women have tried contraception at least once;

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<sup>50</sup> The new Radio and Television Social Responsibility Act, *Gaceta Oficial* No. 38-081 of 7 December 2004.

<sup>51</sup> National HIV/AIDS Strategic Plan - An approach to health and quality of life. Ministry of Health and Social Development, April 2003.

(c) The use of contraception increased by 18 per cent over a period of five years, from 66 per cent to 78 per cent. Among women aged 15 to 24 years, the increase was much less significant. Among women reaching the end of their childbearing years, the increase was significantly higher;

(d) The adolescent fertility rate is 50 per cent higher in less urbanized areas than in the capital;

(e) As to educational background, adolescents who received no more than 6 years of education have a fertility rate 70 per cent higher than adolescents with at least 10 years of education.

271. The joint contribution of the National Sexual and Reproductive Health Programme and the National STI/HIV/AIDS Programme is helping to prevent vertical transmission of HIV by offering comprehensive care and antiretroviral treatment to HIV-positive mothers and to children and adolescents. In 2002-2003, the Ministry of Health and Social Development and the Ministry of Education and Sports, through the National STI/HIV/AIDS Programme, ran a human resources training project for education and health systems entitled "Comprehensive Prevention of STI/HIV/AIDS, Early Pregnancy and Domestic Violence" targeted at schools throughout the country. Action and research on the subject by NGOs are currently being reinforced with funding for projects targeting high-risk groups, including pregnant women and HIV-positive mothers.

272. According to data from the National Statistical Institute on live births by age of the mother in 2002, the proportion of babies born to adolescents is 21.06 per cent; it is estimated that 1.01 per cent of births are to adolescents aged under 15 years, and 20.05 per cent are to mothers aged between 15 and 19 years.

273. As stated by the Chairperson of the Caracas Foundation for Children of the *Alcaldía Mayor*, the birth registration office reports that 27 per cent of mothers are adolescents. It has also identified some of the causes of child and adolescent pregnancy: lack of guidance, absence of a parent, abuse and family abandonment.

274. HIV/AIDS became one of Venezuela's biggest and growing public health problems in the 1990s. Modes of transmission included sexual contact in 89.77 per cent of cases reported, followed by perinatal transmission, which gradually increased to 2.02 per cent in children aged under 4 years, resulting in most cases from vertical transmission. That figure rose from 0.6 per cent in 1993 to 1.24 per cent in 1993, and to 3.01 per cent in 1997. In 1994, the incidence of HIV infection in women was estimated at 11.3 per million inhabitants. The male to female ratio of registered cases was seven to one.

275. As illustrated in tables 17 and 18 (annex II), HIV/AIDS mortality in 2002 was highest in children aged under 1 year (42 cases reported) and in adolescents aged 15 to 19 years, with a total of 26 cases reported; in this group, more boys died than girls but an analysis of all cases shows that more females (62) than males die of HIV/AIDS (see annex II, tables 17 and 18).



## VII. EDUCATION, LEISURE AND CULTURAL ACTIVITIES

### Articles 28, 29 and 31

276. The right to education, leisure and cultural activities is clearly established in the following articles of the Protection of Children and Adolescents (Organization) Act.

277. Article 63 (Right to rest, recreation, leisure, sport and play) stipulates that all children and adolescents have the right to rest, recreation, leisure, sport and play.

278. According to paragraph 1, the rights enshrined in this article must be exercised with a view to ensuring the all-round development of children and adolescents and strengthening the values of solidarity, tolerance, cultural identity and preservation of the environment. The State must organize constant campaigns to discourage the use of violent or war toys and games.

279. Paragraph 2 states that the State, with the active participation of society, must ensure the provision of programmes for recreation, leisure and sports games for all children and adolescents, including specific programmes for children and adolescents with special needs. These programmes must meet the diverse needs and interests of children and adolescents and, in particular, promote traditional toys and games with connections to the national culture and others that have creative or educational value.

280. In accordance with article 64 (Areas and facilities for rest, recreation, leisure, sport and play), the State must ensure the creation and preservation of public areas and facilities for the purposes of recreation, leisure, sport and rest.

281. Paragraph 1 provides that children and adolescents lacking financial resources should have free access to and use of such public areas and facilities.

282. According to paragraph 2, urban planning must provide for the creation of green areas, recreational and sports areas for children and adolescents and their families.

283. The education system has embarked on a complete overhaul in which the assertion of children's and adolescents' rights will play a fundamental role.

284. In order to give effect to the Convention on the Rights of the Child, the Ministry of Education and Sports has set up a Liaison Office<sup>52</sup> with the National Council for Children's and Adolescents' Rights and established a Follow-up and Liaison Committee in conjunction with that Council. The Committee came into being on 17 June 2002 through resolution No. 195; its purpose is to publicize and promote policies, plans, programmes, projects and activities to do with comprehensive care, survival and participation by all children and adolescents.

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<sup>52</sup> [Footnote immaterial to English text.]

285. Some of the functions of the Liaison Office are to:

(a) Support and exchange information between institutions on efforts to guarantee the enjoyment and full exercise of children's and adolescents' rights and obligations in education and sport;

(b) Manage inter-institutional relations between the Ministry of Education and Sports and the National Council for Children's and Adolescents' Rights in order to guarantee the implementation, follow-up, supervision and evaluation of public management on the principles of co-responsibility and democratic participation;

(c) Publicize and promote policies, plans, programmes, projects and activities to do with comprehensive care, survival and participation by all children and adolescents in full exercise of their rights and obligations linked to education and sport.

286. In October 2002, commissions were set up in the states of Portuguesa, Táchira, Mérida, Trujillo, Yaracuy, Falcón, Sucre, Bolívar, Zulia, Guárico, Anzoátegui, Monagas, Delta Amacuro, Carabobo, Cojedes, Barinas, Lara, Aragua, Miranda, Distrito Capital, Apure y Amazonas, and Vargas. Each state drafted a plan of action to promote the human rights of children, adolescents and families, following an analysis of the progress made with regard to those rights. Each plan of action comprises three programmes: (a) a school and community relations programme; (b) a curriculum adaptation programme; and (c) an education ombudsman programme.

287. The participants in each state include the State Councils for the Rights of Children and Adolescents, Municipal Children's and Adolescents' Councils, education secretariats and other local bodies that have worked for the rights of children and adolescents. A plan of action has been established for the different education authorities throughout the country, with a strategic focus on promoting, raising awareness of and providing training on the human rights of children and adolescents.

## **VIII. SPECIAL PROTECTION MEASURES**

### **A. Children in emergency situations (arts. 22, 38 and 39)**

288. The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict was ratified by the Venezuelan State on 23 September 2003.

289. The main objective of this Protocol is to increase protection for children with a view to preventing their involvement in armed conflict and, at the same time, to raise the minimum age for recruitment into the armed forces and direct involvement in hostilities.

290. Article 23 of the Constitution establishes that "human rights treaties, covenants and conventions signed and ratified by Venezuela have constitutional status", as is the case of the Convention on the Rights of the Child.

