



**Convention against Torture and
Other Cruel, Inhuman or
Degrading Treatment or
Punishment**

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Committee against Torture

**Consideration of reports submitted by States parties under
article 19 of the Convention**

**Combined third and fourth periodic reports of States parties due
in 2004**

Bolivarian Republic of Venezuela^{*}, ^{}**

[11 September 2012]

* The second periodic report submitted by the Bolivarian Republic of Venezuela is contained in document CAT/C/33/Add.5; it was considered by the Committee at its 538th, 541st and 545th meetings (see CAT/C/SR.538, 541 and 545) on 18, 19 and 21 November 2002. For the conclusions and recommendations, see CAT/C/CR/29/2.

** In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited.

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I. Introduction

1. In accordance with article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter “the Convention”) and the General Guidelines¹ (CAT/C/14/Rev.1), the Bolivarian Republic of Venezuela hereby submits its fourth periodic report, updated to 2011. The Venezuelan State recognizes that the report was outstanding and therefore submits the progress made in preventing and punishing the practice of torture in the country.

2. This report is the result of a process in which a multidisciplinary team participated, comprising mainly officials of the Ministry of People’s Power for the Interior and Justice, the Ministry of People’s Power for Foreign Affairs, the Ministry of People’s Power for Prison Services, the Supreme Court, the National Assembly, the Ombudsman’s Office and the Office of the Attorney General of the Republic, among others. The Ministry of People’s Power for Foreign Affairs coordinated the consultation process that concluded with the approval of this document.

3. The Bolivarian Republic of Venezuela has signed and ratified a large number of international human rights instruments, including the Rome Statute of the International Criminal Court, which have become the fundamental component of the Constitution, from the preamble to the transitional provisions.

4. The Venezuelan State has shown its commitment to the implementation of international legal instruments — agreements, conventions and protocols — and most especially those relating to human rights and the protection of the rights of children and adolescents, which are established as State policies in every one of the relevant bodies.

5. At the national level, the Constitution of the Bolivarian Republic of Venezuela increases the obligations assumed by the Venezuelan State with the ratification of such treaties, since article 23 stipulates that they have constitutional status and take precedence in domestic law, where they contain provisions concerning the enjoyment and exercise of rights that are more favourable than those established by the Constitution and the laws of the Republic. The article also provides for their immediate and direct applicability by the courts and other public bodies.

6. The Venezuelan State recognizes that any act of torture or cruel, inhuman or degrading treatment that impairs or undermines the rights based on the dignity of the person is a violation of human rights. Owing to its commitment to respect for human rights, it has undertaken a thorough reform of the model for policing in the Bolivarian Republic of Venezuela to take account of the challenges that the police are required to face in the process of democratization and social inclusion through which the country is passing.

7. In this report, the Venezuelan State addresses the concerns and recommendations made by the Committee following its consideration of the second report (CAT/C/CR/29/2), which include the following.

¹ Adopted by the Committee against Torture at its 85th meeting (sixth session) on 30 April 1991 and revised at its 318th meeting (twentieth session) on 18 May 1998.

8. Criminalization of torture as a specific offence under Venezuelan legislation: the Criminal Code was amended in 2005 and article 181 now, for the first time, includes the offence of torture in domestic legislation, carrying a penalty of three to six years' imprisonment, while article 155 of the Code introduces a new penal category, known as "violation of international treaties", which carries a penalty of one to four years' detention. However, the National Assembly, the country's legislative body, is currently working on a bill specifically relating to the prevention and punishment of torture and other cruel, inhuman or degrading treatment.²

9. Complaints of torture, cruel, inhuman and degrading treatment, abuse of authority and arbitrary acts committed by agents of State security bodies, abuse of power and improper use of force: since 2006, in pursuance of its commitment to human rights, the Ministry of People's Power for the Interior and Justice, the executive body responsible for security, has been conducting a reform of the police system in order to create a humane model characterized by solidarity, public participation and respect for human rights: in short, all the principles that go to the construction of Bolivarian socialism. Since that time, wide-ranging consultations have been taking place within the community in general and the social and institutional players directly involved, leading to a rigorous assessment of the nature of the Venezuelan police, and a new model for policing has been discussed that will take account of the challenges facing the police in the process of democratization and social inclusion through which the country is passing and thus fit into the framework of a democratic State governed by the rule of law and justice through the establishment of the National Commission for Police Reform.

10. The Commission's work culminated in the submission of a series of recommendations that the Executive should implement, through the Ministry of People's Power for the Interior and Justice. Some of the main recommendations adopted by the Venezuelan State were the establishment of the Bolivarian National Police Force, the integrated police system, the National Experimental University for Security Services, the Intergovernmental Police Service Fund and the General Police Council. All these were assigned to the Ministry of People's Power for the Interior and Justice, with the single mandate of changing the repressive and reactionary culture of the country's police forces to a preventive culture that will respect the human rights that should prevail under the new police model implemented by the State.

11. As regards investigations, it is worth noting that the Office of the Attorney General of the Republic, also known as the Public Prosecution Service, has established the Directorate for the Protection of Fundamental Rights, which is attached to the Directorate-General for Judicial Proceedings,³ with the remit of acting in defence and protection of the fundamental guarantees and rights enshrined in the national and international legal standards on the protection of such rights, by coordinating, supporting, following up and monitoring the management of specially

² Approved on first reading on 13 June 2012 by the Assembly in plenary and currently undergoing a process of public consultation.

³ The Directorate, together with its policymaking responsibilities, was established by Decision No. 482 of 31 July 2000, which was published in the *Official Journal* of the Bolivarian Republic of Venezuela No. 37,014 of 15 August 2000. The Decision amended the organizational and functional structure of the Public Prosecution Service. The Directorate has its own remit under art. 4 of Decision No. 979 of 15 December 2000.

assigned prosecutors. To this end, its operational structure provides for the criminal prosecution of public officials, the enforcement of sentences, the international protection of fundamental rights and copyright. The Directorate for the Protection of Fundamental Rights was strengthened in 2008 with the establishment of the Criminal Investigation Unit against the violation of Fundamental Rights, which deals exclusively with expert investigations in cases involving police officers. Such investigations are required to be impartial and independent and to avoid impunity.

12. Threats to and harassment of persons who bring complaints of ill-treatment against police officers and the lack of adequate protection for witnesses and victims: we should note the adoption of the Police Service and Bolivarian National Police Force Act, which established the Office of the Special Deputy Ombudsman for Police Affairs attached to the Ombudsman's Office with the remit of undertaking independent investigations of its own motion or on the application of a party on human rights violations committed by officials or police officers, making such recommendations as it may consider appropriate to mitigate the effects, compensate victims and improve police conduct. Moreover, 2006 saw the adoption of the Act on the Protection of Victims, Witnesses and Other Parties to Proceedings,⁴ which contains a wide range of protection measures both during and outside proceedings and also sets up a fund for the protection and assistance of victims, witnesses and other parties to proceedings.

13. Victim Support Office: the changes required to set up a new police model included the establishment of victim support offices in the police forces of the various areas. The offices were made fit for purpose, made up of individual care units, located in accessible places and separate from police stations, clearly identified and with a specialized and multidisciplinary staff.

14. Prompt and impartial investigations and violence in prisons: both these points are of concern not only to the Committee but also to the Venezuelan State. The measures taken to address the situation include the following:

(a) An agreement calling on the Public Prosecution Service, the judiciary, the Ombudsman's Office and the Public Defender Service to carry out prior assessments of the relevant case files, implement the proceedings provided for in the Code of Criminal Procedure and speed up pending cases in the interests of persons on trial,⁵ in accordance with a project to expedite open cases by the Public Prosecution Service following the entry into force of the Code of Criminal Procedure, so as to clear the logjam of cases that had built up since 1999. Eventually, 338 law students were hired under the project and attached to the various public prosecutor's offices. This enabled about 13,675 final decisions to be drawn up by December 2006;⁶

(b) Itinerant judges: following the entry into force of the Code of Criminal Procedure, a transitional regime needed to be adopted. A series of measures was put in place, including the Act on the Abatement of Criminal Proceedings and

⁴ Published in *Official Journal* No. 58,536, 4 October 2006.

⁵ Published in *Official Journal* No. 39,258, 7 September 2009.

⁶ Report of the Office of the Attorney General of the Republic, 2007, p. 306.

Settlement of Cases under the Transitional Regime of Criminal Procedure,⁷ article 8 of which establishes the role of itinerant judges;⁸

(c) Transitional criminal regime: the Special Projects Directorate of the Public Prosecution Service took charge of 37,406 case files relating to circumstances stipulated in the Act, on the basis of a case inventory conducted up to December 2010, in order to fulfil the provisions of the current legal regulations, until it was decided what premises would be used for a central archive, by agreement with the designated technical commission, where such cases would be sent when it became feasible;⁹

(d) Units responsible for the immediate reduction of cases: the purpose of these units is to improve the quality of the response to the public by the Public Prosecution Service by dismissing cases, where their legal nature permitted, as a way of dealing with the backlog, rationalizing human and material resources and reducing the incidence of cases coming before the courts that do not constitute offences;

(e) Expeditious procedure plan: under this plan, the prosecutors of the Public Prosecution Service, working with the respective jurisdictional bodies, carry out a programme aimed at resolving procedural delays arising in relation to the country's prison communities;

(f) Municipal prosecutor's offices: these were established in 2008 with a view to establishing courts close to the community, within a municipality, the aim being to resolve cases in situations in which proceedings can be instituted in the Public Prosecution Service. This immediacy helps the prosecutors of the Public Prosecution Service to deal with the backlog of cases confronting them;

(g) Criminal Investigation Units against the Violation of Fundamental Rights: these were established following the guideline of 23 December 2008¹⁰ as part of the Plan to Strengthen Public Prosecutor's Offices, in the framework of the Public Prosecution Service Strategic Plan 2008-2014 and, specifically, the strategy of speeding up the backlog of cases. The first stage saw the establishment of two units, one in the Caracas Metropolitan Area, which started operations on 15 March 2010, and the other in Lara State. The mandate of these two units is to make sure that criminal investigations are speeded up at the preparatory stage in cases of murder, enforced disappearance, unlawful deprivation of freedom, breaking

⁷ Published in *Official Journal* No. 39,236, 6 August 2009. The aim of the Act was to abate criminal proceedings relating to punishable acts, where such proceedings formed part of the transitional regime of criminal procedure provided for in article 521 of the Code of Criminal Procedure and over 15 years had passed since the actions that gave rise to the investigation occurred or became known to the authorities and no final decision had been reached since the entry into force of the Act.

⁸ Such judges were not a new phenomenon: in 1990 there already existed the Itinerant Criminal Judges Programme, under which such judges worked on the judicial circuits with the largest backlog of cases in the country. The Programme was launched by the Judicature Council under article 15 of the former Judicature Council Organization Act, which gave the Council the power to create the temporary or permanent post of itinerant judge who could hear cases nationwide on a temporary or occasional basis in whatever courts were required. From the outset, the aim was to help speed up trials.

⁹ Report of the Attorney General of the Republic, 2010, pp. 55 et seq.

¹⁰ Published in *Official Journal* No. 39,086.

and entering, assault and battery or torture in which officials are deemed to have participated in the exercise of their duties or by virtue of their office;

(h) Public prosecutor's offices specializing in the prison system: such offices are responsible for overseeing the proper application of a penalty, monitoring respect for constitutional rights and guarantees and ensuring that the rules on protecting the rights of persons deprived of freedom are followed. There are currently three public prosecutor's offices with authority at the national level, located in Falcón, Guárico and Zulia States, and their function is to carry out monitoring and ensure that pretrial detention centres, social and educational centres for young people in conflict with the criminal law, judicial detention centres and female prisons and annexes respect the human and constitutional rights of persons deprived of freedom. In carrying out their functions, prosecutors have access to all such establishments and the powers to implement the legal measures required to ensure the effective exercise of human rights where it is shown that they are violated or under attack. The provisions of the Istanbul Protocol are thereby implemented;

(i) Sociodemographic Appraisal of the prison population 2010-2011: the Appraisal was conducted by the Venezuelan State in 2011, represented by the Higher Council for Prisons,¹¹ a body attached to the Executive through the Ministry of People's Power for the Interior and Justice, with the authority to devise and formulate integrated policies that address the formal structure of the prison system and to make decisions and oversee models and programmes that will cover the whole prison system in an integrated manner. The aim of the Appraisal was to obtain reliable and up-to-date information on the prison population, enabling the Executive to formulate prison policies appropriate to its particular characteristics and needs, on the basis of a technical and scientific approach that would allow a more proactive approach;

(j) Professional qualification in the prison system: introduced by the Higher Council for Prisons, the aim of such a qualification is to bring about a transformation in the prison system, promote the human rights of persons deprived of freedom, devise integrated policies to deal with the matter and also to guarantee the conditions required for the protocols on the treatment and social reintegration of prisoners.¹²

15. Lack of information, including statistical data, on torture and cruel, inhuman or degrading treatment or punishment, broken down by nationality, sex, ethnic group, geographical location where an event occurred and the type and place of detention: it should be noted in this regard that considerable progress has been made by the Ombudsman's Office in collecting and systematizing data on such matters in its annual report. Beginning in 2002, these reports contain a section where the Office sets out the figures for complaints, grievances and petitions relating to torture, cruel, inhuman and/or degrading treatment, disaggregated by age, sex, petitioner, victim and vulnerable group. Another achievement among public institutions is the work by the Supreme Court, the Public Prosecution Service and the Ministry of People's Power for the Interior and Justice, among other institutions,

¹¹ Established by Decree No. 6,553, published in *Official Journal* No. 39,080, 15 December 2008.

¹² Report of the Office of the Attorney General of the Republic, 2010, p. 94.

to provide a range of statistical data disaggregated in the way required by the Committee against Torture and other institutions of the United Nations system. The Venezuelan State is improving its statistical systems so that it can provide better follow-up and assessment of public human rights policies and programmes. Evidence of this is the announcement by the Office of the Attorney General of the Republic that the Annual Report of the Public Prosecution Service for 2012 would be more precise in its data and would show, for example, the number of cases and charges preferred.¹³

16. The Ministry of People's Power for the Interior and Justice, acting on behalf of the Venezuelan State, established the Venezuelan Public Safety Observatory as part of its activities in the framework of the Bicentennial Public Security Programme, the purpose of which is to address the most urgent security needs of the population, with action aimed at the following areas: disarmament, alcohol, small-scale trafficking in illicit substances, roadblocks, violence in schools, criminal investigations, surveillance and patrols. The Observatory is a permanent mechanism for communication and coordination under the Programme, which, among other activities, carries out analyses of the social, political and economic environment and of other information, including protests, affecting public order at the national level. It has a unit dealing with current trends and aims to become a national reference centre helping with information exchange for the formulation of strategies and policies to ensure public safety in the country.

17. Following joint action by the National Executive and other branches of public power, an integrated policy on public safety is being set up for 2012, together with the other bodies making up the system of the administration of justice, known as the Great Venezuelan Life Mission. This will be both a national body, but with a specific focus on the 79 municipalities that have a higher crime rate. The aim is to transform the factors of a structural, situational or institutional nature that generate violence and crime and to reduce them by promoting harmonious coexistence and extending enjoyment of the right to public safety. It is based on a combination of preventive measures — intervention before an offence occurs — and criminal control measures in accordance with the law (post-offence intervention).

18. The main components of the Mission are as follows: (1) comprehensive prevention and harmonious coexistence; (2) strengthening of public safety bodies; (3) overhaul of the criminal justice system and conflict settlement mechanisms; (4) overhaul of the prison system; (5) national system for care of victims; and (6) instilling and raising awareness of coexistence and public safety. These components are made up of 29 strategic lines and 117 programme activities, some of which aim to resolve structural problems so that the question of safety can be addressed efficiently and proactively, while others focus on the situation in the short term. The programme activities include the submission of the new Code of Criminal Procedure, approval of resources for a plan to municipalize justice and the introduction of experiments in the pooling of municipal police forces.

¹³ Press release by the Venezuelan Press Agency, 24 March 2011, available on www.avn.info.ve/node/49872.

II. Information on the adoption of the Convention

19. Article 23 of the Venezuelan Constitution states that the human rights treaties, covenants and conventions signed and ratified by Venezuela have constitutional status and take precedence in domestic law, insofar as they contain provisions on the enjoyment and exercise of such rights that are more favourable and are immediately and directly applicable by the courts and other public bodies. The pre-eminence of human rights thus involves incorporating a system of protection that does not weaken national guarantees but increases international protection. As a result, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is directly applicable for the Venezuelan State.

20. The Constitution stipulates that the legislative branch has the authority to give legal approval to the international treaties and conventions entered into by the executive branch, once a favourable legal opinion has been received from the Office of the Counsel General of the Republic. In this case, only the Head of State takes the initiative in concluding treaties or agreements with the other States of the international community.

21. Once such treaties or conventions are concluded, they are transmitted by the executive branch to the Foreign Policy Committee of the National Assembly, where they enter into force once approved by the plenary. The National Assembly subsequently sends them to the President of the Republic for the enactment of the enabling legislation and the consequent publication in the *Official Journal*. It thus comes into the category of a special law that takes precedence over general legislation that governs similar matters, in accordance with the principle of the speciality of laws.

22. The Venezuelan State adopted the Act Enabling the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Inter-American Convention to Prevent and Punish Torture,¹⁴ together with a commitment to enact legislation to prevent the practice. More recently, the Venezuelan State signed the Additional Protocol to the Convention and is currently considering the amendments required for its ratification. On 13 June 2012, the National Assembly met in plenary to hold its first debate on the Special Act on the Prevention and Punishment of Torture and Other Cruel, Inhuman and Degrading Treatment. It is currently undergoing a process of public consultation.