291. Article 92<sup>53</sup> of the Protection of Children and Adolescents (Organization) Act makes clear reference to banning the provision of weapons, ammunition and explosives to children and adolescents. The fact that Venezuela has ratified the Protocol and respects the Constitution and the Protection of Children and Adolescents (Organization) Act demonstrates its commitment to protecting the rights of the child and to the principles of respect and the universal, indivisible upholding of human rights.

292. As a case in point, on 9 May 2004, the National Council for Children's and Adolescents' Rights (CNDNA) was assigned responsibility for taking action in response to a particular situation arising out of the presence of Colombian adolescents presumed to be paramilitaries in Hacienda Daktari, El Hatillo Municipality.

293. CNDNA worked in cooperation with the various bodies of the Child and Adolescent Protection System and other competent national and international institutions to safeguard the children's and adolescents' rights set out in the Constitution, focusing on the best interests of the child and the principle of absolute priority as means of doing so.

294. It was also considered vital to establish, with support from the United Nations Children's Fund (UNICEF) in Colombia and Venezuela, a verification mechanism for the surrender and transfer of these adolescents in order to obtain information on the protection measures that would be applied to these adolescents and how they were progressing.

295. In this setting, CNDNA<sup>54</sup> confirmed the importance of cooperating, in accordance with article 7 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, in building bilateral mechanisms for protecting children and adolescents from being used and enlisted in irregular forces, and in safeguarding the rights of Colombian and Venezuelan children and adolescents living in the border area.

296. Libertador Municipality's Protection Council ordered a protection measure to safeguard the rights of the adolescents as they were handed over with support from national and international bodies concerned with children and adolescents. CNDNA requested the Colombian Government to send regular (monthly) reports explaining the protection measures and/or programmes applied to the nine Colombian adolescents and the impact or benefits that those measures and/or programmes had had on the adolescents' psychological recovery and social reintegration.

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<sup>53</sup> Article 92. Prevention. It is prohibited to sell to children and adolescents or to provide them with, in any form:

(a) Tobacco; (b) Narcotic and psychotropic substances, including inhalants; (c) Alcoholic substances; (d) Weapons, ammunition and explosives; (e) Fireworks and similar items; (f) Information or images that are unsuitable for their age.

<sup>54</sup> The information given from this point was provided by CNDNA and refers to actions carried out in response to this chance event.

## **B. Children in conflict with the law (arts. 27, 39 and 40)**

297. The Protection of Children and Adolescents (Organization) Act protects the inviolability of children that come into conflict with the law under the following articles.

298. Article 32: “All children and adolescents have the right to inviolability of the person. This right includes physical, mental and moral inviolability ...”.

299. Article 86: “All children and adolescents have the right to defend their own rights. All children and adolescents shall be guaranteed personal exercise of this right before any individual, authority, organization or body.”

300. Article 89: “All children and adolescents deprived of liberty have the right to be treated with the humanity and respect that befits their dignity as human beings. They shall also enjoy all the rights and safeguards of children and adolescents besides those established specifically in this Act, except those restricted by the punishment imposed.”

301. Children are arrested, detained and imprisoned in conformity with the Protection of Children and Adolescents (Organization) Act. Some of the criteria used by the procedural judge are established in article 532 of the Act,<sup>55</sup> and in fact this article 620<sup>56</sup> applies to all the punishments provided for in the Act, in cases of confessions and dismissals of proceedings.

302. Depending on the nature of the offence, the damage caused and the involvement of the adolescent in the offence as determined during the trial, as laid down in article 551 of the Protection of Children and Adolescents (Organization) Act, the following factors are taken into account when deciding what sanction to impose: the adolescent’s behaviour during the trial, full compliance with any precautionary measures imposed, the extent of the damage caused and the appropriateness of measure if there is any argument on the point (so that deprivation of liberty

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<sup>55</sup> Article 532. Children. When a child commits a punishable offence, only measures of protection shall be applied, in accordance with the provisions of this Act.

First Paragraph: If a child is caught in flagrante delicto by the police, the police shall notify the prosecutor attached to the Public Prosecutor’s Office who will then refer the child to the Protection Council within 24 hours. If the child is caught by an individual, he or she must refer the child to the police immediately in order that the same procedure may be carried out.

Second Paragraph: When an investigation or trial finds strong evidence for a child’s involvement in a punishable offence, a copy of the proceedings shall be sent to the Protection Council.

<sup>56</sup> Article 620: Types. When the involvement of an adolescent in the punishable offence has been proven and his or her liability declared, the court shall sanction him or her by applying the following measures: (a) Warning; (b) Imposition of rules of conduct; (c) Community service; (d) Probation; (e) Partial release; (f) Deprivation of liberty.

may be used as a last resort) and the adolescent's occupation (for example, whether he or she is a student or works), all in accordance with article 44<sup>57</sup> of the Constitution and articles 8, 37, 628 and 581<sup>58</sup> of the Protection of Children and Adolescents (Organization) Act.

303. The following measures have been adopted by the courts to guarantee respect for adolescents' rights as laid down in the Convention on the Rights of the Child, the treaties, agreements and conventions signed and ratified by Venezuela, the Protection of Children and Adolescents (Organization) Act and the Code of Criminal Procedure:

- (a) The adolescent must have private or publicly-funded counsel;
- (b) Adolescents deprived of liberty must be held separate from adults in detention facilities that are exclusively for adolescents;
- (c) Adolescents must be detained in police premises close to their families;
- (d) Clinical checks must be carried out if the parties so request;
- (e) Adolescents must be transferred to hospital whenever necessary for their health;
- (f) The Public Prosecutor's Office and the Public Defender's Office must be informed of all decisions regarding adolescents' trials;
- (g) Any act that would constitute a threat to adolescents' personal inviolability when in detention must be prevented;
- (h) Respect for the guarantees and rights inherent to human beings and to criminal proceedings must be ensured in all acts carried out by the court.

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<sup>57</sup> This article refers to the inviolability of personal liberty.

<sup>58</sup> Article 8. Best interests of the child. This Act is interpreted and applied using the principle of the best interests of the child, which must be complied with in all decisions concerning children and adolescents. This principle is aimed at ensuring children's and adolescents' comprehensive development, as well as full and effective exercise of their rights and guarantees ...

Article 37. Right to personal liberty. All children and adolescents have the right to personal liberty, with no limits except those established by law. They cannot be deprived of their personal liberty illegally or arbitrarily ...

Article 628. Deprivation of liberty. This consists in the placing an adolescent in a public establishment which he or she can only leave by court order ...

Article 581. Pretrial detention as a protective measure. In the committal order, the procedural judge shall be able to order pretrial detention of the accused when the following factors exist: (a) Reasonable risk that the adolescent may not attend trial; (b) Well-founded fear of destruction or obstruction of evidence; (c) Serious threat to victim, complainant or witness ...

304. If a criminal court judge finds that there is an imminent threat to the right to life, the physical safety or the development of any adolescent in conflict with the criminal law, the judge must notify CNDNA so that it can order the necessary protection measures.

305. The following measures have been adopted to ensure respect for the principles of the Convention on the Rights of the Child during legal proceedings:

- (a) Regular visits to adolescent detention centres, to carry out inspections and interview adolescents;
- (b) Instructions to the director of the adolescent protection service in each state to ensure that arrangements are made for the smooth operation of facilities and appropriate security;
- (c) Instructions to heads of detention centres to respect and safeguard the rights of adolescents serving sentence and draw up individual plans for the adolescents;
- (d) Prompt response to the concerns and requests of detained adolescents;
- (e) Prompt agreement to transfer adolescents to the care of the public health services whenever necessary to guarantee their right to health;
- (f) In the case of adolescents imprisoned in institutions for adults, orders to the director of the establishment concerned to separate them physically from the adults and seek their transfer to an adolescent detention centre;
- (g) Orders that individual plans shall be drawn up;
- (h) In the case of adolescents in conflict with others, instructions to the director of the detention centre concerned to separate them in order to guarantee the right to life and to physical safety;
- (i) A reminder to directors of detention centres of their obligation to provide adolescents with adequate help, avoiding maltreatment and solitary confinement.

306. The general principles of the Convention are applied in legal proceedings in the case of adolescents in conflict with the law in the following ways.

307. Non-discrimination: Respect for this principle implies due consideration of territoriality, nationality and/or personality, according to the offence, respecting the rights of Venezuelan and foreign adolescents equally. The law must be applied equally, without distinction between adolescents or their representatives. Non-discrimination on grounds of race, sex, religion or social status is guaranteed. Adolescents are guaranteed the rights of accused persons and decent treatment; lighter measures are substituted for precautionary measures involving deprivation of liberty.

308. Best interests of the child: The decision taken by the court must always take into account the best interests of the child and his or her rights. Even when adolescents are in conflict with the criminal law, effective exercise of their fundamental rights must be respected in the first

instance, thereby ensuring their all-round development. When the release of an adolescent is requested on the grounds of his or her best interests, the judge must study the case in depth, taking account of the adolescent's views, the balance between his or her rights and duties, and the balance between the adolescent's rights and the common good.

309. Respect for adolescents' opinion: Adolescents involved in legal proceedings maintain the right to express their opinion freely and voluntarily, not under oath and free from coercion or pressure.

310. Right to life: This right is protected through the prior establishment of clear, well-defined criminal offences and the imposition of punishment that is proportional to the offence committed and reflects the extent to which a legally protected right has been violated or threatened, thereby guaranteeing the adolescent's life and liberty.

311. Survival: This principle refers to the right to life, health and social security, which are guaranteed through government policies beginning with a direct assessment of the adolescent's physical condition and any care required. When adolescents are imprisoned, food can be provided by their families or counsel through the office of the bailiff. However, many adolescents cannot be guaranteed adequate living conditions.

312. As regards the assistance that the State should guarantee to parents, there are no programmes offering parents support in bringing up adolescents.

313. Maximum development of potential: In order for adolescents to develop to the maximum, they must be treated neither as incapable nor as adults, and their individual situations must be assessed clearly and reasonably, thereby ensuring balanced and healthy development with the ultimate aim of reintegration into society.

314. A simple, instructive explanation must be given to adolescents of the proceedings taking place and of the statements made by the Public Prosecutor and Public Defender. Adolescents have the right to speak in order to identify themselves, giving their family and forenames, nationality, address, identity card number, parents' names, place of study or work, telephone numbers, etc. The parents or other relatives may remain in the courtroom with the adolescent and can even talk to him or her (see annex I, figures 4 to 6, and annex II, tables 19 to 21).

315. Adolescents' criminal liability is established through a system made up of a group of bodies and specialized agencies, in such a way that the offender is held answerable for the offence. But article 532 of the Protection of Children and Adolescents (Organization) Act provides that: "When a child commits a punishable offence, only measures of protection shall be applied in accordance with the provisions of this Act."

316. To be provided with legal assistance, an adolescent must first be regarded as a defendant. There is a series of articles on this matter in the Protection of Children and Adolescents (Organization) Act; the following are of particular interest:

(a) “Article 87. Right to justice. All children and adolescents have the right to apply to a competent, independent and impartial court for protection of their rights and interests, and to obtain a ruling on their application by the deadline established by the law. All adolescents are fully entitled to exercise this right directly and in person ...”;

(b) “Article 88. Right to defence and due process. All children and adolescents have the right to defence at all stages and levels of any administrative or legal proceedings and to due process as established in this Act and in the legal order”;

(c) “Article 90. Safeguards for adolescents facing the adolescent criminal liability system. All adolescents who, because of their actions, face the adolescent criminal liability system have the right to the same substantive and procedural safeguards and guarantees with regard to enforcement of sentence as persons aged over 18 years, in addition to those specific to adolescents”;

(d) “Article 544. Defence. The right to defence is inviolable from the beginning of the investigation until completion of the punishment imposed. In the absence of private counsel the adolescent must be given the assistance of a specialist public defender.”

317. In order that the right to justice may be exercised, the State guarantees free legal assistance and representation to children and adolescents who lack sufficient economic means.

318. In order to guarantee full exercise of these rights, the specialized legal authorities proceed as follows:

(a) When the adolescent is accused of a punishable offence: When an adolescent is apprehended in flagrante delicto and brought before the court, as well as checking that the arresting officer has granted the adolescent the right to be accompanied by counsel appointed by him/her or by his or her parents or guardians, the court will, when setting the date of the hearing to rule on the adolescent’s apprehension, notify the specialized Public Defender’s Office so that a defence lawyer may be appointed if necessary;

(b) Ordinary proceedings brought against adolescents not subject to precautionary measures: The specialized Public Prosecutor’s Office is required to notify the procedural judge when an investigation into an adolescent is initiated (Protection of Children and Adolescents (Organization) Act, art. 552). When this notification is received, it is read out in court to the adolescent under investigation so that he or she may appoint counsel for the trial to follow or, if this is not possible, so that a public defence lawyer may be appointed.

319. Since in the ensuing investigation by the Public Prosecutor’s Office, the investigating attorney may wish to take a statement, instructions have been sent to the Public Prosecutor’s Office to ensure that the adolescent is assisted by counsel: these direct that once the statement has been taken with a lawyer present as defence counsel, the adolescent should declare to the investigating attorney his or her wish to appoint this lawyer as defence counsel and have the lawyer sworn in by the court. This declaration is then submitted to the court, which serves notice on the lawyer to appear before the court within 24 hours of receipt, accept or decline the appointment and, in the case of acceptance, be sworn in.



### C. Child victims of exploitation (arts. 32 to 36 and 39)

320. The Venezuelan State seeks to eradicate all forms of child labour. In order to do so the Ministry of Labour operates the National Programme for the Protection of Children and Adolescents. This programme is supported by the following legal framework, established for the prevention and eradication of economic exploitation of children and adolescents:

(a) The Convention on the Rights of the Child, based on the principles of:

- (i) The best interests of children and adolescents;
- (ii) Absolute priority;

(b) The Constitution of the Bolivarian Republic of Venezuela, articles 78 and 89;<sup>59</sup>

(c) The Protection of Children and Adolescents (Organization) Act,<sup>60</sup> establishing comprehensive legislation for the protection of children and adolescents. This report covers the most relevant topics.

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<sup>59</sup> Protection of Children and Adolescents (Organization) Act: “Article 38. Prohibition of slavery, servitude and forced labour. No child or adolescent shall be subjected to any form of slavery, servitude or forced labour.”