23. The Venezuelan State recognized its historical debt to the Venezuelan people with the passage on 25 November 2011 of the Act to Punish Politically Motivated Crimes, Disappearances, Torture and Other Human Rights Violations in the Period 1958-1998,¹⁵ which aimed to set up mechanisms to guarantee the right to truth and punish the persons responsible for human rights violations such as the violation of the right to life, enforced disappearances, torture, rape, unlawful deprivation of freedom, arbitrary exile, solitary confinement, mass repression in urban and rural areas or simulation of punishable acts, among others, that were carried out by the State for political reasons. It also seeks to reclaim the historical memory of such acts and to reclaim the moral, social and political honour and

¹⁴ Both published in *Official Journal* No. 34,743, 26 June 1991.

¹⁵ Published in *Official Journal* No. 39,808, 25 November 2011.

dignity of victims of the repression conducted by the Venezuelan State during the period 1958-1998.¹⁶

III. Specific information on the implementation of articles 1 to 16 of the Convention

Articles 1 and 4

24. Article 46 of the Constitution of the Bolivarian Republic of Venezuela, in fulfilling the international obligations established both in the above-mentioned conventions and in the Rome Statute of the International Criminal Court, provides that “[e]very person is entitled to respect for his or her physical, mental and moral integrity.” It follows that: “[n]o person may be subjected to cruel, inhuman or degrading treatment, torture or punishment. Any victim of cruel, inhuman or degrading treatment or torture practised or tolerated by State officials shall be entitled to rehabilitation.”

25. The same applies to the prison system, the guiding principle of which is that any person deprived of freedom must be treated with the respect due to the inherent dignity of the human being. The Constitution also states that “[n]o person shall be subjected without his or her freely given consent to scientific experiments or medical or laboratory examinations except when such person’s life is in danger or in other circumstances determined by the law.”

26. Lastly, with regard to liability for the acts referred to above, the Constitution provides, in article 46, paragraph 4: “Any public official who, on the basis of his or her official position, mistreats or inflicts physical or mental suffering on any person or instigates or tolerates such treatment shall be punished in accordance with the law.”

27. Similarly, article 25 of the Constitution, which sets out the liability of public officials who participate in or tolerate acts of torture,¹⁷ does not exonerate from blame officials who claim that they were carrying out superior orders: “Any act issued in the exercise of public authority that breaches or impairs the rights guaranteed by the Constitution and the laws is null and void and public officials ordering or implementing it incur criminal, civil or administrative liability, depending on the case, and may not avail themselves of the excuse of superior orders.”

28. All these provisions are imprescriptible in nature, inasmuch as they constitute breaches of human rights and there is an express prohibition on any procedural benefit for officials involved in such offences, in accordance with the provisions of article 29 of the Constitution. Venezuelan legislation is thus making qualitative progress in relation to comparative law in that it does not, when establishing the imprescriptibility of human rights violations, make it a requirement that such

¹⁶ Information provided by the Public Prosecution Service.

¹⁷ The Inter-American Court of Human Rights considers that, for torture to exist, three essential elements must be present: (a) that it is an act that inflicts physical or mental pain or suffering; (b) that such an act is perpetrated with a purpose; and (c) that it is perpetrated by a public official or by a private person at the instigation of a public official.

actions should be systematic. This means that, even if such an action is an isolated one, constituting a violation of the human rights of a single victim, that is sufficient for the offence to be imprescriptible.

29. This has served to strengthen the doctrine of the protection of human rights in domestic law, which had gradually become inadequate in view of the real impossibility for the national courts to dispense justice in such cases because criminal acts were time-barred. Thus the State now guarantees that the human rights of all citizens are protected under the Venezuelan judicial system, so that they enjoy free, accessible, impartial, appropriate, transparent, autonomous, independent, responsible, fair and speedy justice, without undue delays, formalities or unnecessary repetitions.¹⁸

30. Moreover, article 181 of the Criminal Code, as amended in 2005, characterizes the offence of ill-treatment of a detained person in the following terms: “Any public official who, while responsible for the custody or transfer of any detained or convicted person, commits arbitrary acts against that person or subjects him or her to acts not authorized under the relevant regulations, shall receive a prison sentence of between 15 days and 20 months. ... Prison sentences of between three and six years shall be imposed if any suffering, offences against human dignity, harassment, torture or physical or moral attacks are inflicted on a detained person by his or her guards or warders or by anyone ordering such acts, in violation of the individual rights recognized in article 46, paragraph 2, of the Constitution.”

31. Article 155 of the Code defines the offence of violation of international covenants, specifying that the provision is applicable to any person who on a given occasion engages the liability of the Venezuelan State. This makes it easier to eliminate the practical problem of whether or not an official is off duty. “[The following] shall be liable to imprisonment in a fortress or political prison for a period of one to four years: ... 3. Venezuelans or foreigners who violate conventions or treaties concluded by the Republic in such a way that it engages the liability of the State.”

32. There are other criminal sanctions in Venezuelan legislation to punish wrongful acts by police officers, including abuse of authority and unlawful use of firearms. The amendments introduced into the Criminal Code in 2000 added the offence of enforced disappearance of persons as a self-contained offence that permits no grounds for exemption from liability, such as orders from a superior or instructions issued by civil, military or other authorities that might be used to justify its perpetration: this provision was introduced in implementation of the Inter-American Convention on Forced Disappearance of Persons. There are also offences under the ordinary law with which police officials may be charged as appropriate, such as personal injury or murder.

33. With regard to the protection due to children and adolescents, the relevant legislation¹⁹ states in article 32, paragraph 1, in relation to personal safety: “Children and adolescents may not be subjected to torture or to other cruel, inhuman or degrading treatment or punishment.”

¹⁸ Art. 26 of the Constitution of the Bolivarian Republic of Venezuela.

¹⁹ Protection of Children and Adolescents Organization Act, published *Official Journal* (special issue) No. 5,859, 10 December 2007.

34. The second paragraph of the same article states: “The State, families and society must protect all children and adolescents against any form of exploitation, maltreatment, torture, abuse or negligence that affects their personal safety. The State shall guarantee programmes of assistance and comprehensive care, free of charge, to children and adolescents who have been subjected to injuries to their personal safety.”

35. The current situation with the reform of the Venezuelan Criminal Code is that the Standing Committee on Domestic Policy, Human Rights and Constitutional Guarantees of the National Assembly is putting forward draft amendments to the Criminal Code. Work has been going on for almost 10 years to unify the penalties for all offences in a single instrument. The initiative has met with the approval of the person responsible for criminal proceedings²⁰ and by the judiciary, since they believe that the Code should contain a section devoted to all human rights offences, which should include offences against the right to life, among others of vital importance. Both institutions argue that the absence of such a special category inevitably weakens the ruling by the Constitutional Division of the Supreme Court in the *JGSG* case, which stated: “The categorizations of human rights offences or crimes against humanity is a matter exclusively within the purview of the legislature and not a matter for interpretation, but where there is a gap in the law of such magnitude, it is necessary that a court with jurisdiction to try a case of murder committed by a public official in the exercise of his duties and in abuse of his authority should characterize it as an offence against the basic right to life and should give a broad interpretation to its legal effects, including the imposition of the maximum possible penalty, the restriction of benefits to a person who is charged and convicted and the imprescriptibility of the criminal action in question.”²¹

36. The Venezuelan legislature is working on a draft special act on the prevention and punishment of torture and other cruel, inhuman or degrading treatment, which was approved on first reading on 13 June 2012. The explanatory introduction states that, in view of the “recognition and guarantee of human rights in our country, this Act constitutes a precautionary measure against the possible proliferation in our society of practices characterized as offences rather than a response to the existence of a general ignorance of rights, which in fact does not correspond to the reality of our present situation. This is not to overlook the fact that, as in any society, there will always be officials who overstep the bounds of their official duties and thereby infringe the rights of other citizens. That is why the Act provides for the appropriate sanctions where such cases occur.”

37. The innovations introduced into the bill include mechanisms to prevent torture, the provision of resources to that end, victim rehabilitation and the fixing of a term of 13 to 23 years’ imprisonment both for the offence of torture and for cruel treatment. All this is in keeping with the resolve of the Venezuelan State to ratify the

²⁰ Ms. Luisa Ortega Díaz, Head of the Public Prosecution Service, requested the National Assembly to approve a new criminal code that would incorporate over 70 current laws relating to offences and sanctions. She asked it to do away with the current patchwork of legislation, harmonize the criteria and eliminate legislation that, although unused, remained on the statute books, such as “offences of devastation or the mitigation of suffering in cases of homicide”.

²¹ Ruling of 15 April 2005, File No. 04-2533, Report of the Office of the Attorney General of the Republic, 2006, pp.73 et seq.

Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Sanctions imposed on police officers for participating in acts of torture

38. On the basis of the work carried out by the National Commission for Police Reform, one of the recommendations implemented by the Venezuelan State was to impose sanctions under the Police Statute Act²² as a means of strengthening previous legislation. Thus article 16 of the Act provides for the requirement that police officers should “respect the principles of police activity set out in the Police Service and Bolivarian National Police Force Act, giving pre-eminence to respect for and the safeguarding of human rights”. The Act assigns liability as follows:

Article 11. Police officers shall face criminal, civil, administrative or disciplinary sanctions for unlawful acts, offences, negligence or administrative irregularities committed in the exercise of their duties ...

Article 97. The following shall constitute grounds for the application of measures of dismissal: ... 9. Deliberate and serious violation of the rules set out in article 65, paragraphs 7, 10 and 12, of the Police Service and Bolivarian National Police Force Act.

39. Article 91 of a decree with the scope and force of law on the Statute on the Responsibilities of the Criminal Investigation Police²³ states that: “The following are grounds for the application of measures of dismissal: ... 5. Repeated violation of rules, manuals, protocols, guidelines, orders, provisions or records and any other commands and instructions in a way that compromises service provision or the credibility or respectability of the activities of the criminal investigation police; 6. Use of physical force, coercion, police procedures, offences committed in the course of duty and any other activity protected by the exercise of police authority in a private interest or as an abuse of power, deviating from the purpose of the service provided by the criminal investigation police.

40. Organization Act of the Criminal Investigation Police Service, the Scientific, Criminal and Forensic Investigation Unit and the National Institute of Medicine and Forensic Science.²⁴

41. Article 79 of the Civil Service Act²⁵ states that “public officials shall bear criminal, civil, administrative or disciplinary liability for offences, negligence, unlawful acts and administrative irregularities committed in the performance of their duties. Such liability shall not exclude such liability as they may have under other legislation or in their capacity as citizens.”

42. The internal staff administration regulations of the former National Directorate of Intelligence and Prevention Services,²⁶ now the Bolivarian National Intelligence

²² Also published in *Official Journal* (special issue) No. 5,940, 7 December 2009.

²³ Decree No. 9,046, published in *Official Journal* No. 39,945, 15 June 2012.

²⁴ Published in *Official Journal* No. 39,945 (special issue) No. 6,079, 15 June 2012.

²⁵ Published in *Official Journal* No. 37,522, 6 September 2002.

²⁶ The National Directorate of Intelligence and Prevention Services was a police body used for political repression, particularly torture and disappearances of persons. The police at that time was a hybrid force that conducted criminal investigations and engaged in domestic intelligence

Service,²⁷ set out the offences committed by officials of this body that engender their liability when carrying out their functions. These appear in articles 52 and 53, which state that “any action or omission that involves failure to comply with or violation of service regulations or orders shall be considered an offence. Disciplinary sanctions shall be applied in any case and the official in question shall be subject to criminal, civil or administrative liability, whether or not he or she has undergone a disciplinary procedure” and “mandatory offences against due diligence include: 7. Not to render account in a timely fashion, without reasonable cause, of goods or effects received in the course of duty.”

43. The Police Work Statute Act stipulates that the internal control bodies of the police are the Police Activities Monitoring Office, the Police Deviation Response Office and the Police Disciplinary Council.²⁸ The Police Activities Monitoring Office is an administrative unit attached to the headquarters of every national, state or municipal police force, as the case may be, and adopts measures and follows up procedures with a view to ensuring appropriate conduct by police officers, with the help of early-warning mechanisms for major or minor offences and the development of good police practices.

44. The Police Deviation Response Office is an administrative unit attached to the headquarters of a police force, reporting to the Ministry of People’s Power for the Interior and Justice on complex, structured or significant situations in which police behaviour results in a violation of the Constitution of the Republic or the law that may threaten proper service conduct in accordance with the principles and guidelines set out in title IV of the Police Service and Bolivarian National Police Force Act.

45. The Police Disciplinary Council is a collegiate, objective and independent body acting in support of the national, state or municipal police headquarters, as the case may be, and is responsible for identifying and determining the most serious offences committed by police officers in any national, state or municipal police

and patrols but also carried out activities against political dissidents, using methods that violated human rights.

²⁷ A plan to establish the National Bolivarian Intelligence Service was submitted to the National Executive in 2010, under which the Service would have the mandate of contributing to the security, defence and integrated development of the nation as a fundamental constituent of the intelligence and counter-intelligence system by identifying and neutralizing threats that endangered the supreme interests of the State. What was visualized was a radical reorganization of the performance of the security forces, so that the focus would be on intelligence, based on the planning, formulation, orientation and implementation of various types of political information and activities of a civil nature with a view to identifying and neutralizing external threats, following up, assessing and providing timely information and protecting information against espionage and sabotage. The process was initiated by Decree No. 6,733 of June 2009, which set out the general regulations of the Ministry of People’s Power for the Interior and Justice and established that the National Directorate of Intelligence and Prevention Services would be a decentralized body, attached to the Ministry of People’s Power for the Interior and Justice and operating under the authority of the Deputy Minister for Prevention and Citizen Safety. Subsequently, Decree No. 6,865 of August 2009 made provision for the restructuring of the National Directorate of Intelligence and Prevention Services, which would be carried out by a restructuring board, and set a deadline of six months for the restructuring to be carried out.

This process culminated in the establishment of the National Bolivarian Intelligence Service.

²⁸ See art. 75 of the Police Work Statute Act.

force, as the case may be, that may entail dismissal. Decisions taken by the Police Disciplinary Council, taking into account the views of the head of the corresponding national, state or municipal police force, are binding, once they are adopted.

46. As far as case law is concerned, the Second Court of Administrative Litigation has considered the integrity with which police officers must behave. It has ruled that “like any other official, police officers swear full compliance with the Constitution and the law. For this reason, it is inconceivable and intolerable that they should deliberately deviate from such mandatory compliance, particularly since upon them depends the harmonious and peaceful existence of the people. Their behaviour is the safeguard for the people to exercise their rights and freedoms to the full under the Constitution and the law, providing a guarantee of peaceful survival in the social environment.”²⁹

47. The Court also states that the conduct of police officers must be in conformity with the ethical values that should govern the activities of civil servants in general, that is, they must display rectitude, integrity and an honourable and responsible approach or, in a word, probity, since that is the behaviour that is expected of civil servants at all times.

Status of action on the prohibition of forms of torture in other legal instruments

48. Article 54 of the Constitution merits special mention, since it expressly prohibits slavery, servitude and trafficking in persons. This provision undoubtedly represents a legislative innovation that strengthens action to prevent torture and other cruel, inhuman or degrading treatment.

49. As regards the legal product of this constitutional provision, we have the Child Protection Act.³⁰ Articles 32, 33, 38 and 40 respectively contain the following provisions: “All children and adolescents are entitled to personal safety. This right includes physical, psychological and moral safety.” “All children and adolescents have the right to be protected against any form of abuse or sexual exploitation.” “No child or adolescent may be subjected to any form of slavery, servitude or forced labour.” And lastly: “The State shall protect all children and adolescents against their unlawful transfer within the national territory or abroad.”

50. Article 24 of the Special Cybercrime Act³¹ states that “a person who, by means of information technology, uses a child or the image of a child or adolescent for the purpose of exhibition or pornography shall be sentenced to a period of four to eight years’ imprisonment and a fine of 400 to 800 taxation units.”

51. Article 53 of the Migration and Aliens Act³² imposes a penalty of four to eight years’ imprisonment on a person employing foreign men or women who are in the territory of the Republic illegally for the purpose of exploiting them as labour in conditions that prejudice, suppress or restrict the employment rights that have been recognized by legal provisions, collective agreements or individual contracts. As for State involvement, article 59 of the Act provides that: “A public official or police or

²⁹ Judgement of 3 June 2010, File No. AP42-R-2006-000948

<http://jca.tsj.gob.ve/decisiones/2010/junio/1478-3-AP42-R-2006-000948-2010-765.html>.

³⁰ Published in *Official Journal* (special issue) No. 5,859, 10 December 2007.

³¹ Published in *Official Journal* No. 37,313, 30 October 2001.

³² Published in *Official Journal* No. 37,944, 24 May 2004.

military authority that encourages or induces in any way by action or omission entry into or departure from the territory of the Republic by persons clandestinely or in such a way as to evade the migration control procedure established under our domestic law shall be punished with a term of four to eight years' rigorous imprisonment and shall not be permitted to hold any office in public administration for a period of 10 years."

52. Article 173 of the Criminal Code stipulates that: "A person who reduces any person to slavery or a similar condition shall be punished with rigorous imprisonment of six to 12 years. A person who engages in slave trafficking shall incur the same punishment." Meanwhile, article 174 states: "A person who unlawfully deprives any person of his or her personal freedom shall be punished with a sentence of 15 days' to 30 months' imprisonment." Further, article 387 provides: "A person who, in order to satisfy the desires of another person, induces a minor to engage in prostitution or corrupt acts shall be punished with a period of three to 18 months' imprisonment ..."