<sup>60</sup> Article 94. Right to protection at work. All child and adolescent workers have the right to be protected by the State, by their family and by society, especially against economic exploitation and any work that could hinder their education or which could be dangerous or harmful to their health or comprehensive development.

Sole Paragraph: The State, through the appropriate Ministry, shall give priority to monitoring compliance with regulations on the minimum age, authorization to work and supervision of adolescents’ work.

Article 95. Balance between work and education. Adolescents’ work must be balanced with effective exercise of their right to education.

The State, their family, society and employers must ensure that adolescent workers complete compulsory education and that they are able to continue their education.

Article 97. Child workers. Child workers shall be protected through special protection measures. These measures shall not involve additional damage to the work products and shall safeguard the child worker’s daily means of support.

Article 98. Register of workers. In order to work, all adolescents must enrol on the Register of Adolescent Workers, which shall be run by the Protection Council.

(d) The Prevention, Working Conditions and Working Environment (Organization) Act, establishing methods of applying the structural and preventive measures administered by the Ministry of Labour, including the design and execution of activities undertaken pursuant to shared responsibility between institutions and citizens, involvement, critical assessment of child labour and measures for the promotion and prevention of workers' health.

322. The Programme calls for a system to monitor the working conditions of child and adolescent workers, so as to protect their health and permit their personal and social development.

323. The main areas covered by the Programme are the following.

324. Coordination of activities with CNDNA, the Ministry of Labour, bodies providing care for children and adolescents, the Ministry of Education, Culture and Sports and the Ministry of

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First Paragraph: This register shall contain:

- (a) Adolescent's name;
- (b) Date of birth;
- (c) Place of residence;
- (d) Parents', representatives' or guardians' names;
- (e) School name, grade and timetable;
- (f) Place, type and schedule of employment;
- (g) Date of entry;
- (h) Employer's details, if applicable;
- (i) Authorization, if applicable;
- (j) Start date of employment;
- (k) Medical examination;

(l) Any other information that the Protection Council, CNDNA or the appropriate Ministry deems necessary for the protection of the adolescent worker, depending on his or her area of competence.

Second Paragraph: The information held in this Register shall be sent every month to the appropriate Ministry for the purposes of inspection and supervision of the work.

Health and Social Development in order to devise, implement, follow up and monitor policies and plans to guarantee full exercise of the rights of and safeguards for child and adolescent workers, in the following areas:

- (a) Registration, authorization and permits;
- (b) Right to education;
- (c) Right to recreation;
- (d) Right to social security;
- (e) Right to health, particularly occupational health;
- (f) Closer supervision and monitoring of working conditions;
- (g) Supervision and monitoring of working conditions in the informal sector;
- (h) Classification and updating categories of work that are dangerous or harmful to child and adolescent workers, taking into account the conditions in which the work is carried out and the health risks involved;
- (i) Occupational health care for child and adolescent workers;
- (j) Training programmes in occupational health for members of the Protection Councils and bodies providing care for child and adolescent workers and their families;
- (k) Training programmes in the organization and active participation of child and adolescent workers (union organizations, health and safety committees and support bodies);
- (l) Promotion of opportunities for encountering and participating in the organization and active participation of child and adolescent workers (union organizations, health and safety committees and support bodies);
- (m) Promotion of opportunities for child and adolescent workers and support bodies to encounter and participate in the formulation, execution and supervision of policies, plans, programmes and projects in the area of health and work;
- (n) Creation of a database of child and adolescent workers' workplaces and working conditions.

325. When Venezuela assumed the presidency of the Andean Community (CAN), members of the National Programme for the Protection of Children and Adolescents and the National Institute of Prevention, Health and Safety at Work (INPSASEL) were required to lay the groundwork for the Simón Rodríguez Agreement on labour issues, one of the central themes of which is child labour.

326. Participants discussed the status of child and adolescent workers in their respective countries in order to adapt strategic plans to the facts of life in Latin America. They then discussed what action to take over the subsequent two years.

#### **D. Children belonging to minority or indigenous groups (art. 30)**

327. The Constitution and legislation recognize children and adolescents as possessing full rights and as privileged groups that must be protected by the State, society and the family; they require all concerned to act in accordance with the principles of absolute priority, the best interests of the child, shared responsibility, equality, non-discrimination and participation. This has led to a series of laws, policies, plans and projects focusing on safeguarding the rights of indigenous and Afro-Venezuelan children and adolescents as perceived in the world view and customs of these groups; the groups have been actively involved in devising, drawing up, administering and evaluating these laws and policies.

328. The National Statistical Institute recognizes a total of 35 indigenous groups. In 2001, Venezuela conducted its thirteenth housing and population survey, which for the first time included a census of indigenous communities. In the housing and population survey itself, 354,400 people stated that they belonged to an indigenous people, and the census of those who thought of themselves as distinct ethnic groups, occupying a given geographical area with indigenous communities, registered 178,383 people. Together these figures total 532,783 indigenous inhabitants spread throughout the country and accounting for 2.3 per cent of the overall population.

329. The greatest geographical concentrations of indigenous peoples are to be found in Venezuela's border states: Apure, Amazonas, Bolívar, Zulia, Delta Amacuro, Sucre, Monagas, Anzoátegui and Trujillo.

330. The preamble of the Constitution emphasizes the multi-ethnic, multicultural nature of Venezuelan society. Title III, chapter VIII, recognizes the existence of indigenous people and communities, 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. Exploitation of natural resources on indigenous lands is therefore subject to direct involvement of and prior information and consultation with the communities concerned.

331. The Constitution stresses the social rights of indigenous peoples: the right to intercultural bilingual education, to health, to traditional medicine, to traditional economic practices, to participation in the national economy as workers, to vocational training, the right to participate in training programmes, to benefit from technical and financial assistance services supporting their economic activities, and to be represented politically in the National Assembly and in federal and local deliberative bodies where there is an indigenous population.

332. The Constitution also calls for a first Indigenous Peoples and Communities (Organization) Act giving effect to indigenous peoples' constitutional rights (Constitution, "Chapter VIII. Rights of Indigenous Peoples", arts. 119 to 126) and the rights established in the international conventions, covenants and treaties signed by Venezuela to be drawn up as a priority. Indigenous

peoples' lives and sustainable development are also protected, mechanisms to connect them with the State are being put in place, and the right to comprehensive health care and the recognition of traditional medicine is guaranteed: "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" (Constitution, art. 122).

333. Other national legal instruments that guarantee the rights of indigenous peoples and, of course, those of indigenous children and adolescents are the following: The Indigenous Peoples Habitat and Lands Demarcation and Protection Act, Decree No. 17,952, Decree No. 17,963, the draft indigenous peoples and communities bill of 11 December 2001, the draft indigenous peoples' education and language use bill, the draft health bill and the Protection of Children and Adolescents (Organization) Act.

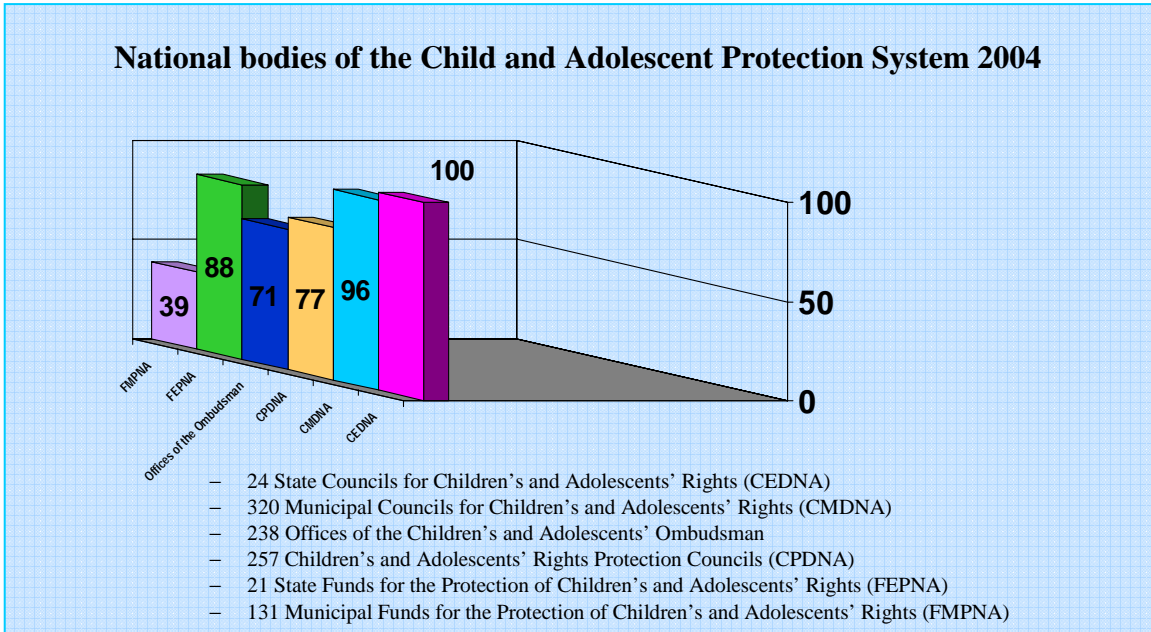
334. In May 2004, the then Ministry of Health and Social Development set up the Indigenous Peoples Intercultural Health Coordination (CISPI) scheme, devoted to improving health conditions for indigenous peoples using a structural, participative and proactive approach. Health programmes are linked to intercultural health education programmes with a multicultural structure, regarding health as integral to life and the harmonious process of self-possession, self-determination, self-respect and self-worth, leading on to recognition, respect and esteem for others in all their biological and cultural diversity.

**ANNEXES**

**Annex 1**

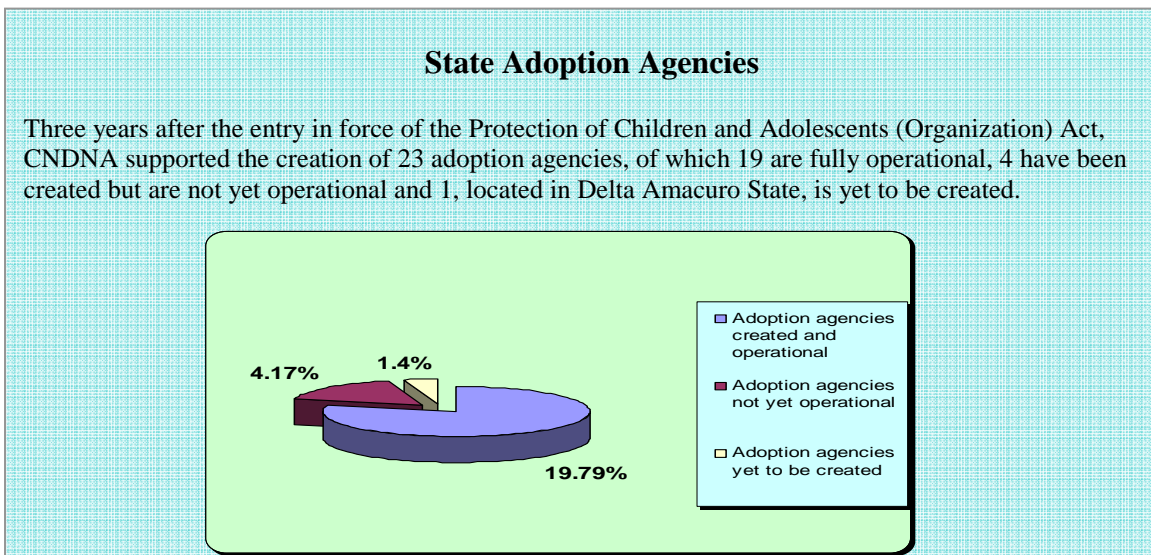
**FIGURES**

**Figure 1**



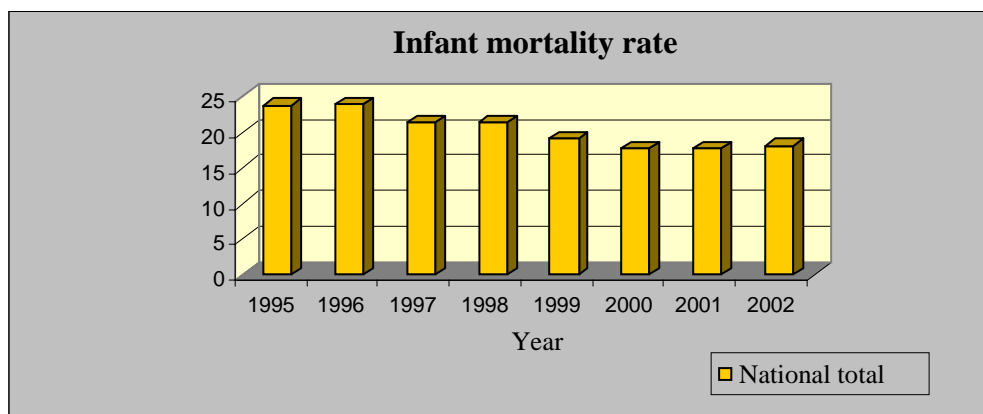
Source: CNDNA.

**Figure 2**



Source: CNDNA.

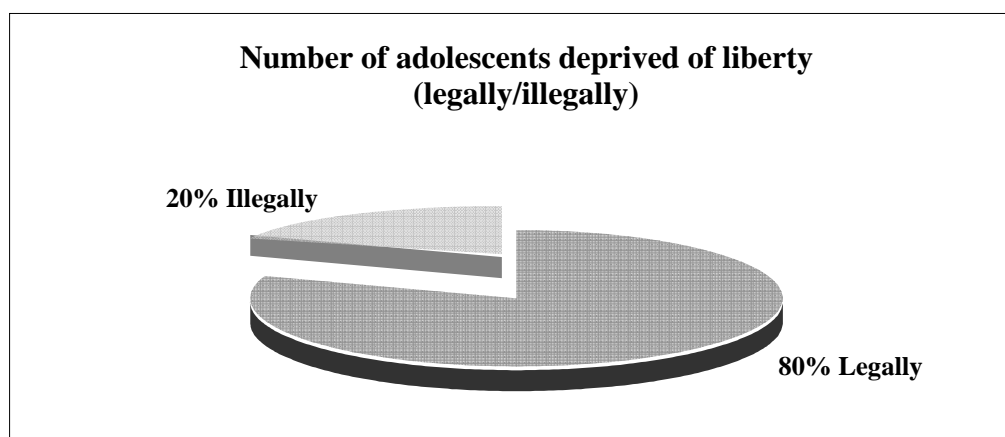
**Figure 3**



*Source:* Ministry of Health and Social Development. Epidemiology and Vital Statistics Yearbook and Directorate for Social and Statistical Information.