53. With regard to the protection that women should have from this form of torture, the Act on Women's Right to a Life Free from Violence³³ ("the Violence Act") recognizes 14 forms of violence against women, including trafficking in women and girls. Article 56 of the Act states: "A person who promotes, encourages, facilitates or implements the recruitment, transfer, harbouring or receipt of a woman, girl or adolescent through recourse to violence, threats, deception, abduction, coercion or any other fraudulent means for the purposes of sexual exploitation, prostitution, forced labour, slavery, irregular adoption or extraction of organs shall be punished with a term of 15 to 20 years' imprisonment."

54. In issuing a constitutional interpretation of article 46 of the Constitution, the Criminal Appeal Division of the Supreme Court has laid down jurisprudence on medical examination as a form of evidence.³⁴

55. Successful convictions by prosecutors of the Public Prosecution Service, showing the criminal liability of some police officers, include that handed down by the Seventh Procedural Court of Aragua State of 6 February 2008, which sentenced three police officers from the State who admitted having engaged in the torture and cruel and inhuman treatment of two citizens on 9 January of that year. The officers — NS, DC and GE — were convicted of committing the offences of breaching

³³ Published in *Official Journal* No. 38,668, 23 April 2007.

³⁴ Judgement No. 279 of the Criminal Appeals Division, File No. C01-0541 of 11 June 2002 states that: "Article 46 of the Constitution of the Republic relates to the right to respect for a person's physical, psychological or moral safety, which means that no one may be subjected to torture or cruel, inhuman or degrading treatment (para. 1), nor may a person be subject without his or her consent to scientific experiments or to medical or laboratory examinations, except where such person's life is in danger, or in other circumstances determined by the law (para. 3). The Code of Criminal Procedure, meanwhile, establishes the right to the justified and reasonable practice of physical or mental examinations of accused persons or third parties (conducted by experts *lex artis*), with prior warning and ensuring respect for the modesty of those being examined, who, moreover, should be permitted to be accompanied by a person that they trust. Such examinations may not represent a risk to the life or health of the persons examined and may thus be of crucial importance in elucidating the facts under investigation. They may therefore be ordered by the Public Prosecution Service at the investigation stage in order to obtain information that may enable it to lay a charge."

international treaties and agreements, torture and minor injuries. In addition, the Fourth Functions of Proceedings Court of First Instance of Sucre State, of 17 October 2005, sentenced the citizens JR, RP and OA to a term of nine years and nine months' imprisonment for committing the crimes of extortion, unlawful deprivation of liberty and torture of a citizen and the Seventh Functions of Proceedings Court of First Instance of the Judicial District of the Caracas Metropolitan Area convicted a group of 23 police officers on 13 October 2006 of the crimes of aggravated homicide, attempted aggravated homicide, unlawful use of firearms and complicity and sentenced them to between three and 30 years for offences committed on 27 June 2005, when three university students were killed and three others were wounded.

56. The Basic Rights Department of the Proceedings Directorate of the Public Prosecution Service has recorded that, between 2000 and 2011, a total of 636 persons were convicted of offences that constituted human rights violations, including assault and battery, torture, enforced disappearance, unlawful deprivation of liberty and homicide.

57. The most emblematic example of the implementation of article 155 may be found in the charges brought by the Public Prosecution Service against persons accused³⁵ of acts occurring during the Caracazo events, who are accused of the "offence of intentional homicide, in the necessary accessory category, and breach of international treaties and conventions, for their alleged participation in the deaths of 71 persons", according to the Attorney General.³⁶

58. The name "Caracazo" is given to the round of protests, disturbances and looting that started in the city of Guarenas and spread to the capital of the Republic and other cities on 27 and 28 February 1989, following an announcement by the Head of State that there would be a 30 per cent rise in petrol prices on 26 February and that public city and inter-city transport fares would also rise by 30 per cent from 27 February for a period of three months, after which they might be increased by up to 100 per cent. This measure formed part of an "economic package", which

³⁵ Those accused to date are retired Army Divisional General Ítalo Augusto del Valle Alliegro, who was Minister of Defence in the first years of Carlos Andrés Pérez's second Government, the former commander of Unit 5 of the National Guard, Freddy Maya Cardona, the Deputy Commander of the Metropolitan Police at the time in question, retired General Luis Guillermo Fuentes Serra and Manuel Heinz Azpúrua, Head of Army Strategic Command and Operational Commander of Plan Ávila, who were charged on 19 March 2010. They are accused of the intentional aggravated homicide of 50 people, in the category of necessary accessory, and breach of international covenants and conventions, pursuant to articles 406.1 and 155 of the Criminal Code. Also accused is José Rafael León Orsini, Director of the former Metropolitan Police, who was charged on 18 August 2010 with the offences of the intentional aggravated homicide of 121 people, in the necessary accessory category, and breach of international covenants and conventions, pursuant to articles 406.1 and 155 of the Criminal Code. All these proceedings were initiated in compliance with the ruling of 11 November 2002 by the Inter-American Court of Human Rights, which held unanimously that the State should undertake a proper investigation of the facts of the case, identify both those who planned the attacks and those who carried them out, as well as any accessories, and to impose administrative or criminal sanctions, as appropriate; that the family members of the victims and the surviving victims should have full access to proceedings and capacity to act at every stage and in all aspects of such investigations, in accordance with domestic law and the provisions of the Inter-American Convention on Human Rights; and that the results of the investigations should be made public.

³⁶ <http://catalogo.fiscalia.gob.ve/Prensa/A2010/prensa0103IV.htm>.

included price liberalization and the elimination of exchange controls, among others, thus pushing people on lower incomes into an extremely harsh readjustment. The protests were suppressed by the Metropolitan Police, the Directorate of Intelligence and Prevention Services, the Army and the National Guard, on the orders of President Carlos Andrés Pérez. As a result of this suppression, over 300 Venezuelans lost their lives and thousands were injured. It was carried out by Government bodies, which concentrated particularly on the poor districts of the capital.

Articles 2 and 16

59. The entry into force of the new Code of Criminal Procedure in July 1999 brought a change of approach: the country passed from the inquisitorial to the adversary procedure, which meant, among other features, the adoption of oral proceedings, the presumption of innocence, the elimination of the *nudo hecho* (laying of information)³⁷ procedure and summary proceedings. The reform also made legal forms of evidence that had hitherto not been permissible. It thus did away with various obstacles to access to justice, particularly in cases of human rights violations involving abuse or excess of authority. The replacement of the summary procedure by the oral and public procedure ensures greater transparency, access to information and stronger guarantees of a judge's impartiality during a trial.

60. These principles were ratified on 15 June 2012 with the adoption of the new Code of Criminal Procedure, on the basis of the "need to bring the rules of criminal procedure into line with the constitutional mandate" and the reality of Venezuelan life, which meant implementing rules that were in keeping with the country's special character. For example, the *escabinado* procedure, which had been copied from the German system and was completely alien to the customs, legal tradition and realities of Venezuela,³⁸ was abolished. Criminal justice was transferred to local government with the establishment of the municipal criminal courts of first instance and a system was proposed to allow participation by the public, which would strengthen the democratization and legitimacy of judicial decisions. Among other provisions, it provided for the possibility of being tried while at liberty.

61. This change of approach is set out in article 10 of the new Code: "During criminal proceedings, all persons shall be treated with due respect for their inherent dignity as human beings and for the rights deriving therefrom and may demand of the authority requiring them to attend the right to be accompanied by a lawyer of their choosing ..."

62. With regard to children and adolescents, it may be noted that the Code reaffirms the principle of comprehensive care. This reverses the former approach of an irregular situation and the lack of a definition of what constitutes an antisocial act. The Code introduces a criminal liability system specifically relating to

³⁷ The laying of information was a privilege enjoyed by officials of State security forces in the course of a criminal investigation. It was a provision of the Code of Criminal Procedure of the time, which allowed for a kind of preliminary procedure, where a judge issued a ruling on whether an official against whom evidence had been brought should or should not stand trial.

³⁸ Explanatory introduction to the new Code of Criminal Procedure, published in *Official Journal* (special issue) No. 6,078, 15 June 2012.

adolescents, with penalties that comprise measures with an educational purpose. Adolescents have the same rights and guarantees as adults, but special attention is paid to their age and other elements that are different, such as the need not to disclose their identity and to keep the records of proceedings confidential, in order to avoid stigmatization and achieve the effective reform and social reintegration of adolescents.

63. As for the rights of the accused, article 127 of the Code sets out the following rights, among others: “ ... to communicate with his or her family members and with a lawyer of his or her choosing or a legal aid association, in order to inform them of his or her arrest; to be assisted, from the initial stages of the investigation, by a counsel appointed by him- or herself or his or her relations or, failing that, by a court-appointed counsel; to be assisted free of charge by a translator or interpreter if he or she does not understand or speak Spanish; ... not to be subjected to torture or other cruel, inhuman or degrading treatment; and not to be subjected to techniques or methods that impair his or her free will, even with his or her consent.”

64. Meanwhile, article 289, paragraph 3, of the Code stipulates that the persons required to report abuse include surgeons and other health professionals, when they have been invited to provide or have provided their skills in cases of poisoning, bodily harm or other forms of injury, abortion or false declaration of birth. In any of these cases, they are required to inform the authorities.

65. In this connection, the legislative measures aimed at preventing acts of torture include the provision of the Code of Criminal Procedure that stipulates that a person may be detained only when caught in flagrante delicto or by court order and must be brought before a supervisory judge within 48 hours following his or her arrest. The judge then decides whether to continue to keep the person in custody or to impose less onerous conditions, such as releasing the person on bail. This clearly provides greater control over the constitutional guarantees against police abuse of any kind, mentioned above.

66. In addition, the entry into force of the Police Service and Bolivarian National Police Force Act³⁹ breaks with the models that were previously followed in police matters and establishes and guarantees the defence and protection of human rights without any discrimination, definitively preventing the practice of torture and cruel or degrading treatment. It also contains a provision whereby police officers may refuse to obey orders that violate the human rights guaranteed in the Constitution.⁴⁰

67. The Act provides for the establishment of the National Bolivarian Police Force⁴¹ as a decentralized body responsible for public safety, constituting a civilian,

³⁹ Published in *Official Journal* (special issue) No. 5,940, 7 December 2009.

⁴⁰ Article 25 of the Constitution, mentioned above, provides for the liability of public officials who participate in or tolerate acts of torture and does not exempt from such responsibility an official who claims that he or she was carrying out orders.

⁴¹ The Force was established following a wide and participatory process of consultation conducted by the National Commission for Police Reform, which was set up on 10 April 2006 with the aim of constructing a new model for the police in the context of Venezuelan society as it actually is. This will enable it to be seen as a general public service guided by the principles of permanence, efficiency, outreach, democracy and participation, under which behaviour can be monitored and assessment can be carried out in accordance with defined procedures and standards. Moreover, planning and development can take place with due regard for national, state and municipal

public, standing, professional and organized force, with a remit throughout the national territory in the following aspects of policing: public order, traffic, taxes and customs, tourism, airport security, protection for embassies and public persons, the prisons, migration, maritime affairs, action against corruption, narcotic drugs and psychotropic substances, the environment, organized crime, action against kidnapping, food security, illegal armed groups and any other duties that the Constitution of the Republic and the law impose on the national Government, and also any matter relating to the prevention of administrative or duty-related crime on the part of the Executive, through the Ministry of People's Power for the Interior and Justice, with a disciplinary regime that promotes adherence to the rules and encourages the timely correction of minor police offences in an appropriate and effective manner.

68. Article 65 of the Act states: "The basic rules governing the activities of officials of police forces and other bodies and entities that may in exceptional circumstances perform the functions of the police service require them to: ... 7. Respect the inviolability of every person and under no circumstances inflict, incite or tolerate any arbitrary, illegal or discriminatory act or act of torture or other cruel, inhuman or degrading treatment or punishment that involves physical, psychological or moral violence, in accordance with the absolute right to the physical, psychological and moral integrity of the person guaranteed under the Constitution."

69. The use of force by police forces is governed by article 68 of the Act, which states that the use of force must be guided by the principle of the affirmation of life as a moral value and the progressive use of force depending on the level of resistance or opposition.

70. Moreover, article 70 of the Act sets out the criteria for increasing the use of force:

(a) The behaviour of the person concerned and not any prejudice that the official concerned may have;

(b) A police officer must assess the need to apply action including psychological intimidation and potentially lethal force, on the basis of the progression from passive resistance to life-threatening aggression on the part of the person concerned;

(c) A police officer must use the least possible force to achieve his or her objective;

(d) A police officer must not inflict unnecessary physical harm or moral abuse on a person subjected to police action, nor should force be used as a form of direct punishment.

71. The forerunner of the Act was the decree with the scope and force of law on the National Bolivarian Police Service and Police Force Act,⁴² which, among the other bodies mentioned in paragraph 10, established the General Police Council attached to the Ministry of People's Power for the Interior and Justice. This was set

needs within the framework of the Constitution of the Bolivarian Republic of Venezuela and international human rights treaties and principles.

⁴² Published in *Official Journal* (special issue) No. 5,880, 9 April 2008.

up in 2009 with a view to proposing public policies to standardize police forces and bring them into line with the new police model. The main purpose of the General Police Council during its first period of operations in 2009-2010 was to make recommendations to the Ministry on what was required to create the new police model and enhance the role of the police within an institutional and management legal framework that would make it possible to view the police as a civilian public institution, which had functions that could not be delegated and operated within the framework of the Constitution of the Bolivarian Republic of Venezuela and the international human rights treaties and principles.⁴³

72. In 2010, the Council drew up a handbook on the progressive and differentiated use of force by the police, with the aim of establishing rules and procedures for police action, accompanied by the use of force by the police, that took account of human rights and regulating them in line with the new concept of the police service established in the relevant legislation, which gives priority to respect for the principles of legality, necessity and proportionality that are an essential part of professional ethics. This makes it a tool that must be used, without distinction on the basis of the level of hierarchical organization, rank or post involved, and requires police training, education and specialization at every political level within the national, state or municipal area.⁴⁴ It is thus an implementation of the judgement by the Inter-American Court of Human Rights in the Caracazo case against Venezuela, which stipulates that the Venezuelan State must “guarantee that, where necessary to resort to the use of physical means to deal with public disturbances, the members of the armed and security forces will use only those which are indispensable to control such situations in a rational and proportionate manner, respecting the right to life and to humane treatment”.⁴⁵

Measures adopted to combat trafficking in persons

73. In this regard, we may draw attention to paragraphs 212 to 239 of the report submitted by the Venezuelan State to the Committee on the Rights of the Child on the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. Of particular importance is the action taken by the Executive, through the Ministry of People’s Power for the Interior and Justice, which designated the Department for Crime Prevention as the “central authority for the preparation, coordination and implementation of the preventive and cooperation measures stipulated in article 9 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime”.⁴⁶

74. The Department for Crime Prevention — hereinafter the Central Authority — submitted a preliminary bill to the National Assembly on the prevention and punishment of the crime of trafficking in persons and comprehensive assistance to victims. The aim of the bill is to prevent and punish crimes relating to trafficking in persons and to ensure respect for the human rights of victims and their immediate

⁴³ Presentation of the guide to minimum standardization rules for police forces.

⁴⁴ General Police Council, *Handbook on the progressive and differentiated use of force by the police* (2010).

⁴⁵ Judgement of 11 November 1999. Series C No. 58.

⁴⁶ Ministerial Decision No. 61, *Official Journal* No. 38,140, 4 March 2005.

families and to provide them with care, comprehensive assistance and protection, in accordance with the provisions of the Constitution and international treaties and conventions signed and ratified by the Republic.

75. The Central Authority also participated in amending the Organized Crime and Financing of Terrorism Act and submitted the text of the preliminary bill referred to above so that certain elements of it could be taken into account in the Act. The crime of trafficking in persons has accordingly been included in the amendments to the Organized Crime and Financing of Terrorism Act.⁴⁷

76. The action taken by the National Executive requires a consistent and coordinated response by the various State institutions and institutions in a number of other countries. Such action includes the First Meeting of National Authorities on the question of trafficking in persons of the Organization of American States (OAS), held from 14 to 17 March 2006 in Isla Margarita, at which the Bolivarian Republic of Venezuela gave a description of its progress in combating trafficking in persons in its national territory. The meeting was also the occasion of the signing of a document of conclusions and recommendations on measures for cooperation, prevention, control and assistance to victims of this criminal offence; it may be noted that the document was approved by all the participants in the plenary session and was subsequently discussed by the General Assembly.

77. The Bilateral Meeting between Colombia and the Bolivarian Republic of Venezuela for the coordination of the fight against trafficking in persons took place on 8 May 2006, in the city of Cúcuta. Various institutions of both countries took part in the meeting, where they exchanged experiences and information on trafficking in persons and agreed to establish cooperation mechanisms for prevention, control and comprehensive assistance to victims.

78. The Central Authority drew up a protocol on care of victims of trafficking in persons in Venezuela whose cases have come before the courts. The protocol was drawn up following consultation with and participation by the authorities that are involved in assisting victims, so that they could put forward comments, suggestions and recommendations. The protocol is currently under review by the Deputy Minister for Prevention and Public Safety so that it can be incorporated into the Ministry's plans.

79. The Central Authority has drawn up a workplan jointly with the Administrative Service for Civil Registration, Migration and Aliens and the National Institute for Civil Aviation and Airlines of Venezuela in order to train and raise awareness among

⁴⁷ Published in *Official Journal* No. 39,912, 30 April 2012. Article 41 states: "A person who promotes, encourages, facilitates or engages in the recruitment, transportation, transfer, harbouring or receipt of persons or uses threats, force, coercion, kidnapping, deception, abuse of power, a situation of vulnerability, the offer or acceptance of payments or benefits or any other fraudulent transaction to obtain, directly or through an intermediary, the consent of the victim or a person who is in a position of authority over him or her to engage in beggary, forced labour or services, debt bondage, illegal adoption, slavery or similar practices, the removal of organs or any form of sexual exploitation, or even with the consent of the victim, the prostitution of others or forced prostitution, pornography, sexual tourism or servile matrimony shall be punished with a term of 22 to 25 years' imprisonment and the payment of the victim's expenses for recovery and social reintegration. If the victim is a child or adolescent, the punishment shall be a term of imprisonment for 25 to 30 years."

its officials concerning trafficking in persons and the smuggling of migrants, in line with the current Security Plan.

80. The Ministry of People's Power for the Interior and Justice, acting through the Central Authority and the Ministry of People's Power for Terrorism, acting through the National Tourism Institute, have signed an agreement on training and raising awareness among tourist service providers and the public in general on the prevention of this crime.

81. With support from the United Nations Children's Fund (UNICEF), the Office of the United Nations High Commissioner for Refugees (UNHCR) and the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders, the Central Authority, acting on behalf of the Ministry of People's Power for the Interior and Justice, conducted a high-level training course from 12 to 16 December 2011 on criminal prosecution and trafficking in persons, aimed at police officers, diplomats and judicial officials, among others, so that they could spread information within their own professions.

82. As regards the protection of women's rights, and in particular the measures adopted to combat trafficking in persons, the Public Prosecution Service established the Department for the Defence of Women,⁴⁸ which is a unit specializing in gender-based violence. Attached to it are public prosecutors who deal exclusively with investigations and cases monitored by the crime commission provided for in the Violence Act. Among other subjects, it deals with trafficking, which had previously been investigated by public prosecutors attached to the Department for the Comprehensive Protection of the Family. The Department is responsible for 43 public prosecutors' offices dealing exclusively with the protection of women and 73 assigned procurator's offices. Across the country, they have dealt with a total of 378,805 cases, 50,680 of which were decided in the years between the adoption of the Act in 2007 and the first quarter of 2012.⁴⁹

83. In the interests of providing an appropriate response to the needs of the particularly vulnerable sectors of the population, the Public Prosecution Service established a technical unit specializing in comprehensive care for women victims, children and adolescents, attached to the Department for the Comprehensive Protection of the Family, in order to help the new Department for the Defence of Women to care for women victims of violence. However, the intention is to create another unit that will be attached to the recently established public prosecutor's office in order to provide the community with more options.⁵⁰

84. As regards numbers of complaints, prosecutions, sentences and convictions for trafficking in persons, the recently established Department for the Defence of Women keeps a register of cases dealt with by its Assignment Offices, according to which there have been six cases relating to forced prostitution and illicit trafficking in women, girls or adolescents, brought under the Violence Act.⁵¹

85. As for convictions, it may be noted that trafficking in persons is a complex offence that is particularly difficult to prove, since it is ever-present and generally

⁴⁸ On 15 September 2011.

⁴⁹ Information provided by the Legal Support Department of the Public Prosecution Service.

⁵⁰ Ibid.

⁵¹ Ibid.

transnational. Following the entry into force of the Violence Act, a number of cases have been investigated, but we may draw attention here to the judgement in the DC case⁵² by the Criminal Court of First Instance with competence to hear cases on offences of violence against women of the Zulia State Judicial Circuit⁵³ and confirmed in a final judgement of the Third Division of the Court of Appeal of the Criminal Judicial Circuit of Zulia State.⁵⁴ The accused was sentenced to 16 years' imprisonment.

86. Over the past few years, the Public Prosecution Service has taken part in various workshops on training, information exchange and legal assistance for the community, given talks and run workshops for the community. It recently started a series of talks on gender-based violence and legal advice set out in the National Plan for the Social Prevention of Crime and the Promotion and Defence of Human Rights, which are held every two weeks.⁵⁵

States of exception

87. With regard to the protection of the rights enshrined in the Constitution, articles 337-339 provide that, in a case of a state of exception, the guarantees enshrined in the Constitution may be temporarily suspended, except those relating to "the right to life, the prohibition of solitary confinement and torture, the right to due process, the right to information and other intangible human rights."

88. Since 1992, the Venezuelan State has not suspended constitutional guarantees or decreed a state of exception, despite the fuel shortage that developed during the oil strike⁵⁶ or the coup d'état of 2002. The State undertook legislation in that regard

⁵² Conviction for trafficking in persons, Judgement No. 001-09 of 20 January 2010. DC was in a difficult economic situation. She was unemployed, when she saw newspaper classified advertisements seeking young women with a smart appearance who were prepared to travel to Europe. An interview was arranged and she was told that the employment on offer was as a cook, with a salary of €1,500. In view of her situation, she accepted the work and was provided with all the necessary documents and an air ticket. On the date agreed, the victim was accompanied to Madrid by a member of the network, where two other members were waiting for her at the airport. The following day, the victim was taken to a brothel, where the people running the establishment informed her that she would be working as a prostitute. When she refused, she was physically assaulted. Following a clandestine telephone call, it was discovered that the person who had hired her in Venezuela was seeking money from her family for her release. Thanks to one of the many clients who visited the establishment, she was able to escape and told a taxi driver about her situation. He reported it to the police of the Criminal Investigation Service of Logroño in Spain and the police raided both the apartment where the members of the management lived and the brothel itself. Seven members of the network were arrested and charged in Spain with these offences, drug trafficking and others relating to public health before Calahorra Court of Investigation No. 2 in La Rioja, Bilbao, Spain. DC was declared a protected witness, to serve as a prosecution witness in the trial of the men concerned in Spain. On 5 December 2008, she returned to Venezuela, where she lodged a complaint relating to the facts described above.

⁵³ Available at <http://jca.tsj.gov.ve/decisiones/2010/enero/2307-20-VP02-S-2009-001523-PJ0662010000002.html>.

⁵⁴ No. 011-10, 20 April 2010: www.tsj.gov.ve/tsj_regiones/decisiones/2010/abril/590-20-VP02-R-2010-000054-N%C2%BA011-10.html.

⁵⁵ Ibid.

⁵⁶ This is the name given to the general and indefinite suspension of labour and economic activities directed against the Venezuelan Government, promoted by the employer organizations

through the States of Exception Organization Act,⁵⁷ article 7 of which establishes the guiding principles of a state of exception: “In accordance with the provisions of article 339 of the Constitution of the Bolivarian Republic of Venezuela, article 4, paragraph 2, of the International Covenant on Civil and Political Rights and article 27, paragraph 2, of the Inter-American Convention on Human Rights, no restrictions may be placed on the guarantees to the rights to life, acknowledgement of legal personality, protection of the family, equality before the law, nationality, personal freedom and prohibition of the practice of enforced disappearance of persons, physical, psychological and moral integrity of the person, the right not to be submitted to slavery or servitude, freedom of thought, conscience and religion, the legality and non-retroactive nature of the law, particularly criminal laws, due process, constitutional protection, participation, suffrage and access to the civil service and information.”

89. Article 338 of the Constitution provides for three kinds of state of exception. Adopting a gradual approach, it sets out the factual circumstances that may justify a state of exception and the limits that may be placed on its duration. Thus a state of alert may be declared in the event of natural or manmade disasters or similar occurrences that pose a serious risk to the safety of the nation or its people for a period of up to 30 days, which may be further extended by the same length of time. An economic state of emergency may be declared in the event of extraordinary economic circumstances that seriously affect the economic life of the nation, for a period of up to 60 days, which may be extended by the same length of time. Lastly, a state of internal or external disturbance may be declared in the case of conflict within or outside the country that poses a serious threat to the security of the nation and its people or its institutions, for a period of up to 90 days, which may be extended by the same length of time.

90. The provisions of article 339 set out the essential components of a decree declaring a state of exception, namely that it should spell out the measures that will be taken on the basis of the decree with a view to maintaining legal security and should also order that the requirements, principles and guarantees enshrined in the International Covenant on Civil and Political Rights and the Inter-American Convention on Human Rights must be observed.

91. In view of the importance of such a declaration, the Constitution provides that all three branches of Government must participate in the decision: first, the President of the Republic, acting with the Council of Ministers, issues a decree. The President then orders it to be transmitted to the National Assembly (or the Parliamentary Recess Committee, if the Assembly is in recess) for consideration or revocation, after which it passes for legal consideration to the Constitutional Division of the Supreme Court, which pronounces on whether the state of exception

of the Federation of Chambers of Commerce and Production and seconded by the board of directors and many of the staff of the oil company *Petróleos de Venezuela*, the opposition parties making up the *Coordinadora Democrática* coalition, the *Confederation of Workers of Venezuela*, various organizations such as *Súmate* and private media enterprises involved in print, radio and television. The strike ran from December 2002 to February 2003: at 63 days, it was one of the longest general strikes in history and caused serious damage to oil installations, with national and international shortages, and forced Venezuela, which is the fifth largest crude oil producer in the world, to import fuel.

⁵⁷ Published in *Official Journal* No. 37,261, 15 August 2001.

and the measures set out in the decree declaring it are in conformity with the principles and rules established in the Constitution.

92. It is clear that the Venezuelan legal order is in conformity with the provisions of the principal international human rights instruments as regards states of exception, in that it is provided with a legal framework for the State's response in emergency situations, safeguarding the fundamental rights and freedoms of the individual.

Article 3

93. Extradition in Venezuela is governed by article 69 of the Constitution, which prohibits the extradition of nationals; the same provision appears in article 6 of the Criminal Code, the Code of Criminal Procedure, specific legislation and extradition treaties signed and ratified by the Republic.⁵⁸ Where a Venezuelan national has committed torture in foreign territory, he or she must be tried in Venezuela at the request of the injured party or the Public Prosecution Service.

94. Articles 382 et seq. of the Code of Criminal Procedure govern the extradition procedure, which is jurisdictional rather than administrative. The question of whether or not an extradition request is granted falls to the Supreme Court, and specifically the Criminal Division of Cassation. If it grants a request, that does not imply a judgement of the culpability or not of the person concerned on the basis of an evidentiary procedure of an adversarial nature but is restricted to the consideration of the documents submitted by the requesting State, on the basis that the interests of the State must be served and that the information provided is true and accurate. Subsequently, the details are checked as to both the form and the substance required by treaties and domestic law. The Bustamante Code — the Code of Private International Law annexed to the Convention on Private International Law — and the principles of international law are also applicable.

Guiding principles on extradition in Venezuela

95. The main points are:

(a) *Principle that nationals should not be extradited.* This principle is established in the Constitution, which prohibits the extradition of Venezuelans. Moreover, article 6 of the Criminal Code provides that a national whose extradition is requested “shall be tried in Venezuela at the request of the injured party or the Public Prosecution Service, if the offence of which the person concerned is accused is subject to punishment under Venezuelan law”.

(b) *Principle of dual criminality.* It is absolutely essential that the facts on which a request is based are considered an offence in the legislation of both the requesting and the requested State. By the same token, article 6 of the Criminal Code provides that: “The extradition of a foreigner shall not be granted for any action that is not considered an offence under Venezuelan law.” This ties in with article 49, paragraph 6, of the Constitution, which states: “Due process shall apply in all legal and administrative proceedings and, as a consequence, ... 6. No one may

⁵⁸ See Judgement No. 333 of the Criminal Division of Cassation, File No. E0017-99 of 22 March 2000.

be punished for acts or omissions that are not deemed serious offences, ordinary offences or minor offences under existing law.” This principle was the subject of an interpretation by the Attorney General’s Office of the Public Prosecution Service, given in an opinion addressed to the President and other judges of the Criminal Division of Cassation of the Supreme Court, when a request was received for the extradition of a national of the Kingdom of Belgium, JEC, as follows: “With regard to extradition, an essential feature is the requirement of dual criminality, whereby the extradition of the requested person may be granted only where the action of which the person is accused in the requesting country constitutes an offence in the requested country.”⁵⁹

(c) *Principle of non-extradition for political offences.* The Criminal Code establishes definitively — and this has been confirmed by the Supreme Court⁶⁰ — that the extradition of a foreigner may not be granted for political offences or infringements connected with such offences.

(d) *Principle of refusal of extradition in cases carrying the death penalty, life imprisonment or imprisonment for a period exceeding 30 years.* In addition to the exceptions relating to the extradition of foreigners, the Venezuelan Criminal Code states that: “The extradition of a foreigner accused of an offence that under the legislation of the requesting country is subject to the death penalty or life imprisonment shall not be granted.” In implementation of this principle, the Supreme Court has granted the extradition of nationals of the United States of America, conditional on a commitment by the requesting Government that, if the person concerned is convicted, he or she will not receive a penalty exceeding 30 years.⁶¹ The Attorney General’s Office of the Public Prosecution Service issued a similar opinion addressed to the President and other judges of the Criminal Division of Cassation of the Supreme Court when a request was made by the Government of the Kingdom of Spain for the extradition of its national MUM, stating that: “In the event that the penalty imposed on the requested person shall exceed 30 years by virtue of the applicability of the rules relating to concurrence of offences, whether a series of offences or a multiple offence, it is required that the Government of the Kingdom of Spain shall provide effective guarantees that the penalty shall not exceed the maximum established under the Venezuelan legal order.”⁶²

(e) *Principle of the special nature of extradition.* According to this principle, the requesting State undertakes to put the requested person on trial only for the act for which his or her extradition has been requested and not for any other offence. It is also inadmissible to replace the offence for which an extradition request has been lodged by another offence, where such conduct is not considered unlawful in the requested State.

(f) *Extinction of criminal proceedings or penalty.* This constitutes another extremely important element of extradition, since extradition will not be granted where the criminal proceedings or the penalty are extinguished under the domestic law of the requesting or the requested State.

⁵⁹ Report of the Office of the Attorney General of the Republic, 2006, p. 291.

⁶⁰ See Judgement No. 0869 of the Criminal Division of Cassation, File No. E01-0847 of 10 December 2001.

⁶¹ Judgement No. 0286 of the Criminal Division of Cassation, File No. E010019 of 24 April 2001.

⁶² Report of the Office of the Attorney General of the Republic, 2006, p. 290.

96. It should be noted that, although article 271 of the Constitution provides that under no circumstances may extradition be refused in the case of a foreigner guilty of committing serious crimes, such as money-laundering, impairment of State assets, organized crime, drug trafficking or human rights violations, such a provision does not exempt the requesting State from complying with the requirements established in the treaties that apply in this area; a request may be denied in the absence of such compliance.

97. The most effective means of ensuring the presence of a person to be extradited is pretrial detention, which will be extended for as long as is necessary until the Supreme Court grants or refuses extradition. There are, however, less onerous measures available under Venezuelan law, which are set out in article 242 of the Code of Criminal Procedure. For this reason, the Supreme Court has stated on a number of occasions that: “Where extradition is based not on a definitive conviction but on a committal order or a warrant for pretrial detention or its equivalent in the legislation of the requesting country, careful consideration must be given to the evidentiary basis of the order or decree in question in order to determine whether it is adequate under the procedural law in force in the Bolivarian Republic of Venezuela.”⁶³

98. The Court also stated that: “An extradition request must be accompanied, in addition to other items of evidence,⁶⁴ by evidence that the offence for which the surrender and participation of the accused is required was committed. According to the rules and principles of international law, such evidence must be such as to make it possible to impose measures of deprivation of freedom.”⁶⁵

99. Where extradition has been refused, a new request may not be made for the same offence. However, this decision may be challenged on the basis of special procedures, such as the remedy of amparo or an application for judicial review of the facts.

100. The Venezuelan State operates with a deep sense of responsibility, accepting extradition as a moral obligation under international law, but it reserves the right to decide whether to grant or refuse it, taking into account the question of whether, in the specific case, it runs counter to the principles of domestic law or does not comply with reason or justice.⁶⁶

Article 5

101. As stated in the report contained in document CAT/C/33/Add.5, submitted in 2000, the Venezuelan State has clearly established its jurisdiction over the

⁶³ Judgement No. 1119 of the Criminal Division of Cassation, File No. E0008-99 of 3 August 2000.

⁶⁴ Judgement No. 184 of the Criminal Division of Cassation, File No. E00-0894 of 15 May 2003: “An extradition request must be accompanied, in addition to an arrest warrant, by items of evidence of the alleged offence and the alleged participation of the accused. According to the rules and principles of international law, such evidence must be such as to make it possible to order that measures of deprivation of freedom should be imposed and that the person concerned should stand trial.”

⁶⁵ Judgement No. 1010 of the Criminal Division of Cassation, File No. E0684-00 of 20 July 2000.

⁶⁶ Judgement No. 639 of the Criminal Division of Cassation, File No. E0009-99 of 11 May 2000.

offences covered in article 5 of the Convention in respect of foreign nationals, provided that they are located in the country, that the issue does not relate to political offences or infringements connected with such offences, that the act in question is not deemed an offence under Venezuelan law or that the offence is subject, under the legislation of the requesting country, to the death penalty or life imprisonment. Where a Venezuelan commits the crime of torture in a foreign country, he or she must be tried in Venezuela at the request of the injured party or the Public Prosecution Service.

102. In any case, article 6 of the Criminal Code states that: “Once an extradition request is made, the National Executive shall decide on the pretrial detention of the foreign national in accordance with the merits of the accompanying documents, before passing the case to the Supreme Court.” Similarly, article 386 of the Code of Criminal Procedure provides that: “... If a foreign Government requests the extradition of any person located in the territory of Venezuela, the Government shall transmit the request to the Supreme Court with the documentation received.”

103. However, article 390 of the Code of Criminal Procedure states that: “The Supreme Court shall issue an attendance notice for an oral hearing within 30 days following notification of a request. A representative of the Public Prosecution Service, the accused, the accused’s defence counsel and a representative of the requesting Government shall take part in the hearing and state their arguments. On the conclusion of the hearing, the Court shall issue a decision within 15 days.”