The infant mortality rate fell from 23.7 per thousand live births in 1995 to 17.7 per thousand live births in 2000, a figure which remained stable up to 2001. The rate for 2002 was 18.2 per thousand live births. An analysis of the components of infant mortality shows that neonatal mortality has decreased by a smaller proportion than post-neonatal, which means that efforts must be intensified for the neonatal component. Neonatal care centres and human milk banks have been created for this purpose.

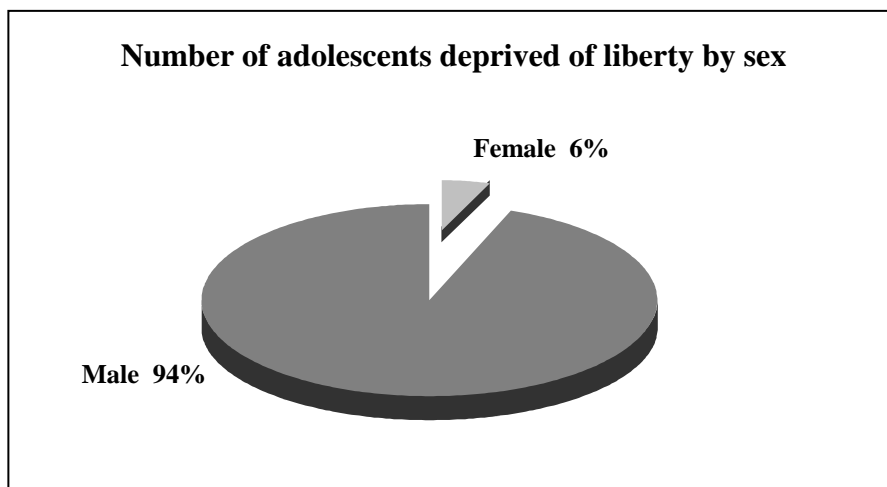
**Figure 4**



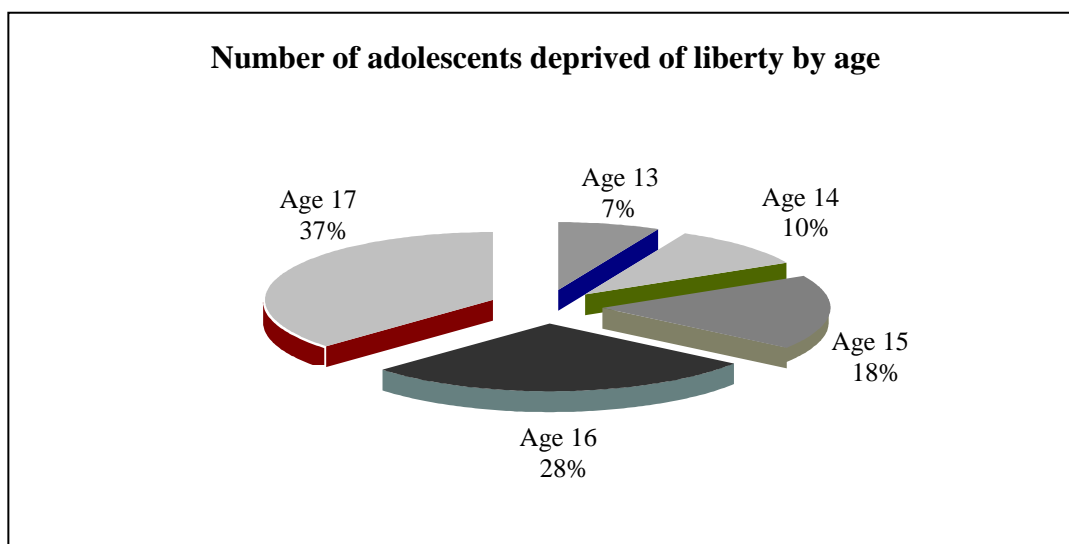
*Source:* CNDNA, 2003.

This figure shows the number of adolescents deprived of liberty legally and illegally. Of the total, 80.22 per cent of deprivations of liberty were carried out in accordance with legal procedures.

**Figure 5**



**Figure 6**



*Source:* CNDNA.



**Annex II**

**TABLES**

**Table 1**

**Budget allocations for social programmes by sector, 2000-2002 (bolivares)**

Sector	Year		
	2000	2001	2002
Health	1 091 606.3	1 358 554.6	1 783 269.4
Education	3 610 587.5	4 313 487.2	5 211 153.5
Other social sectors	4 080 049.0	5 106 467.0	5 112 852.3
Total	8 782 242.8	10 778 508.8	12 107 275.2

*Source:* National Budget Office (ONAPRE).

According to CNDNA, and as shown in the tables, budget trends for spending by sector on child and adolescent care during the period under consideration rose by 22.7 per cent in 2000-2001, whereas in 2001-2002 the rise was only 12.3 per cent as a result of budget cuts due to the increased cost of public services, inflation and lower revenue in the oil sector. In the health sector, the budget increased by 24.4 per cent in 2000-2001 and 31.2 per cent in 2001-2002. In the education sector, the budget increased by 19.5 per cent in 2000-2001 and 20.84 per cent in 2001-2002.

**Table 2**

**Budget allocations for State ministries in the social sector, 2004 (billions of bolivares)**

Ministry	Allocation
Health and Social Development	3 153
Education and Sports	5 801
Labour	2 99
Environment and Natural Resources	308 332
Interior and Justice	7 651
Agriculture and Lands	693

*Source:* Budget Execution Evaluation Unit; National Budget Office (ONAPRE).

This table shows the budget allocations for ministries in the social sector, with the largest amount allocated to the Ministry of the Environment and Natural Resources.

**Table 3**

**Population by sex and by type of impairment, problem or disability  
(2001 census results)**

Type of impairment, problem or disability	Total	Men	Women
Total	23 054 210	11 402 869	11 651 341
Total blindness	29 906	14 527	14 489
Total deafness	33 996	17 761	16 235
Mental retardation	84 463	46 824	37 639
Loss or disability of upper limbs	32 757	20 695	12 062
Loss or disability of lower limbs	67 825	36 877	30 948
Other	679 338	340 652	338 686

*Source:* INE 2001 Census results.

**Table 4**

**Reports of abuse and ill-treatment**

Year	Informant	Ill-treatment	Kidnappings, abduction and corruption of minors	Disappearances
September 2002 - July 2003	CICPC (own calculations)	Physical injury: 2,366 cases; Sexual violence: 2,546 cases.	719 cases	1,538 cases
September 2003 - May 2004	CICPC (own calculations)	Physical injury: 1,928 cases, 50.9 per cent involving boys; Domestic violence: 2,546 cases, 49.1 per cent involving girls; Sexual violence: 1,891 cases.	334 cases	1,057 cases, of which 375 have been closed.

*Source:* Scientific, Criminal and Forensic Investigation Unit (CICPC) (own calculations).

**Table 5**  
**Primary school attendance by grade, 1997-2002**

Academic year	Total	School grade								
		First	Second	Third	Fourth	Fifth	Sixth	Seventh	Eighth	Ninth
1997-98	3 648 280	544 782	543 224	506 032	465 570	436 256	388 435	285 507	239 237	239 237
1998-99	3 748 114	531 646	539 460	521 647	490 945	453 705	419 936	312 921	261 345	216 509
1999-00	3 904 296	540 720	524 693	522 747	509 591	481 750	458 338	344 117	287 101	235 239
2000-01	4 075 780	570 937	543 695	523 292	513 166	501 513	48 875	369 328	307 399	257 697
2001-02	4 085 567	555 033	554 196	525 115	500 888	489 117	490 948	386 114	320 957	263 199

*Source:* Ministry of Education and Sports.

*Note:* The figures in this table differ from those published in previous years because attendance was broken down by academic year and corresponding school grade.

**Table 6**  
**Enrolment in primary education by type of educational establishment and by academic year: 1994/95 to 2003/04**

Academic year	Total	Public schools					Private schools
		Total	National	State	Municipal	Autonomous	
1994-95	4 249 389	3 524 830	2 268 737	1 124 376	60 387	71 330	724 559
1995-96	4 120 418	3 375 365	2 207 473	1 016 296	56 260	95 336	745 053
1996-97	4 262 221	3 513 379	2 267 313	1 102 195	53 531	90 340	748 842
1997-98	4 367 857	3 597 282	2 310 516	1 155 198	50 280	81 288	770 575
1998-99	4 299 671	3 518 783	2 249 050	1 141 806	59 273	68 654	780 888
1999-00	4 448 422	3 690 482	2 403 869	1 168 992	57 919	59 702	757 940
2000-01	4 645 209	3 854 423	2 541 507	1 190 282	63 153	59 481	790 786
2001-02	4 818 201	3 995 982	2 678 223	1 202 831	61 577	53 351	822 219
2002-03	4 786 445	3 979 879	2 722 585	1 148 440	58 680	50 174	806 566
2003-04	4 833 470	4 037 555	2 783 227	1 146 958	66 377	40 993	795 915

*Source:* Ministry of Education and Sports.

**Table 7**  
**School enrolment by level, method, type of educational establishment and academic year: 1999/2000 to 2003/04**

Level and method	Academic year														
	1999/2000			2000/01			2001/02			2002/03			2003/04		
	Total	Public	Private	Total	Public	Private	Total	Public	Private	Total	Public	Private	Total	Public	Private
Grand total	6 487 446	5 308 790	1 178 656	6 961 421	5 685 389	1 276 032	7 372 234	6 053 952	1 318 282	7 402 665	6 118 347	1 284 318	7 755 133	6 468 569	1 286 564
Levels	5 767 815	4 724 753	1 043 062	6 015 636	4 924 043	1 091 593	6 266 461	5 133 310	1 133 151	6 245 577	5 136 072	1 109 505	6 387 309	5 275 658	1 111 651
Preschool education	896 593	750 552	146 041	914 349	758 260	156 089	948 554	789 392	159 162	946 761	794 849	151 912	984 224	825 491	158 733
Formal	800 885	654 844	146 041	835 074	678 985	156 089	863 364	704 202	159 162	882 095	730 183	151 912	914 920	756 187	158 733
Non-conventional	95 708	95 708	0	79 275	79 275	0	85 190	85 190	0	64 666	64 666	0	69 304	69 304	0
Primary education	4 448 422	3 690 482	757 940	4 645 209	3 854 423	790 786	4 818 201	3 995 982	822 219	4 786 445	3 979 879	806 566	4 833 470	4 037 555	795 915
First to sixth grade	3 327 797	2 849 996	477 801	3 423 480	2 927 578	495 902	3 506 780	3 000 606	506 174	3 443 847	2 952 241	491 606	3 449 579	2 968 108	481 471
Seventh to ninth grade	1 120 625	840 486	280 139	1 221 729	926 845	294 884	1 311 421	995 376	316 045	1 342 598	1 027 638	314 960	1 383 891	1 069 447	314 444
Secondary education	422 800	283 719	139 081	456 078	311 360	144 718	499 706	347 936	151 770	512 371	361 344	151 027	569 615	412 612	157 003
General	381 671	249 872	131 799	409 834	274 190	135 644	446 084	305 376	140 708	455 789	318 057	137 732	501 243	360 531	140 712
Vocational	41 129	33 847	7 282	46 244	37 170	9 074	53 622	42 560	11 062	56 582	43 287	13 295	68 372	52 081	16 291
Methods	719 631	584 037	135 594	945 785	761 346	184 439	1 105 773	920 642	185 131	1 157 088	982 275	174 813	1 367 824	1 192 911	174 913
Adult education	360 216	228 477	131 739	457 177	277 120	180 057	495 237	314 526	180 711	461 979	290 774	171 205	506 301	336 438	169 863
Literacy	5 322	4 799	523	2 858	2 541	317	11 439	10 658	781	14 503	10 978	3 525	0	0	0
Primary education (first to sixth semester)	38 061	35 740	2 321	44 463	37 591	6 872	48 438	42 084	6 354	40 461	35 707	4 754	35 820	33 000	2 820
Primary education (seventh to twelfth semester)	170 268	99 870	70 398	227 921	130 704	97 217	241 129	147 268	93 861	209 002	126 858	82 144	238 003	154 673	83 330
Middle education Training	101 788	44 542	57 246	125 590	53 562	72 028	137 911	61 451	76 460	137 812	64 537	73 275	155 605	79 447	76 158
Special education	44 777	43 526	1 251	56 345	52 722	3 623	56 320	53 065	3 255	60 201	52 694	7 507	76 873	69 318	7 555
Routine support	157 728	152 419	5 309	185 632	180 815	4 817	183 780	178 730	5 050	262 450	257 640	4 810	317 687	309 991	7 696
Periodic support	18 985	15 672	3 313	26 654	22 851	3 803	25 766	22 403	3 363	23 928	21 510	2 418	26 853	23 967	2 886
Interdisciplinary cooperation <sup>1</sup>	48 898	48 356	542	59 454	58 875	579	71 779	70 722	1 057	77 649	76 459	1 190	113 944	111 780	2 164
Extra-curricular education <sup>2</sup>	89 845	88 391	1 454	99 524	99 089	435	86 235	85 605	630	160 873	159 671	1 202	176 890	174 244	2 646
Extra-curricular education <sup>2</sup>	291 532	291 532	0	402 500	402 500	0	512 991	512 991	0	593 532	593 532	0	720 726	720 726	0

<sup>1</sup> Interdisciplinary cooperation: enrolment under this strategy is not included in the total figures since it corresponds to primary education within the education system.

<sup>2</sup> Figures provided by the National Institute for Education Cooperation (INCE).

**Table 8**  
**Budget allocations and number of patients receiving free treatment,  
2000-2004**

Year	Budget (billions of bolivares)	Number of patients
2000	32 000 000 000	800
2001	32 000 000 000	3 458
2002	50 000 000 000	7 566
2003	50 000 000 000	8 504
2004	60 000 000 000	12 546

*Source:* National HIV/AIDS/STI Programme (Ministry of Health and Social Development).