104. With regard to the legislation applying to punishable acts committed onboard merchant vessels,⁶⁷ the Criminal Code states that: “The following may be tried in Venezuela and punished in accordance with Venezuelan criminal law ...: Venezuelans or foreign nationals resident in the Republic who commit acts of piracy or other offences on the high seas that are deemed atrocious crimes or crimes against humanity under international law, except where they have already been tried in another country and served a sentence.”

105. The Criminal Cassation Division of the Supreme Court refused the extradition of the nationals RMGC and OGC on the grounds of non-compliance with the articles referred to above.⁶⁸ The Supreme Court has thus made it clear that, in order

⁶⁷ International doctrine adopts a different approach according to whether the French or the British system is applied. French practice has been followed in many international agreements, including the 1958 Geneva Convention on the Law of the Sea, to which Venezuela is party, and the 1982 United Nations Convention on the Law of the Sea, which both restrict the sovereignty of a coastal State over its territorial sea as regards the application of its punitive power against merchant vessels, with the recommendation that territorial criminal law should not apply under certain circumstances. Art. 19 of the Convention on the Territorial Sea and the Contiguous Zone, signed in Geneva on 29 April 1958 and part of Venezuelan law following the publication of its Enabling Act in *Official Journal* No. 26,615 of 31 July 1961, establishes the rules applicable to merchant vessels.

⁶⁸ Judgement No. 019 of 24 November 2011, File No. E10-219 states: “With regard to the requirement that all the parties involved should take part in the hearing that it is obligatory should be held before this Court, particularly the accused person whose extradition is sought, the following case law has been established: ‘In order to conduct the extradition procedure established under the Code of Criminal Procedure, it is required, as we have stated in earlier judgements, that, in accordance with the provisions of article 396 (which has become article 387 of the new Code), the requested person should be detained in accordance with a request made by the Public Prosecution Service to the Control Court. At that point, following the detention of the

to continue with an extradition procedure, it is required that an accused person whose extradition is requested should be detained so that he or she can be present at the hearing.

106. Another notable decision is Judgement No. 333 concerning the extradition of a Belgian national, YD,⁶⁹ and also establishes what the court calls a “Consideration of an extradition request”, in which it gives careful consideration, point by point, to every requirement of both form and substance as to whether or not to grant the extradition of a foreign national.

107. It is particularly important to note that, on 31 October 2008, a technical round table was held on the procedure for active or passive extradition in the meeting room of the chambers of the Attorney General’s Office, which was attended by representatives of the Department of Consular Relations of the Ministry of People’s Power for Foreign Affairs, the Ministry of People’s Power for the Interior and Justice and the International Criminal Police Organization (INTERPOL). The meeting discussed the need to harmonize legal and procedural criteria for the proper processing of extradition requests for the benefit of the various national public authorities involved in such requests. Further discussion round tables will be arranged to enable procedures to be harmonized in this way.⁷⁰

Article 6

108. The authorities responsible for applying the extradition procedure are the Ministry of People’s Power for Foreign Affairs, the Ministry of People’s Power for the Interior and Justice, the Attorney General’s Office, the Supreme Court and INTERPOL.

109. The Ministry of People’s Power for Foreign Affairs acts as the diplomatic channel — through the Extradition, Letters Rogatory and Trafficking in Persons Desk of the Office of Consular Relations — to which a requesting country addresses a request for extradition and pretrial detention for the purpose of extradition. Such requests may, in accordance with the treaties signed and ratified by Venezuela, in urgent cases be sent by faster means, such as telegrams or facsimile.

requested person, a deadline shall be set for the submission of the necessary documentation and the holding of the public hearing, in which a representative of the Public Prosecution Service, the accused person, the accused person’s defence counsel and a representative of the requesting Government will participate.”

⁶⁹ File No. 001799 of 22 March 2000. The Court states: “In view of the above, the Supreme Court rules in favour of granting the extradition of YD, requested by the Government of the Kingdom of Belgium, on the grounds that he is a foreign national whose detention was expressly ordered by the Brussels District Court of First Instance, the competent authority in the case, for the alleged offence of aggravated robbery, as part of a criminal grouping, using weapons and a stolen vehicle, and burglary. This is not a political offence or associated with a political offence, and is punishable by the domestic law both of the requesting country, Belgium, and the requested country Venezuela, being established in the extradition treaty between the two countries as an offence subject to extradition, for which there is no statute of limitations and which does not carry in the requesting country the death penalty, life imprisonment or a sentence of imprisonment exceeding 30 years.”

⁷⁰ Report of the Office of the Attorney General of the Republic, 2008, p. 4.

110. The Ministry of People's Power for the Interior and Justice, acting through the Department of Justice and Worship, is the body responsible for transmitting a request for detention for the purpose of extradition and a formal extradition request to the Supreme Court.

111. The Supreme Court, acting through the Criminal Cassation Division, is the body with the competence to rule on whether or not extradition should be granted and to inform the Attorney General's Office that extradition proceedings or a request for pretrial detention for the purpose of extradition are in place.

112. The Attorney General's Office, acting through the Legal Support Department, is responsible, within the terms of its mandate, for coordinating relations between the Public Prosecution Service, as the central authority with regard to mutual assistance in criminal matters and extradition, and the authorities of other countries in respect of the establishment and administration of joint mechanisms for obtaining evidence that will help protect the interests of the Republic and the prosecution of wrongful conduct under the law, acting through the Office of the Coordinator for International Affairs,⁷¹ which is attached to the Public Prosecution Service. In addition to preparing the draft opinions provided by the Attorney General's Office for the Criminal Cassation Division of the Supreme Court, the Office of the Coordinator has, since September 2008, had the function of preparing draft assignments for the prosecutors appearing before the Cassation and Constitutional Divisions of the Supreme Court and participating in the hearing provided for under the Code of Criminal Procedure to carry out the passive extradition process and for the trial prosecutors responsible for handling requests for pretrial detention for the purpose of either active or passive extradition for consideration by the Legal Support Department. It also provides advisory services on an ongoing basis at all times both for prosecutors appearing before the Cassation and Constitutional Divisions of the Supreme Court and for the trial prosecutors assigned to handle requests for pretrial detention for the purpose of extradition before the competent legal body in each case.

113. The mandate of INTERPOL is to promote international mutual legal assistance to suppress crime and, to that end, to facilitate cooperation between member States in seeking persons wanted for extradition. Cooperation through INTERPOL takes place at the stage before extradition or pretrial detention for the purpose of extradition, in other words before the official extradition request is received. On receiving a search notice, the police authorities are required to adopt measures, such as the location, identification, detention, questioning or surveillance of the individual concerned, the whole process being under the supervision of the relevant supervising magistrate. Red Notices are valid as an order for pretrial detention for the purposes of extradition, provided that there is an extradition treaty to which both the requesting and the requested State are party or where another legal text provides for the transmission of a request through INTERPOL.⁷²

⁷¹ According to the mandates assigned under Decision No. 208 of 3 April 2006, the general objective is to create a specialized internal structure for international law, which will help to give effect to the action taken by the Public Prosecution Service on the basis of the Constitution, the law and the international agreements signed and ratified by the Republic.

⁷² Report of the Office of the Attorney General of the Republic, 2008, pp. 134 et seq.

Article 7

114. Following the reform of the Code of Criminal Procedure, the Venezuelan criminal justice system guarantees constitutional rights, emphasizing the importance for the activities of all parties of respect for due process. It therefore promotes equitable treatment for persons who are charged or accused at every stage of a trial, as set out in article 127*, which sets out the rights of the accused: to be informed specifically and clearly of the facts with which he or she is charged; to communicate with his or her family members and with a lawyer of his or her choosing or a legal aid association, in order to inform them of his or her arrest; to be assisted, from the initial stages of the investigation, by a counsel appointed by him- or herself or his or her relations or, failing that, by a court-appointed counsel; to be assisted free of charge by a translator or interpreter if he or she does not understand or speak Spanish; to request the Public Prosecution Service to carry out investigations with a view to dismissing the charges against him or her; to appear in person before the court in order to make statements; to request that the investigation should be expedited and to be informed of its findings, except in cases where a part of the findings has been declared confidential and only for so long as such a declaration is in force; to be informed of the constitutional provision exempting him or her from making a statement and, where he or she agrees to make a statement, to be exempted from making it under oath; not to be subjected to torture or other cruel, inhuman or degrading treatment; not to be subjected to techniques or methods that impair his or her free will, even with his or her consent; and not to be tried in his or her absence, in compliance with the Constitution of the Republic.

Article 8

115. The Venezuelan State recognizes the offence of torture as a crime that gives rise to extradition. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment constitutes part of the legal body of protection for human rights, within the limits established in the Constitution. The treaties entered into by the Republic do not place any restriction on the extradition of nationals who have committed the crime of torture and, even where there is no extradition treaty between States, extradition is possible in accordance with the rules of international law and on the basis of the principles of international solidarity and reciprocity in order to avoid impunity for offences committed abroad.⁷³

Article 9

116. On this aspect of the Convention, we would draw attention to the list of extradition treaties contained in the country's second periodic report, submitted

* *Translator's note*: the reference should be to art. 125.
⁷³ Report of the Office of the Attorney General of the Republic, 2006, p. 292. Opinion addressed to the President and other judges of the Criminal Cassation Division of the Supreme Court concerning an extradition request formulated by Lithuania for its national, AE.

in 2000 (CAT/C/33/Add.5), with the addition of the following treaties entered into by the Venezuelan State:

Extradition treaties

117. The following should be noted:

(a) Extradition Treaty with the Andean countries, signed in Caracas on 18 July 1911;

(b) Extradition Treaty between the Republic of Venezuela and the United Mexican States, signed in Caracas on 15 April 1998, published in *Official Journal* No. 37,219 of 14 June 2001;

(c) Extradition Treaty between the Republic of Venezuela and the Eastern Republic of Uruguay, signed in Caracas on 20 May 1997 and published in *Official Journal* (special issue) No. 5,265 of 1 October 1998;

(d) Model extradition treaty drawn up by the Office of the Legal Counsel of the Ministry of People's Power for Foreign Affairs.

118. It should be noted that the Venezuelan State has included in all the international extradition treaties signed and ratified by the Republic a clause stating that a person cannot be extradited for political offences.

Treaties on mutual assistance in criminal matters

119. The following should be noted:

(a) Bilateral:

(i) Agreement on Cooperation and Legal Assistance in Criminal Matters between the Government of the Republic of Venezuela and the Government of the Republic of Colombia, signed in Caracas on 20 February 1998 and published in *Official Journal* (special issue) No. 5,506 of 13 December 2000;

(ii) Cooperation Treaty between the Government of the Republic of Venezuela and the Government of the United Mexican States on Mutual Legal Assistance in Criminal Matters, signed in Mexico City on 6 February 1997 and published in *Official Journal* (special issue) No. 5,241 of 6 July 1998;

(iii) Agreement between the Republic of Venezuela and the Dominican Republic on Mutual Assistance in Criminal Matters, signed in Caracas on 31 January 1997 and published in *Official Journal* No. 5,274* of 12 November 1998;

(iv) Agreement between the Republic of Venezuela and the Republic of Paraguay on Legal Assistance in Criminal Matters, signed in Caracas on 5 September 1996 and published in *Official Journal* (special issue) No. 5,274 of 5 August 1998;

(v) Agreement between the Government of the Republic of Venezuela and the Government of the United States of America on Mutual Legal Assistance

* *Translator's note*: there appears to be some confusion in the date of the *Official Journal* for para. 119(a)(iii) and (iv).

in Criminal Matters, signed in Caracas on 12 October 1997 and published in *Official Journal* No. 37,884 of 20 February 2004;

(vi) Agreement between the Government of the Republic of Venezuela and the Government of Cuba on Legal Assistance in Criminal Matters, published in *Official Journal* No. 38,092 of 22 December 2004;

(vii) Enabling Act of the Treaty between the Bolivarian Republic of Venezuela and the People's Republic of China on Mutual Legal Assistance in Criminal Matters, published in *Official Journal* No. 39,122 of 17 February 2009;

(viii) Enabling Act of the Treaty of Mutual Legal Assistance in Criminal Matters, published in *Official Journal* No. 39,558 of 23 November 2010;

(ix) Memorandum of understanding on strengthening legal cooperation between the Venezuelan Public Prosecution Service and the Public Prosecution Service of the Federative Republic of Brazil, signed on 2 September 2005;

(b) Multilateral:

(i) Vienna Convention on Diplomatic Relations, published in *Official Journal* No. 27,612 of 7 December 1964;

(ii) Vienna Convention on Consular Relations, published in *Official Journal* (special issue) No. 976 of 16 September 1965;

(iii) Inter-American Convention on Letters Rogatory, signed in Panama on 30 January 1975 and published in *Official Journal* No. 33,033 of 3 August 1984;

(iv) Additional Protocol to the Inter-American Convention on Letters Rogatory, signed in Montevideo on 8 May 1979 and published in *Official Journal* No. 33,171 of 25 February 1985;

(v) Inter-American Convention on Execution of Preventive Measures, signed in Montevideo on 8 May 1979;

(vi) Inter-American Convention on the Taking of Evidence Abroad, signed in Panama on 30 January 1975 and published in *Official Journal* No. 33,170 of 22 February 1985;

(vii) United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, signed in Vienna on 20 December 1988 and published in *Official Journal* No. 34,741 of 21 June 1991;

(viii) Additional protocol to the Inter-American Convention on the Taking of Evidence Abroad, signed in La Paz, Bolivia, on 24 May 1984 and published in *Official Journal* (special issue) No. 4,580 of 21 May 1993;

(ix) Inter-American Convention against Corruption, signed in Caracas on 29 March 1996 and published in *Official Journal* No. 36,211 of 22 May 1997;

(x) Inter-American Convention on Mutual Legal Assistance in Criminal Matters, signed in Nassau on 27 August 1992 and published in *Official Journal* No. 4,999 of 3 November 1995;

(xi) United Nations Convention against Transnational Organized Crime, signed in Palermo, Italy, on 15 December 2000 and published in *Official Journal* No. 37,357 of 4 January 2002;

(xii) Inter-American Convention against Terrorism, signed in Bridgetown on 3 June 2002 and published in *Official Journal* No. 37,841 of 17 December 2003;

(xiii) International Convention for the Suppression of Terrorist Bombings, signed in New York on 15 December 1997. Enabling Act published in *Official Journal* No. 37,727 of 8 July 2003;

(xiv) International Convention for the Suppression of the Financing of Terrorism, signed in New York on 9 December 1999. Enabling Act published in *Official Journal* No. 37,727 of 8 July 2003;

(xv) Agreement on Fostering Cooperation and Mutual Legal Assistance between Members of the Ibero-American Association of Public Prosecution Services, signed in Quito in 2003.

120. In addition, the Public Prosecution Service, as the body responsible for bringing criminal prosecutions and in its role of Central Authority for mutual assistance in criminal matters,⁷⁴ is party to the following cooperation mechanisms: the Hemispheric Cooperation Network of the OAS Member States, using the secure Groove system; the Ibero-American International Legal Cooperation Network (IberRed); and the Ibero-American Association of Public Prosecution Services. It also participates in preparatory and special meetings of the public prosecution services of the Southern Common Market (MERCOSUR).

121. Meanwhile, INTERPOL operates on the basis of the following legal instruments:

(a) International agreements on transfer through INTERPOL;⁷⁵

⁷⁴ This is in accordance with art. 16, para. 7, of the Public Prosecution Service Organization Act, which includes among its responsibilities “issuing and executing letters rogatory and requests for mutual assistance in legal matters and exercising other functions inherent in its status of central authority in such matters.”

⁷⁵ European Convention on Extradition, 1957; European Convention on Mutual Assistance in Criminal Matters, 1959; European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders, 1964; European Convention on the International Validity of Criminal Judgements, 1970; European Convention on the Repatriation of Minors, 1970; European Convention on the Transfer of Proceedings in Criminal Matters, 1972; European Convention on the Control of the Acquisition and Possession of Firearms by Individuals, 1978; Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, 1990; Agreement on Illicit Traffic by Sea, in application of article 17 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1995; Criminal Law Convention on Corruption, 1999; Convention on Cybercrime, 2001; United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988; the United Nations Model Treaty on Extradition, 1990; the rules of procedure and evidence of the International Criminal Tribunal for the former Yugoslavia, adopted in 1994; the Rome Statute of the International Criminal Court, 1998; International Convention for the Suppression of the Financing of Terrorism, 1999; United Nations Convention against Transnational Organized Crime; Convention on the Establishment of a European Police Office, 1995; Framework Decision on the European arrest warrant adopted by the Justice and Home Affairs

- (b) Constitution of INTERPOL;
- (c) General regulations of INTERPOL;
- (d) Rules of procedure of the General Assembly;
- (e) Rules governing access by an intergovernmental organization to the INTERPOL telecommunications network and databases;
- (f) Rules on the processing of information for the purposes of international police cooperation.

122. The Venezuelan State, true to the commitment expressed in the various agreements and conventions that it has signed and ratified in this field, provides the fullest mutual assistance in criminal matters to States that request it, the sole restriction being considerations of national sovereignty, security, public order and other basic interests of the Republic, together with the rights and guarantees enshrined in the Constitution.

123. The policy followed by the Public Prosecution Service as regards extradition is that, where there is no bilateral or multilateral international instrument governing mutual cooperation in criminal matters, such assistance is provided on the basis of the principle of reciprocity, which entails equality and mutual respect between States and ensures identical treatment in similar cases.⁷⁶

124. The Public Prosecution Service has also stated that simultaneous investigations or proceedings in both the requested and the requesting State are not an indispensable requirement for the execution of a request for mutual assistance in criminal matters; it is enough that an investigation, at least, is taking place in the State that formulated the request.⁷⁷

Council, 13 June 2002; Commonwealth Scheme for the Rendition of Fugitive Offenders; Economic Community of West African States Convention on Extradition, 1994; Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials, 1997; Agreement between Benin, Ghana, Nigeria and Togo on criminal police cooperation, 1984; Agreement between the Ministers of the Interior of Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Moldova, Russian Federation, Tajikistan, Turkmenistan, Ukraine and Uzbekistan on cooperation in controlling illicit trafficking in narcotic drugs and psychotropic substances, 1992; Cooperation Agreement for the prevention and suppression of cross-border crime between the Governments of Albania, Bosnia and Herzegovina, Bulgaria, Greece, Hungary, Republic of Moldova, Romania, the former Yugoslav Republic of Macedonia and Turkey, 1999.

⁷⁶ Report of the Office of the Attorney General of the Republic, 2008, p. 75. Memorandum addressed to National Prosecutor No. 66 of the Public Prosecution Service with full authority, in which he was instructed to execute the letters rogatory sent by the Examining Magistrate of La Coruña Court of Investigation No. 7, Kingdom of Spain, relating to previous proceedings appearing in Summary Proceeding No. 35/2008 against Ms. Melany Elvira Soto Díaz for the alleged offence of wrongful detention of a minor.

⁷⁷ Report of the Office of the Attorney General of the Republic, 2008, p. 62. Memorandum addressed to the Third Prosecutor of the National Public Prosecution Service, who had full competence, containing advice with regard to the request for mutual assistance in criminal matters made by the Kingdom of the Netherlands, relating to the case of its nationals Johannes Wilhelmus Veit, Gerrit Veenendal and Alexander Faras on the basis of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and the United Nations Convention against Transnational Organized Crime.

125. Where mutual assistance in a criminal matter might disrupt a current investigation, proceedings or trial, it may be deferred or its execution may be subject to such conditions as it may, as the central authority in that respect, deem necessary, which must be submitted for the consideration of the requesting State. This is in accordance with the provisions of the Organized Crime Act, article 66; the 1988 Vienna Convention, article 7, paragraph 17; the United Nations Convention against Transnational Organized Crime (Palermo Convention), article 18, paragraphs 25 and 26; and the United Nations Convention against Corruption, article 46, paragraphs 25 and 26.⁷⁸

126. Foreign officials may participate in the execution of a request for mutual criminal assistance in Venezuelan territory, provided that the following conditions are met: that it is not expressly prohibited under the internal legal system of Venezuela; that the officials participating in the processing of letters rogatory or requests for mutual assistance in criminal matters should be adequately identified beforehand in the request for assistance; and that the action of the foreign authorities is subject at all times to the authorization and direction of the Venezuelan authority.⁷⁹

127. A diplomatic mission of the Federal Republic of Germany requested that Venezuela should permit the Federal Republic Criminal Police to search the archives in order to investigate crimes perpetrated in relation to the Second World War, especially those committed in concentration camps and crimes against prisoners of war. To date, there is no explicit legal provision governing such assistance to other States. Venezuela has, however, incorporated in its domestic legal system the commonly accepted principles governing criminal cooperation between countries by signing various international agreements on mutual assistance in criminal matters, the provisions of which include the possibility of authorizing the presence of officials of the requesting party who were identified in the request beforehand in the course of conducting cooperation or assistance procedures under the direction and supervision of our competent authorities, so long as there is no legal provision to the contrary.

128. The international treaties signed and ratified by the Republic on mutual assistance in criminal matters, together with international custom and doctrine, establish that documents submitted as part of a request for assistance do not require legalization, authentication or any other special formality of a similar nature.

⁷⁸ Report of the Office of the Attorney General of the Republic, 2008, p. 78. Memorandum addressed to the Third Prosecutor of the National Public Prosecution Service, who had full competence, with regard to a request for mutual assistance in criminal matters made by the Office of the Attorney General, Schiphol Department, Kingdom of the Netherlands, relating to the Tallis investigation.

⁷⁹ Report of the Office of the Attorney General of the Republic, 2008, pp. 54-56. Memorandum addressed to Ms. Emma Toledo Padilla, Director of the Foreign Consular Service of the Ministry of People's Power for Foreign Affairs, containing information relating to the procedure for letters rogatory and requests for mutual assistance in criminal matters between the Bolivarian Republic of Venezuela and the Federal Republic of Germany for the purpose of the establishment of the Central Office of the State Justice Administrations for the Investigation of National Socialist Crimes, based in Ludwigsburg, in the Federal State of Baden-Württemberg.

Article 10

129. The question of human rights education is covered in paragraphs 193-250 of the common core document submitted by the Venezuelan State on 4 July 2011. Aware of the fact that torture was a scourge that previous Governments allowed to persist for a long time, the Venezuelan State has made enormous efforts over the past years to replace the repressive and reactionary culture of the police by a preventive culture that respects human rights. This should become the prevailing culture in the new police as a result of the new police model implemented by the State.

130. At the time that the Constitution was adopted in 1999, an educational forum was also set up, setting in motion a process of collective participation, which resulted in the development of the National Educational Project. The Project was based on the following premises: to promote education and school from the holistic perspective of a Venezuelan person seeking a new society; to protect education, on principle, as a human right; to put participatory and proactive democracy into practice in the educational field; to raise the quality of education; and to make the learning process relevant, which means making the curriculum more flexible from the interdisciplinary and cross-disciplinary point of view. In order to realize all these principles, the Venezuelan State has consistently allocated sufficient resources to provide continuity on a massive scale on developing structured policies and programmes and to implement new operating systems in the educational sector.

131. With regard to the military, article 134 of the Decree with the scope, effect and force of the Bolivarian Armed Forces Organization Act⁸⁰ states that the Ministry of People's Power for Defence is the body responsible for the human rights and international humanitarian law aspects of defence and sets out the necessary organizational and regulatory structure for the promotion, supervision and protection of such rights by means of the adoption of the appropriate policies and doctrines. Thus the National Guard Officers' Training School has a mandatory department of human rights and international humanitarian law, thus ensuring that members of the national armed forces comply with human rights in all their official actions. A total of 185 officials, including senior and junior officers, non-commissioned officers, professional soldiers and civilian staff have undergone training within the department.⁸¹

132. As regards the question of refugees, a guarantee of the right to asylum and refuge poses a challenge for the State, as stated in the national report submitted for the universal periodic review,⁸² mainly because of movements on a border between Colombia and Venezuela that stretches 2,119 km, covering Apure, Táchira, Zulia and Amazonas States, where the terrain often makes it difficult of access. Action taken includes the Refugees and Asylum-seekers Organization Act, adopted on 3 October 2001; the regulations governing the Act of 28 July 2003; the rules of procedure of the National Refugees Commission approved on 28 January 2010; and

⁸⁰ Decree No. 6,239 of 22 July 2008.

⁸¹ Information provided by the General Inspectorate of the National Bolivarian Armed Forces, Human Rights and International Humanitarian Law Department, which was established by Decision No. 13240 of the Ministry of People's Power for Defence of 18 January 2010. Published in *Official Journal* No. 39,350 on 20 January 2010.

⁸² A/HRC/WG.6/12/VEN/1, para. 149.

the memorandum of understanding between Venezuela and Colombia, signed in April 2003. The Commission was established on 7 August 2003 pursuant to a presidential decree,⁸³ which nominated the members of the Commission in accordance with the provisions of article 12 of the Act.⁸⁴ It has offices in Zulia, Táchira and Apure States and the Capital District.

133. In March 2011, the National Refugees Commission agreed on a workplan with the Office of UNHCR with a view to strengthening the ties between the two institutions in order to simplify refugee procedures and establish a technical cooperation framework that would benefit both refugees and refuge-seekers. One aspect of this plan was to provide training through joint information and registration sessions throughout the year in remote communities in Apure, Táchira and Zulia. It also makes provision for continued training for border authorities and the development of legal guidelines to determine a refugee's status.

134. The Public Prosecution Service National School of Prosecutors was established pursuant to Decision No. 263 of the Attorney General of the Republic with a view to training new prosecutors to achieve a high professional level to take on investigations and trials. It opened in October 2008, with an initial intake of 117 lawyers selected from among 1,650 law professionals from Vargas, Miranda and Caracas States. In 2011, a total of 1,420 officials had been trained in various fields (see annex).

135. The education and training provided at the School comes in the form of the following programmes:

(a) Academic education, which is aimed at training and educating prosecutors and lawyers to extend, update and strengthen their knowledge, skills and abilities. The emphasis will be on the promotion of principles, institutional values, the ethics of public officials and justices of the peace and to reinforce the responsibility of representing an institution that forms part of the justice system;

(b) Legal training, which is made up of a number of academic activities designed to effect the formulation, institutionalization and implementation of the Single Training Plan for officials of the system so that they achieve integrated, systematic and progressive development that will enable them to carry out their duties more successfully;

(c) Social legal investigation, which is essentially applied investigation, strategic assessment and the dissemination of knowledge and information on justice,

⁸³ Presidential Decree No. 2539, published in *Official Journal* No. 37,748 of 7 August 2003.

⁸⁴ "Art. 12. The National Refugees Commission shall be established and shall comprise one (1) representative of the Ministry of People's Power for Foreign Affairs, who shall chair the Commission, one (1) representative of the Ministry of People's Power for the Interior and Justice, one (1) representative of the Ministry for People's Power for Defence, who shall have the right to speak and to vote. They shall be joined by one (1) representative of the Public Prosecution Service, one (1) representative of the Ombudsman's Office and one (1) representative of the National Assembly, designated by the Standing Committee on Foreign Policy of the Assembly, who shall be entitled only to speak. Sessions of the Commission may be attended by one (1) representative of the Office of the United Nations High Commissioner for Refugees as an observer, without the right to speak or vote. The Commission may also invite delegates from governmental or non-governmental institutions to its meetings, without the right to speak or vote.

the concept of the social State and the study of the management of the Public Prosecution Service and other institutions of the justice system.

136. Such is the quality of the instruction provided by the School that Venezuela was chosen to host the Secretariat of the Training Network of Ibero-American Public Prosecution Services. The appointment was made unanimously at the Eighth General Assembly of the Network, held in Santo Domingo, Dominican Republic. Among the activities to be held will be the first International Specialization Course in Criminalistics and Forensic Sciences, the practical part of which will be conducted in the Criminalistics Unit against the Violation of Fundamental Rights, which has 16 experts of various kinds on its staff. The students will be 18 officials of the Public Prosecution Service and two students invited from abroad.

137. The establishment of the Permanent Human Rights Faculty of the Public Prosecution Service National School of Prosecutors is founded on the State's obligation to guarantee every person, in accordance with the principle of progressiveness and without any discrimination, the irrevocable, indivisible and interdependent enjoyment and exercise of human rights. The Permanent Human Rights Faculty is an academic forum created by the School to promote and generate a culture of peace and the systematic diffusion of human rights as part of the cross-cutting issues of the training programmes for prosecutors of the Public Prosecution Service, the topic being "Social Criminal Justice System in Venezuela".

138. In 2009, a cooperation agreement was signed between the Public Prosecution Service, the Criminal Investigation Police and the University Forensic Police Institute on the education and training of experts from the Public Prosecution Service Criminalistics Unit against the Violation of Fundamental Rights, who provide support of prosecutors on the Public Prosecution Service by teaching them about criminal trials relating to such crimes as homicide, enforced disappearances, unlawful deprivation of freedom, burglary or injury or abuse of prisoners, in which officials acting in the performance of their duties or in the course of their work are alleged to have participated.

139. The Public Prosecution Service also participated in drawing up the *Consolidated Handbook of Procedures relating to the Chain of Custody of Physical Evidence*. This was done jointly with officials of the Criminal Investigation Police, the Intelligence Service, Civil Defence, National Institute for Transport and Inland Traffic Institute, the Caracas Metro and the Bolivarian National Guard, thus complying with the provisions of article 202-A of the Code of Criminal Procedure and article 26 of the Scientific, Criminal and Forensic Investigation Bodies Act. It was issued on 25 September 2011 by the Ministry of People's Power for the Interior and Justice and the Office of the Attorney General of the Republic.

140. The *Handbook* was written with a view to appropriately safeguarding digital, physical or material evidence, preventing it from being tampered with or contaminated from the time that it is identified in the site of an incident or the place of discovery and when it is collected and passes through the hands of various bodies engaged in criminal, forensic and scientific investigations, before the results are submitted to the competent authority at the end of the procedure. The *Handbook* will standardize the procedures used by criminal investigation bodies nationwide.

141. The police are governed by the mandate established in the Police Service and Bolivarian National Police Force Act, which states that one of the principles guiding

the new Police Service is to “protect the free exercise of human rights and public freedoms and to guarantee social peace”.⁸⁵

142. The National Experimental University for Security Services was established in 2009 as part of the Alma Mater Mission.⁸⁶ Its main objective is to create and promote a new university education system, open to all and with the mandate of serving the Venezuelan people, answering the need to establish a subsystem of police training.

143. The University is a product of the setting up of the new police model, which was conceived, owing to its complexity and its correspondence with the public authorities, to carry out police duties aimed at guaranteeing public safety. To date, a total of 6,848 officers have been trained and 11,290 are undergoing training.⁸⁷

144. Issue of the *Handbook on the Progressive and Judicious Use of the Police Force* and the *Handbook on the Use of Potentially Lethal Force*. The University has trained 4,500 officers of the Bolivarian National Police Force⁸⁸ and 2,400 prospective young policemen and -women. A total of 100,000 copies were printed and distributed free to the 80,100 police officers around the country in order to promote the new police model. It has also been distributed to the public, so that it can monitor police behaviour.⁸⁹

145. The University also established a special programme to enhance police professionalization, aimed at all public security officials at the national, regional or municipal level, offering them the opportunity to reach the university higher technical level or gain a degree in police service, thus meeting the requirement in the Police Duties Statute Act with regard to advancement. A total of 40,000 police officers from throughout the country have preregistered for the programme and over 18,000 have enrolled.⁹⁰

146. As regards prison issues, the Ministry of People’s Power for the Interior and Justice, which took over the responsibilities of the former National Prison Services Directorate, has carried out the task of providing prison services efficiently and effectively, guaranteeing accused or convicted persons the necessary conditions and tools to develop their potential or capacities with a view to enhancing the possibility of their reintegration into society, showing strict commitment to and observance of the fundamental rights of the human being, in accordance with the provisions of article 272 of the Constitution.⁹¹

⁸⁵ Police Service and Bolivarian National Police Force Act, art. 4.

⁸⁶ Set up pursuant to Decree No. 6,650 of 24 March 2009, published in *Official Journal* No. 39,148 of 27 March 2009, with the aim of promoting the transformation of Venezuelan university education and making it more interconnected both institutionally and territorially, guaranteeing to every person without exception, in accordance with the strategic lines of the Simón Bolívar national project, the right to a good university education.

⁸⁷ Speech by the Minister for People’s Power for the Interior and Justice, Mr. Tarek El Aissami, to the United Nations Human Rights Council.

⁸⁸ Ibid.

⁸⁹ Ibid.

⁹⁰ Information provided by the National Experimental University for the Security Services.

⁹¹ “The State guarantees a prison system that ensures the rehabilitation of prisoners and respects their human rights. Prisons therefore have work, study, sports and recreation areas; they are run by professional prison staff with university qualifications; they are governed by a decentralized

147. While the Directorate was in existence, progress was noted in the following areas of human rights training:

(a) Training courses were held at the Assistant Prison Officers' Training School, the aim being to develop, select and train assistant prison officers with responsibility for human rights, in readiness for the opening and putting into operation of new prison centres, and to complete the staffing levels of existing assistants;

(b) Advisory service workshops on screening and comprehensive care: during 2010, three such workshops were held with a view to raising awareness of the *Screening and Comprehensive Care Handbook*;

(c) Sociodemographic Assessment of the Prison Population of the Bolivarian Republic of Venezuela, 2010-2011: the aim of this was to obtain reliable and up-to-date information on the prison population as a whole in all the country's prison centres. This would make it possible to formulate prison policy in accordance with their characteristics and requirements on the basis of technical and scientific information, which should create a greater degree of certainty;

(d) Degree in prison studies: this was developed with a view to advancing the transformation of prisons, promoting the human rights of the prison population, designing comprehensive care policies and also guaranteeing the conditions required for protocols of treatment and social reintegration of prisoners.

148. These initiatives were carried out in compliance with the order made by the Inter-American Court of Human Rights in the Caracazo case against Venezuela, which ruled that the State must adopt all necessary provisions for the education and training of all members of its armed forces and its security agencies on human rights principles and standards and on the restrictions that must be placed on the use of weapons by law enforcement officials, even in a state of exception.⁹²

149. It should also pointed out that all programmes approved by the Ministry of People's Power for Planning and Development now stipulate an approach based on respect for human rights in order to ensure their implementation and sustainability.

Article 11

150. The Code of Criminal Procedure,⁹³ the Criminal Investigation Police Service Act, the Scientific, Criminal and Forensic Investigation Unit and the National

administration that is answerable to state or municipal governments and may be privatized. In general, preference is given to an open regime and to a system of prison farms. Non-custodial sentences are applied in preference to terms of imprisonment. The State establishes post-prison assistance institutions to enable former prisoners to reintegrate into society and encourages the establishment of autonomous prisons with an exclusively technical staff."

⁹² Judgement of 11 November 1999. Series C No. 58.

⁹³ Art. 181: "Evidence shall be valid only if it has been obtained by lawful means and introduced into the proceedings in accordance with the provisions of this Code. No use may be made of information obtained through torture, ill-treatment, coercion, threats, deceit, improper interference in the privacy of the home or correspondence, communications, documents and private records, or by any other means that impairs the will or violates the fundamental rights of

Institute for Medicine and Forensic Sciences set out mechanisms for the interrogation of persons subjected to arrest, detention or prison. The activities of officials are regulated by the Office of the Attorney General of the Republic and the Ombudsman's Office.