**Table 9**  
**Homicides of children and adolescents, September 2002-July 2003**

Age group	Number of homicides	%
Under 10 years	46	8.8
10-11 years	9	1.7
12-13 years	26	4.9
14-15 years	103	19.7
16-17 years	337	64.6
Total	521	100

*Source:* CICPC, 2003.

**Table 10**

Type of sexual abuse	Number of cases	%
Rape*	1 538	60.4
Sexual intercourse	186	7.3
Lewd acts	715	28
Seduction	66	2.5
Incest	17	0.6
Indecent acts	6	0.2
Sexual harassment	18	0.7
Total	2 546	100

*Source:* CICPC/Criminal Investigation Service (PTJ), 2002-2003.

\* Including rape committed during robbery.

**Table 11**

**Cases of physical injury, September 2003-May 2004**

Type of offence	Number of cases	%
Personal injuries	1 679	87
Violence against women and within the family	225	11.6
Ill-treatment of children	14	0.8
Attempted homicide	10	0.5
Total	1 928	100

Source: CICPC.

**Table 12**

**Breakdown of cases of sexual violence by sex, September 2002-September 2003**

Type of offence	Sex		%	
	Male	Female	Male	Female
Rape	248	1 290	16.2	83.8
Sexual intercourse	7	279	3.8	96.2
Lewd acts	89	626	12.5	87.5
Seduction	-	66	-	100
Incest	1	16	5.9	94.1
Indecent acts	-	6	-	100
Sexual harassment	3	15	16.7	83.3
Total	348	2 198		

Source: CICPC Operating Offices (own calculation).

**Table 13**

**Population benefiting from water supply, 1996-2002**

	1996	1997	1998	1999	2000	2001	2002
Total	16 814	18 824	19 405	17 364	16 819	21 624	20 141

Source: HIDROVEN Report and Statement, 1999.

*Note:* Figures do not include Monagas, Hidrolara, Mérida, Yaracuy, Portuguesa, Bolívar, Amazonas or Delta Amacuro, where water is supplied by the Guayana Venezuelan Corporation (CVG); in the state of Nueva Esparta, rural water supply systems are monitored for malaria.

As the previous table shows, the share of the population benefiting from water supply increased from 16.814 per cent in 1996 to 21.624 per cent in 2001, which, while falling short of the goal of universal access to drinking water, represents a significant increase. This percentage fell slightly in 2002, which can be explained by poverty levels and the widely dispersed population in some rural and forest areas.

**Table 14**

**Infant mortality rate, 1999-2002**

1995	1996	1997	1998	1999	2000	2001	2002
23.7	23.9	21.4	21.4	19.1	17.7	17.7	18.20

*Source:* Ministry of Health and Social Development, Epidemiology and Vital Statistics Yearbook and Directorate for Social and Statistical Information.

**Table 15**

**Summary of infant mortality, 1995-2002**

Year	Overall mortality		Infant mortality		Neonatal mortality		Post-neonatal mortality		Registered births	
	Number	Rate	Number	Rate	Number	Rate	Number	Rate	Number	Rate
1995	98 136	4.5	12 346	23.7	7 045	13.5	5 301	10.2	520 584	23.8
1996	100 045	4.5	11 913	23.9	6 883	13.8	5 030	10.1	497 975	22.3
1997	98 011	4.3	11 069	21.4	6 699	13.0	4 370	8.5	516 636	22.7
1998	100 963	4.3	10 721	21.4	6 217	12.4	4 504	9.0	501 888	21.6
1999	104 625	4.4	10 108	19.1	6 272	11.9	3 836	7.3	527 888	22.3
2000	105 948	4.4	9 649	17.7	6 269	11.5	3 380	6.2	544 416	22.5
2001	110 672	4.5	9 353	17.7	5 845	11.0	3 507	6.6	529 552	21.3
2002	110 293	4.4	8 949	18.2	5 871	11.9	3 078	6.2	492 678	19.6

*Source:* Ministry of Health and Social Development, Epidemiology and Vital Statistics Yearbook.

**Table 16**

**Corrected fertility rate by mothers' age group, 1998-2003**

Year	Total fertility rate	Fertility rate (children per thousand women)						
		Mothers' age group						
		15-19	20-24	25-29	30-34	35-39	40-44	45-49
1998	2.90	99.70	161.78	140.90	99.30	57.68	21.46	4.74
1999	2.85	93.30	159.96	138.60	97.30	56.26	20.82	4.58
2000	2.81	92.90	158.14	136.30	95.30	54.84	20.18	4.42
2001	2.77	92.50	156.32	134.00	93.30	53.42	19.54	4.26
2002	2.72	92.10	154.50	131.70	91.30	52.00	18.90	4.100

*Source:* National Statistical Institute (INE): Directorate of Social and Demographic Statistics.

*Note:* Indicators have been calculated using population projections based on the 2001 census.

**Table 17**

**HIV/AIDS: mortality by age group, 2002**

Sex	Total	Age							
		<-1	1	2	3	4	5-9	10-14	15-19
Male	58	9	11	6	0	3	7	3	20
Female	62	33	12	0	3	6	3	0	6
Grand total	120	42	33	6	3	9	10	3	26

*Source:* National HIV/AIDS/STI Programme (Ministry of Health and Social Development).

**Table 18**

**Cases of asymptomatic HIV infection, 2002-2003**

Year	Age group					
	<1 year	1-4 years	5-9 years	10-14 years	15-24 years	Total
2000	19	10	2	7	232	270
2001	32	24	13	6	325	400
2002	43	30	14	17	343	447
2003*	47	18	9	9	262	345

*Source:* Regional Epidemiology Department, Ministry of Health and Social Development, 2001-2003.

\* Information up to epidemiological week No. 45.

This table shows that in 2000 there were 270 cases of asymptomatic HIV infections among children and adolescents nationally: 19 children aged under 1, 10 aged between 1 and 4, 2 aged between 5 and 9, 7 aged between 10 and 14 and 232 aged between 15 and 24.

**Table 19**

**Number of adolescents deprived of liberty (legally/illegally)**

Legal	%	Illegal	%	Total
2 118	80.22	522	19.78	2 640

*Source:* CNDNA.

This table shows the number of adolescents deprived of liberty legally and illegally. Of the total, 80.22 per cent of deprivations were carried out in accordance with legal procedures.



**Table 20**

**Number of adolescents deprived of liberty by sex**

Female	%	Male	%	Total
157	5.95	2 483	94.05	2 640

*Source:* CNDNA.

This table shows the number of adolescents sentenced to deprivation of liberty by courts in 70 per cent of the country's federal districts. It will be noted that 94.05 per cent are male and only 5.95 per cent are female.

**Table 21**

**Number of adolescents deprived of liberty by age**

Age 13	%	Age 14	%	Age 15	%	Age 16	%	Age 17	%	Total
194	7.34	264	10.00	465	17.61	744	28.19	973	36.86	2 640

*Source:* CNDNA

This table shows the age distribution of adolescents sentenced to deprivation of liberty by courts in 70 per cent of the country's federal districts. The largest group is made up of those aged between 16 and 17 years, representing 65 per cent of the total.

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