151. The Venezuelan State recognizes⁹⁴ that guaranteeing the rights of the prison population poses a significant challenge for the Government, which continues to address this issue seriously and vigorously, since it is having to combat the violent legacy of more than half a century of a mafia culture in prisons.

152. The prison system is made up of a number of bodies, entities, processes and procedures that are interconnected for the purpose of implementing a punishment and also ensuring the safety and security, allocation and general health of accused persons. Despite difficulties, the system has made considerable progress since 1999. The Constitution provides for the protection and guarantee of the rights of persons deprived of liberty; article 272 lays down the constitutional principles that should guide the Venezuelan prison system. The following actions have been taken:

(a) In 2004, the President issued the Prison Emergency Decree, which set in motion a series of strategies aimed at overhauling the Venezuelan prison system, beginning with the decision to carry out the first comprehensive, empirical and technical assessment of the prison situation nationwide that had been carried out in the country. The assessment was conducted in 2005 and yielded a range of data that corroborated and quantified various aspects of the situation that had been noted over the years by a number of social groups and organizations, especially the academic world and human rights NGOs;

(b) Following the assessment, which came out in 2006, a project to humanize and modernize the Venezuelan prison system was drawn up. It sought to deal with the needs of the criminal population by means of classification and treatment that used different approaches, such as education, employment and culture. One important aspect of the project is an access monitoring system, which has the general aim of installing monitoring systems to prevent weapons, drugs, explosives and other prohibited objects from entering the 27 penitentiary establishments of the country;

(c) The Department for the Custody and Rehabilitation of Prisoners has been renamed the National Prison Service Directorate,⁹⁵ since the term *recluso* ("prisoner") is "a pejorative and stigmatizing expression used as part of a culture of contempt for our Venezuelan brothers, who on some occasion committed some kind of crime";⁹⁶

persons. Neither shall any value be attached to information obtained directly or indirectly by unlawful means or procedures."

⁹⁴ Report submitted by the Venezuelan State on 7 October 2011 to the Human Rights Council for the Universal Periodic Review (A/HRC/WG.6/12/VEN/1), para. 147.

⁹⁵ Published in *Official Journal* No. 39,202.

⁹⁶ Statement by the Minister, Tarek El Aissami, reply by the Bolivarian Republic of Venezuela to the questionnaire from the Rapporteur on the Rights of Persons Deprived of Liberty of the Inter-American Commission on Human Rights, p. 4.

(d) Implementation of the prison management system allowed penitentiary establishments⁹⁷ to collect and monitor operational information generated in such establishments. It monitors the passage of persons deprived of liberty through every aspect of the prison system, processes data on the criminal population and audits legal proceedings to ensure that a sentence is carried out. This means that the system can keep track of a person from the beginning to the end of his or her term of imprisonment;⁹⁸

(e) With regard to the classification and care of persons deprived of liberty, the Code of Criminal Procedure provides that there should be minimum, medium and maximum security. The classification relates to the personal care given to a person deprived of liberty once sentence has been pronounced to determine what the person's situation is and, once the classification is made, to establish the care policy. Under the prison humanization project, care is undertaken by a criminologist, a sociologist, a psychologist, a social worker and a lawyer. This means that a person deprived of liberty can be given personalized care;

(f) Establishment of the National Prison Buildings Fund,⁹⁹ an autonomous and independent body having a legal personality and its own assets. It is an important part of the prison system, since it is responsible for the development of the physical infrastructure of the country's prisons and for the provision and maintenance of welfare, educational and other training services operating in the country's penitentiary centres;

(g) It should be pointed out that the establishment of the Fund meant that investments could be made to finish works under construction with a view to modernizing the prison system more effectively by building new and innovative establishments, whose physical appearance breaks with the traditional lay-out of the country's prison centres, providing inmates with such resources as study areas, workshops, general services, rooms containing medical equipment, kitchens and sports areas;

(h) The inclusion of persons deprived of liberty in the employment and educational environment is a procedure that makes for social harmony inside prisons, since it establishes standards and basic habits for organization in various

⁹⁷ These are detention centres, penitentiary centres, community treatment centres and other institutions, such as regional coordinating units and prison system technical support units.

⁹⁸ This system has been implemented in nine penitentiary centres: La Mínima Penitentiary Centre in Carabobo, the Coro Penitentiary Community, the Barinas Detention Centre, the Carúpano Detention Centre, the Venezuelan General Penitentiary, the Andean Region Penitentiary Centre, the Western Penitentiary Centre, the Tocorón Detention Centre and Yare III Penitentiary Centre. Electronic access control systems (metal detector arches, X-ray scanners, closed circuit television and hand-held metal detectors) have been installed and put into operation in 14 penitentiary establishments: La Mínima Penitentiary Centre in Carabobo, the Carabobo Detention Centre, the Carabobo Women's Wing, the Coro Penitentiary Community, the Women's Wing of the Venezuela General Penitentiary, the Andean Region Central Penitentiary, the Western Penitentiary Centre, the Yare III Penitentiary Centre, the Maracaibo National Prison, the Women's Wing of the Maracaibo National Prison, the Western Enforcement Centre, the Re-education Centre of the Maracaibo National Prison, the La Planta Detention Centre and the Uribana Penitentiary Centre of the Western Region Centre.

⁹⁹ Established in response to the imperative need identified by the National Executive for a technical institution capable of promoting the development of the country's prison infrastructure, 21 June 1995, published in *Official Journal* No. 35,737.

forms of occupation and study, promoting the acquisition of knowledge, abilities and professional skills or enabling a prisoner to raise his or her educational level in the interests of his or her own welfare. There are also men and women deprived of liberty who participate actively as workers in production workshops, earning a wage that enables them to contribute to their families' expenses;

(i) The prison population engages in employment activities in the following sectors: textiles, agriculture, baking, mechanics, maintenance, carpentry, leather goods, metalwork and handicrafts. Self-employed persons work in canteens, are engaged in informal trade or work as barbers and/or hairdressers. Those who opt to work inside the penitentiary establishment are engaged in cleaning toilet areas or administrative offices, or work as assistants in the kitchens serving the inmates or the staff, or work in the commissary store;

(j) Education is divided into the formal and the informal. Formal education comprises three educational programmes, Robinson, Ribas and Sucre. Informal education involves training courses in the following fields: mathematics, computer studies, spelling, English, Spanish, electrical studies, carpentry, metalwork, bricklaying, brick making, ceramics, upholstery, the making of underwear, lingerie, Christmas decorations, bags or dolls, food handling and confectionery, among others;

(k) Organizations registered with the Prisons Volunteers Coordination Board, which is attached to the Department for Classification and Comprehensive Care, are active in improving the quality of life of persons deprived of liberty by participating in or assisting with cultural or sporting activities, health procedures, spiritual assistance or informal training workshops, as well as giving donations. Such activities are formulated, planned and assessed by the National Prison Services Directorate, through the Department for Classification and Comprehensive Care. This means that, although civil society does not participate directly in the formulation of prison management policies, its participation in the form of support institutions contributes extremely positively to the protection of human rights;

(l) The Human Rights Council was set up by the Ombudsman's Office and has been operational since 10 March 2008 in a number of different prison camps. It is a body where the inmates of various wings are organized and represented and they are entitled to make recommendations. Thanks to the active participation of these councils, a line of direct communication has been established between the representatives of institutions and the prison community. This has created an enhanced area for dialogue, agreement and commitment to resolve the conflicts inside prisons and the result has been a satisfactory reduction in violence;¹⁰⁰

(m) The Higher Prison Council¹⁰¹ was established. It is a national office acting as the lead organization in "designing and formulating integrated policies that give structural form to the reform of the prison system";

¹⁰⁰ Questionnaire on persons deprived of liberty of the Rapporteur of the Inter-American Commission on Human Rights, p. 6.

¹⁰¹ Pursuant to Decree No. 6,553, published in *Official Journal* No. 39,080 of 15 December 2008, the Council is made up of a representative of the legislature and the executive, including the Ministries of Education, Sport, Culture, Community Economy, Health, Higher Education and Defence and the Ministry of People's Power for the Interior and Justice, which will chair the

(n) Preparation and approval on first reading of the new Prison Code¹⁰² on 5 April 2011, submitted to the National Assembly by representatives of all the bodies making up the Higher Council for Prisons on 8 February 2011;

(o) Extension of the system of Prison Symphony Orchestras, which was set up in 2007 in order to lower the level of violence in prisons and facilitate the process of the social reintegration of persons deprived of liberty through learning, practising and enjoying music. A total of 1,565 men and women deprived of liberty have taken part in the programme in the following centres: the Andean Region Penitentiary Centre, the Coro Penitentiary Community, the Western Penitentiary Centre, the Los Teques National Women's Counselling Institute and the Mínima Penitentiary Centre at Carabobo;

(p) The National Prison Sports Scheme was improved. Working with the support of the Ministry of Sport, the Ministry of People's Power for the Interior and Justice has successfully organized a large number of sporting activities with the aim of occupying leisure time in prisons;

(q) The National Prison Theatre Scheme was launched. Established by the Higher Prison Council, jointly with the Directors for a New Theatre Foundation, its aim is to generate ethical, moral and social values in the prison population through theatre as means of changing human behaviour, encouraging healthy social relations in penitentiary centres and acting as an instrument for effective social reintegration. The National Prison Theatre Scheme currently has two centres: the first was established in the Los Teques National Women's Counselling Institute in October 2010 and has been used, over the course of the project, by 100 female prisoners. The second was launched on 15 March 2011 at the Insular Region Women's Penitentiary Centre and was attended by 50 prisoners during the initial stage;

(r) Assessments of classification protocols for persons deprived of liberty;

(s) Establishment of the Ministry of People's Power for Prison Services.¹⁰³ The Ministry's plans include the following:

(i) Action against delays in bringing cases to trial. This campaign is known as "*cayapa*¹⁰⁴ to delayed proceedings", which involves the Public Prosecution

Council. There will also be representatives of the judicial branch, in the form of the Supreme Court, the civil branch, in the form of the Public Prosecution Service and the Ombudsman's Office, and the Juventud Toma las Cárceles ("Youth takes the prisons") Foundation.

¹⁰² Article 8 of the Code provides for the duty of the State to guarantee that the prison system, implementing the necessary mechanisms, will provide all persons deprived of liberty, without restriction except where established by law, will be able to enjoy and exercise the human rights enshrined in the Constitution of the Bolivarian Republic of Venezuela and in human rights treaties signed and ratified by the Republic. Article 10 subsequently provides that "any person deprived of liberty shall be treated with due respect for human dignity. The State shall guarantee protection against any measure or cruel, inhuman or degrading punishment, unless a lack of institutional capacity or reasons of internal security constitute justification for not complying with these obligations." Moreover, article 23 provides that "any person deprived of liberty shall have the right to have his or her physical, psychological and moral integrity respected while held within the prison system."

¹⁰³ Pursuant to Decree No. 8,266, published in *Official Journal* No. 39,721 of 26 July 2011.

Service, the staff of the courts and public defenders working together in the country's prisons with a view to dealing with the prison population case by case;

(ii) *Chamba*¹⁰⁵ plan: here the aim is that persons deprived of liberty should be given support and help with social reintegration, in addition to being provided with a trade. Every male or female prisoner receives a social contribution adjusted to the minimum wage and also a contribution to their social rehabilitation, which is taken into account by the courts, in that a sentence is reduced according to every day worked; at the same time they receive training, education and motivation courses;

(iii) *Cambote*¹⁰⁶ plan: this consists in repairs to the infrastructure of penitentiary establishments carried out by the prison population themselves.

Article 12

153. With regard to the duty to investigate offences that constitute human rights violations,¹⁰⁷ including torture, this is the responsibility of the justice administration system, particularly the Office of the Attorney General of the Republic, which takes charge of criminal proceedings in accordance with the provisions of article 11 of the Public Prosecution Service Act. In addition, article 29 of the Constitution provides for the imprescriptibility of offences constituting human rights violations and prohibits officials involved in such offences from enjoying procedural privileges: "The State is required legally to investigate and punish human rights offences committed by its authorities. Actions to punish crimes against humanity, serious human rights violations and war crimes are not time-barred. Violations of human rights and crimes against humanity are investigated and tried by the ordinary courts. Such offences are excluded from privileges which may allow them to go unpunished, such as pardons and amnesties."

154. According to case law, the denial of such procedural privileges extends to every stage of a trial, since they encourage a situation of impunity for offences against victims of human rights violations.¹⁰⁸ The Venezuelan State, acting through the Public Prosecution Service, has, moreover, complied with the requirement for imprescriptibility, the proof of this being that the police officers and military personnel alleged to be responsible for the deaths at the Caracazo were charged.

¹⁰⁴ In Venezuela, the expression "*cayapa*" is used to describe a process whereby members of a community work together cooperatively at a task, whether the task relates to an individual or a collective.

¹⁰⁵ This is an expression of Mexican origin, meaning "work" or "labour".

¹⁰⁶ This means to go to a place with a crowd of other people.

¹⁰⁷ The Public Prosecution Service has determined that offences that violate human rights constitute unlawful acts committed by a person performing a public function that infringe the essential attributes of a human being to the detriment of his or her dignity and are subject to a criminal sanction. Report of the Office of the Attorney General of the Republic, 2006, p. 68.

¹⁰⁸ Judgement No. 1368 of the Constitutional Division, File No. 01-2503, of 13 August 2008, and Judgement No. 626 of the Constitutional Division, File No. 05-1899, of 13 April 2007, which are available on www.tsj.gov.ve/decisiones/scon/Abril/626-130407-05-1899.htm.

Case of El Rosal investigative police

155. Another case that stands out for the impartiality and speed with which the investigation was conducted and the relevance that the case took on in public opinion relates to an investigation carried out by the Public Prosecution Service against two detectives assigned to the investigative police, ER and AS, for their alleged participation in the deaths of three prisoners in an event that took place in May 2011 in the Search and Arrest Department mentioned earlier, which was located in El Rosal, Chacao Municipality, in the city of Caracas.

156. Such was the magnitude of the case that the National Assembly issued a resolution¹⁰⁹ calling on the Public Prosecution Service to investigate the human rights violation against this group of prisoners and establish the criminal liability for what had happened, in terms set out in the resolution.

157. In view of the fact that the actions in question occurred in the headquarters of the Search and Arrest Department of the Investigative Police, officials of the Department might well have been involved. For that reason, the Public Prosecution Service ordered that the necessary expert investigation should be carried out to establish the exact cause of the deaths of the persons in pretrial detention. Expert appraisals were therefore carried out in the recently established laboratory of the Criminal Investigation Unit against the Violation of Fundamental Rights,¹¹⁰ whose experts received judicial authorization to exhume the bodies and carry out the necessary forensic analysis.

158. As a result of this incident, the Ministry of People's Power for the Interior and Justice decided to put in train a reform programme to bring the investigative police up to the standard of criminal police in a democratic society and launch an effective campaign against crime. The team that carried out the assessment was headed by the Executive Secretary of the General Police Council.¹¹¹ The team issued a range of recommendations on the overhaul of the investigative police, which led to the adoption of the new Organization Act of the Investigative Police Service, the Department of Scientific, Criminal and Criminalistic Investigations and the National Institute for Medicine and Forensic Sciences.¹¹²

¹⁰⁹ Published in *Official Journal* No. 39,666 of 4 May 2011.

¹¹⁰ This Unit was established in view of the need to promote and carry out strategies, policies and actions to speed up criminal investigations prompted by human rights violations with the alleged participation of public officials. In the specific case, the evidence was very strong and the detectives were placed in pretrial detention and charged with the offences of homicide perpetrated for petty and ignoble reasons, in the relative degree of complicity, cruel treatment of the detained person, failure to provide help and breach of international principles and covenants. Charges were also successfully brought against the pathologist attached to the Forensic Science Unit of the investigative police for the commission of the offences of covering up the offences of homicide perfidiously perpetrated for petty and ignoble reasons, breach of international principles and covenants, disclosure of secrets and issue of false certificates with a view to circumventing the law. Information provided by the Legal Support Department of the Public Prosecution Service.

¹¹¹ *Revista Cuerpo de Investigaciones Científicas, Penales y Criminalísticas* (Review of the Department of Scientific, Criminal and Criminalistic Investigations), 27 September 2011, http://revistacicpc.com/indexnoticias.php?subaction=showfull&id=1317114761&archive=&start_from=&ucat=&.

¹¹² Published in *Official Journal* (special issue) No. 6,079, 15 June 2012.

Article 13

159. Reference may be made in this regard to the content of paragraphs 50 to 58 of the unilateral periodic review submitted by the Venezuelan State to the Human Rights Council in Geneva on 7 October 2011. The Venezuelan State guarantees that every one of its nationals shall, free of charge, have right of access to the courts in order to engage the remedies provided for by law and ensure the enforcement and effective protection of their rights, including collective or diffuse ones, without having to claim poverty or indigence, as is the case under other legislations. Moreover, article 31 of the Constitution recognizes the right to address petitions or complaints to the international bodies established by the human rights treaties in order to request protection of their rights.

160. The result has been that, in recent years, there has been a substantial increase in complaints against the Venezuelan State and provisional measures;¹¹³ but the response of the Venezuelan State has also grown stronger and it has assumed responsibility in the appropriate cases, behaving not only reactively but also preventively with regard to human rights violations.

161. The courts of the Venezuelan State have convicted a total of 636 officials for torture, enforced disappearance or homicide between the years 2000 and 2011 (see four attached annexes).

Article 14

162. Article 30 of the Constitution enshrines the obligation to make full reparations to the victims of human rights violations and to their legal successors, including payment of damages. It also states that “the State shall adopt the necessary legislative and other measures to give effect to the damages provided for in this article.” In addition, in article 46, paragraph 1, it is established that “every victim of torture or cruel, inhuman or degrading treatment effected or tolerated by agents of the State has the right to rehabilitation”.

AN case

163. On 12 June 1965, officials of the now-defunct General Police Directorate broke into the office of an alleged member of the committee campaigning for the freedom of General Marcos Pérez Jiménez and arrested Mr. AN, together with other persons present in the office. Mr. AN was later brutally tortured and taken to El Dorado prison, where, under a correctional measure provided for under the Vagrancy Act, he was imprisoned for more than two years, during which time he was not informed of the charges against him, among other irregularities. Under the aforementioned act, classification as a vagrant was an administrative process and a person could be imprisoned for up to five years without a legal review of their detention. In addition to lacking the necessary safeguards for due process, the Act was applied in an arbitrary and discriminatory manner during the period 1952-1958,

¹¹³ Cases relating to La Pica Detention Centre in Monagas, the Yare I and Yare II Capital Region Penitentiary Centre, the Cárcel de Uribana Penitentiary Centre of the Western Central Region, El Rodeo I and El Rodeo II Capital Detention Centre, the Cárcel de Tocorón Penitentiary Centre in Aragua and the Cárcel de Vista Hermosa Detention Centre in the city of Bolívar.

when General Marcos Pérez Jiménez was in power. At the time when Mr. AN recalls being freed, it was obligatory to provide a criminal record to potential employers; because of this, he was unable to find work. The situation led him to file a claim, on 28 June 2000, for pecuniary and non-pecuniary damages against the Bolivarian Republic of Venezuela, through the Ministry of the Interior and Justice, today the Ministry of People's Power for the Interior and Justice, for his imprisonment and for the application of the correctional measure of incarceration provided for under the Vagrancy Act.

164. The first ruling on this case was Decision No. 0409, which was made eight years later. It contained a partial judgement on the claim by the provisional Political Administration Division.¹¹⁴ This decision was later reviewed and annulled by the Constitutional Court,¹¹⁵ which ordered the Political Administration Division of the Supreme Court to issue a new judgement that complied with the doctrine established in its verdict.

165. On 4 March 2010, the provisional Political Administration Division of the Supreme Court reviewed its criteria with regard to the responsibility of the State and established, in ruling 206, the following: "Pecuniary responsibility of the State constitutes one of the guarantees available to citizens with regard to the obtaining of damages for cases in which the actions of the State have been unlawful, having in mind that due consideration and prudence should be used to take into account relevant facts that may exempt it from responsibility, such as an act by a third party, fault of the victim, or force majeure or unforeseeable circumstances, as these, if not taken into account, could create unjust situations and would place an excessive burden on the public finances."¹¹⁶

166. Nevertheless, the Administration would be liable for damages in the following cases: (a) harm has been done to the claimant's rights or property, (b) the harm done is attributable to the Administration, through its actions and (c) there is a causal

¹¹⁴ On 2 April 2008, as follows: finds that compensation for pecuniary damages is unwarranted; orders the Bolivarian Republic of Venezuela, through the Ministry of People's Power for the Interior and Justice, to publish the facts as compensation for non-pecuniary damage; orders the destruction of all criminal records held in the archives of the Ministry of People's Power for the Interior and Justice and any of its departments, with the exception of the list of prisoners kept in the National Archives, which has been declared a historical document, that relate to the correctional measure to which the claimant was subjected, as well as the destruction of any other administrative document that contains reference to that measure; and orders the insertion of a marginal note in the register of prisoners held at El Dorado labour camp indicating that the provisional Political Administration Division of the Supreme Court agreed to make a public apology to the Venezuelan citizen AN for his unlawful detention and imprisonment in that prison from 19 July 1965 to 2 August 1967, as a result of the unlawful application of a supposed correctional measure that was contained in the Vagrancy Act.

¹¹⁵ In ruling No. 1,542 of 17 December 2008.

¹¹⁶ Following a review of the facts that could provide an exemption of responsibility, the Division decided: "finds that the claim by Mr. AN for compensation for non-pecuniary harm that was caused as a consequence of the infringement of his life plan and his moral sphere caused by his imprisonment for more than two (2) years in El Dorado prison under the Vagrancy Act without information as to the reasons for his incarceration is warranted. In that regard, orders the Bolivarian Republic of Venezuela, through the Ministry of People's Power for the Interior and Justice, to compensate Mr. AN with a one-off, lump-sum payment of two hundred thousand bolívars (Bs. 200,000.00), as well as a monthly life pension equivalent to thirty taxation units (30 T.U.)."

relationship between the act attributed to the Administration and the harm caused by that act.

167. Another example of fulfilment of articles 30 and 140 of the Constitution is the Act to Punish Politically Motivated Crimes, Disappearances, Torture and Other Human Rights Violations in the Period 1958-1998,¹¹⁷ which aims at “setting up mechanisms to guarantee the right to truth and punish the persons responsible for human rights violations such as murders, enforced disappearances, torture, injuries, arbitrary deprivation of freedom, enforced displacement of communities and persons, expulsions, arbitrary exile and deportations, unlawful entry, harassment, violation of women and physical, psychological and moral injuries, solitary confinement, isolation, libel and insult, loss of assets, mass repression in urban and rural areas, simulation of punishable acts, and illegal administrative proceedings that, as a consequence of the use of policies of State terrorism, were carried out against sectors of the population, revolutionary militants and those fighting for justice, democracy and socialism during the period 1958-1998. In addition it ensures the reclamation of the historical memory, compensation for victims and the locating of the remains of those killed in that fight.”

168. The Act provides for the achievement of this objective through five specific actions:

(a) Creating a truth and justice commission to investigate the actions, human rights violations and other consequences of the terrorism committed by the State during the period 1958-1998;

(b) Identifying the instigators and perpetrators, both Venezuelan and foreign, who committed human rights violations as part of the terrorism committed by the State and as part of its counter-insurgency doctrine during the period covered by the present Act;

(c) Ascertaining the whereabouts of victims to ensure the recovery of their remains and their honour and dignity, and arranging for their internment in accordance with the law and with the traditions and customs of their families;

(d) Defending the actions of the victims of State terrorism who were fighting for anti-imperialism, popular democracy and socialism in Venezuela;

(e) Establishing mechanisms for compensating victims.

169. With regard to the last aspect, the Act recognizes the guarantee of non-recurrence as a form of reparation in its article 7: “The Venezuelan State assumes the responsibility and obligation to satisfy and guarantee the non-recurrence of the human rights violations that took place during the period covered by the present Act, to which end it shall:

“(a) Disseminate the truth among the public, in a manner that does not endanger victims;

¹¹⁷ Recently approved by the National Assembly, published in *Official Journal* No. 39,808, of 25 November 2011. In its preamble the following is stated: In Venezuela, criminal practices of enforced disappearance, torture and other human rights violations for political reasons, orchestrated by officials from the United States of America, began in 1960. These practices were later applied in Brazil, Argentina, Uruguay and Chile and were known throughout the Southern Cone as “Operation Condor”. People were tortured to obtain information and then disappeared.

“(b) Locate the remains of disappeared persons and provide specialized assistance to identify them;

“(c) Guarantee the restitution of the rights of all victims;

“(d) Return the remains of the dead to their family members for their interment according to their family and community laws and customs, and defray the associated costs;

“(e) Make an official announcement with regard to the public recognition of the events, the acceptance of responsibility and the re-establishment of the dignity, reputation and rights of the victims of human rights violations;

“(f) Develop public policies on strengthening institutions and on disseminating and promoting human rights in order to eradicate the arbitrary practices of State terrorism that contravene the special humanist values and principles that are established in the Constitution of the Bolivarian Republic of Venezuela;

“(g) Promote, in keeping with the people’s power (*poder popular*), various forms of honouring the victims and the historical events in question, in order that they shall remain in the collective memory of present and future generations, as a guarantee that they shall never be repeated;

“(h) Recognize its responsibility for the perpetration of the events identified and shall continue the relevant inquiries;

“(i) Be able to recognize victims at any stage of the relevant legal proceedings.”

170. Similarly, the draft special act on preventing and sanctioning torture and other cruel, inhuman or degrading treatment, which was approved by the Government at its first hearing, establishes, in article 11, the duty of the State with regard to the rehabilitation of the victims of torture or other cruel, inhuman or degrading treatment and the obligation of the State to provide “medical, psychological and social assistance to the victims until they are fully rehabilitated”.

171. It is interesting to note the response of the State in the aftermath of the Caracazo riots:¹¹⁸ it made an unprecedented effort, through a three-pronged approach, to guarantee to the victims and their family members that the actions that took place during the riots would not go unpunished.

172. In November 2010, the Office of the Vice-President of the Republic launched a process whereby the State would provide voluntary compensation to 186 family members of deceased victims and one injured victim (José Luis Martínez García). In addition, between May and October 2010, visits were carried out to the El Sur

¹¹⁸ In which the Inter-American Court of Human Rights ordered the State to pay, as compensation for pecuniary damage, the total sum of \$1,559,800 (one million five hundred and fifty-nine thousand eight hundred United States dollars) or its equivalent in Venezuelan currency and, as compensation for non-pecuniary damage, \$3,921,500 (three million nine hundred and twenty-one thousand five hundred United States dollars) or its equivalent in Venezuelan currency, a sum that includes payments of up to \$90,000 (ninety thousand United States dollars) as compensation, pursuant to paragraph 103 of Judgement No. ..., for suffering caused by the facts of the case and by subsequent disability, to the three victims of violations of the right to humane treatment.

cemetery and the municipal Las Clavellinas cemetery in Guarenas, Miranda State, to review the construction of the provisional monument in which the skeletal remains of 71 victims of the Caracazo and those of the 78 individuals listed in the ruling of the Tenth Criminal Court, which are located in the forensic laboratory in Fuerte Tiuna, Caracas, will be interred.

173. It is also important to highlight that the Act on the Protection of Victims, Witnesses and Other Parties to Legal Proceedings provides for the creation of a fund for compensation and assistance for victims and witnesses, the legal mechanism of which is currently being assessed for effectiveness by the Public Prosecution Service. In this regard, the Public Prosecution Service is undertaking the budgetary calculations and allocations needed for the adequate functioning of the fund and, for that purpose and among other measures, it is assessing information provided by senior public prosecutors at the national level, with regard to the number of agreed protection measures, as well as the infrastructure required for the creation of the temporary shelters and refuges provided for under the Act.

174. The Public Prosecution Service has drafted a training plan for specialists, entitled “Psychosocial intervention strategies as tools to treat victims of crime”, in order to provide effective training for working with victims and evaluating the psychological consequences of crime and the impact of crime on the community. Such specialists provide ongoing assistance to victims during investigations and legal proceedings brought by the prosecutor.

175. Between 2000 and 2011, the Venezuelan Government, through the bodies that comprise its justice system, granted 4,844 protection measures, including personal or residential protection, temporary accommodation in safe houses or protection centres, change of residence, provision of financial assistance for accommodation, transport, food, communications, health care, re-entering the labour market, administrative formalities, security systems, home refurbishing and other essential costs, within or outside the country, and, if the person in question is unable to obtain such benefits by his or her own efforts, assistance with re-entering the labour market or changing identity in order to keep the location of the protected person and their family a secret.

Article 15

176. The guiding principle in criminal prosecution in the Bolivarian Republic of Venezuela is that of freedom of proof, according to which the parties have the right to prove, by any method, all the facts relevant to the case, on condition that the inclusion of those facts is carried out in accordance with the Code of Criminal Procedure and with the principles and guarantees enshrined in the Constitution and the laws of the Republic. The principle of free proof is covered in article 182 of the above-mentioned Code.¹¹⁹

¹¹⁹ “Article 182. Freedom of proof. Except as otherwise provided for by the law, all the facts and circumstances relevant to reaching the correct outcome in a case may be proved through any method that is in accordance with the provisions of this Code and not expressly prohibited by law. In particular, legal restrictions relating to the civil status of persons shall take precedence. A method of proof, to be admitted, must concern, directly or indirectly, the subject of the investigation and must be of use in discovering the truth. The courts may limit the methods of

177. The Venezuelan criminal system admits all evidence, on two conditions: (a) it must be admitted into the proceedings in accordance with the provisions of criminal procedural law; (b) its admission must not be prohibited by law. With regard to evidence, public prosecutors, as parties to the criminal proceedings, must observe the principle of lawfulness. Thus no information obtained through torture, ill-treatment, coercion, threats, deception or unlawful interference in the privacy of the home, correspondence, communications, papers or private files, nor information obtained by any other method that diminishes a person's will or violates their fundamental rights, may be used. Information that comes indirectly or directly from unlawful methods or procedures may also not be used.

178. The rights of the accused, described above in the context of article 127 of the Code of Criminal Procedure, form part of what is known as the right of due process; the infringement of any of those rights nullifies due process and therefore any evidence obtained by violating those rights must be withdrawn and will not be taken into account by the judge.¹²⁰

179. With regard to confessions, in our penal system, which is predominantly an adversarial one, probative value may not be accorded to an extrajudicial confession: according to the principles of orality and immediacy, evidence is based on a public and oral hearing, and only a statement made before a judge by a defendant informed of his or her rights and guarantees, in the presence of his or her legal representative, may be taken into account by the court. Such statements must be made without coercion of any sort and in accordance with the guarantee enshrined in article 49, paragraph 5, of the Constitution, which exempts persons from testifying against themselves and from confessing guilt. Therefore, it is not likely that a confession made as a result of torture would be used or considered in Venezuelan criminal proceedings.

180. Article 197 of the Code of Criminal Procedure states unequivocally that: "Evidence shall be admissible only if it has been obtained by lawful methods and admitted into the proceedings in accordance with the provisions of this Code. No information shall be used that has been obtained through torture, ill-treatment, coercion, threats, deception or unlawful interference in the privacy of the home, correspondence, communications, papers or private files, nor information obtained by any other method that diminishes a person's will or violates their fundamental rights. In addition, information that comes directly or indirectly from unlawful methods or procedures may not be used." That provision is fully complied with by public prosecutors, as the courts would nullify any actions that violated the defendant's right to defence.¹²¹

proof offered in relation to a fact or circumstance when it has already been sufficiently verified by the proof already examined. The court may disregard proof that is offered to substantiate a matter of common knowledge."

¹²⁰ Article 49, paragraph 1, of the Constitution of the Bolivarian Republic of Venezuela states that "any evidence obtained in violation of due process shall be null and void".

¹²¹ As shown by the appeal for cassation lodged with the Criminal Division of the Supreme Court, in which it is stated: "It is clear that, in the present case, from the preparatory and investigation stage, procedures were not followed and were not monitored by the competent judge, resulting in the violation of appropriate forms of action that left Mr. AP without access to legal assistance. The appeal for cassation is therefore upheld and, consequently, all actions subsequent to the appearance by the defendant before the police and the Public Prosecution Service shall be

181. Another judgement of the Criminal Division of the Supreme Court¹²² interprets article 305 (now article 285) of the Code of Criminal Procedure to mean that the parties may request records that they consider necessary for the exercise of their rights, and that the Public Prosecution Service must provide such records if it considers them necessary or, if it does not, must justify its reasons for not providing them.

182. The judgement of the Criminal Cassation Division extending the presumption of innocence, according to which “it has been stated in established jurisprudence that statements by police officers are not a sufficient basis for prosecuting individuals — such statements merely constitute an indication of guilt”, represented a genuine judicial advance in favour of due process.¹²³

183. With regard to extradition and mutual legal assistance in criminal matters, the Public Prosecution Service has made it clear that information requested through a letter rogatory must be intended for the use specified in the request: “One of the principles governing mutual assistance in criminal matters is that of speciality, according to which the requesting State may not transmit or use the information or the evidence provided in response to a request for assistance in legal actions, investigations or proceedings other than those indicated in the request without the prior consent of the requested State”.¹²⁴ It is a responsibility of all public prosecutors to ensure that constitutional rights and guarantees are respected at all stages of judicial and administrative proceedings.¹²⁵

nullified and proceedings shall be restarted, from the investigation stage, in order that the person under investigation is treated in accordance with article 49 of the current Constitution and of article 125 (now article 127) of the Code of Criminal Procedure. In that regard, he shall be informed in a clear and specific manner of the rights to which he is entitled, he shall have access to evidence and he shall request that which he considers relevant, in order to clarify the facts and conduct his defence.”

¹²² Judgement No. 181 of 3 April 2008, File No. A07-0489: “According to the established jurisprudence of this Division, an application for the taking of evidence, by any party, is vital for the exercise of the right to defence and for the application of the principle of equality before the law and the principle of adversarial proceedings, which, by its very nature, is related to the conduct of proceedings. Any act or omission that affects a request, requirement or condition for obtaining, advancing or producing evidence shall have the effect of nullifying absolutely that evidence as a result of infringement of the right to due process or interference in that process, both being equally serious (Judgement No. 425 of 2 December 2003, summing-up by Judge Blanca Rosa Mármol de León).”

¹²³ Criminal Division, Judgement No. 3 of 19 January 2000, File No. 99-465, available from www.tsj.gov.ve/decisiones/scp/Enero/03-190100-99-465.htm.

¹²⁴ Report by the Attorney General of the Republic, 2008, p. 78, Memorandum to the Third Prosecution Office of the competent national Public Prosecutor’s Office, with regard to the request for mutual legal assistance submitted by the National Prosecutor’s Office, Schiphol Department, Netherlands, in relation to “Operation Tallis”.

¹²⁵ Public Prosecution Service Act, art. 31.