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**Consideration of reports submitted by States parties
under article 40 of the Covenant**

List of issues in relation to the fourth periodic report of the Bolivarian Republic of Venezuela

Addendum

Replies of the Bolivarian Republic of Venezuela to the list of issues*

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* The present document is being issued without formal editing.



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Reply to question 1

1. The implementation of all international instruments signed and ratified by Venezuela is governed by the spirit and terms of article 23 of the Constitution of the Bolivarian Republic of Venezuela. Article 23 provides that human rights treaties, covenants and conventions have constitutional rank and take precedence over domestic legislation wherever the standards they contain are more favourable to the enjoyment and exercise of human rights than those established in the Constitution and laws of the Republic.

2. In the event of a contradiction between an international human rights treaty and a domestic constitutional provision, the Constitutional Chamber of the Supreme Court is competent to resolve the conflict by means of a constitutional interpretation.

3. Judgements 1309/2001 and 1265/2008 of the Constitutional Chamber of the Supreme Court clearly establish that where there is a contradiction or conflict between an international treaty and a domestic constitutional provision, the interpretation must provide dual justification: internal (consistency with the legal system) and external (alignment with the most appropriate political theory underlying the system and with the institutional precepts that form its ethical framework).

4. Accordingly, the standard to be used in resolving any conflicts between principles and provisions must be compatible with the political intent of the Constitution (i.e., a democratic and social State based on the rule of law and justice), and should not undermine the legitimacy of that intent by pursuing ideological interpretations that give absolute precedence to individual rights or that establish primacy of international law over domestic law to the detriment of State sovereignty.

5. In its jurisprudence the Supreme Court has established guidance on how judges and litigants should interpret the invocation and application of the provisions of the International Covenant on Civil and Political Rights and all other international human rights instruments signed and ratified by the Republic.

6. This constitutional principle is established in Judgement No. 1077/2002 (case of Servio Tulio León Briceño), Judgement No. 0-0158 of 7 August 2007 and article 25, paragraph 17, of the Organic Law on the Supreme Court.

Current process for giving effect to the Committee's decisions under the Optional Protocol

7. The Venezuelan State, in strict conformity with the provisions of the Constitution and the legal system in force, recognizes and complies with the decisions of international bodies to which it is bound through its ratification of an international convention. For those decisions to be fully implemented in the Bolivarian Republic of Venezuela, they must be in line with the Constitution and with domestic law inasmuch as no State body could implement any decision or action that is in direct violation of the Constitution, as this would constitute disregard for the State and would make public servants liable for carrying out unconstitutional acts.

8. Article 31 of the Constitution provides that the State shall adopt, in accordance with the procedures established by the Constitution and the law, such measures as may be necessary to enforce decisions adopted by international bodies.

9. In accordance with Judgement No. 1077/2000 of the Constitutional Chamber of the Supreme Court, the procedures for enforcing the decisions of international bodies as set out in article 31 of the Constitution should be established through a general constitutional interpretation until such time as the relevant legislation is enacted.

10. This power stems from article 335 of the Constitution, which provides that the Supreme Court is the supreme authority for providing definitive interpretations of constitutional rules and principles. Its interpretations are binding on the other chambers of the Supreme Court and on all other courts of the Republic.

Reply to question 2

11. In keeping with its constitutional and legal mandate to promote, defend and oversee human rights, the Office of the Ombudsman monitors the activity of all national, state and municipal government agencies and officials in the executive, legislative, judicial, electoral and military branches as well as other bodies within the civil branch of government. The Office also concerns itself with the activity of private individuals who provide public services, in accordance with the Constitution.

12. During the 2007–2014 administration, the Office of the Ombudsman was accredited on two occasions, in 2008 and 2013, by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), which is the international association for national human rights institutions. ICC promotes and strengthens these institutions to ensure that they are in conformity with the Paris Principles, and it takes the initiative in matters regarding the promotion and protection of human rights. The Office of the Ombudsman is thus an internationally certified institution that fulfils its mandate to promote, defend and oversee human rights.

13. In 2008, following a thorough assessment, ICC determined that the Office of the Ombudsman should be accredited in category A, as it considered that the institution continued to be in full compliance with the Paris Principles. The Paris Principles are a set of minimum international criteria that assess the effectiveness and efficiency of a national human rights institution based on its competencies, responsibilities, composition and guarantees of independence and pluralism, as well as its mode of operation. In January 2013, the Office submitted the documentation required by ICC for the reaccreditation process; the series of special reports produced over the past five years were also submitted. ICC undertook its periodic review of the accreditation of the institution in May. The Subcommittee on Accreditation, the ICC body responsible for reviewing the accreditations of all members of the association, recommended accrediting the Office of the Ombudsman with a category A rating, thus certifying that it is in full conformity with the Paris Principles. The recommendation was endorsed by the ICC Bureau at a meeting held in Accra, Ghana, on 26 November 2013. It is worth noting that the Office of the Ombudsman has maintained this ranking since 2002.

Reply to question 3

Legal and regulatory framework prohibiting all discrimination, whether direct or indirect, including in private domains, such as housing and employment

14. The commitment of the Venezuelan State to combat racial discrimination was clearly expressed in its combined nineteenth to twenty-first periodic reports (CERD/C/VEN/19-21), presented on 9 July 2012 to the Committee on the Elimination of Racial Discrimination.

15. During the consideration of the report, the following positive aspects were highlighted: legislative and institutional measures, social inclusion policies and the social development plans, programmes and measures for inclusion of indigenous peoples and people of African descent, which have contributed to combating structural racial discrimination. Attention was also drawn to the progress made in education and

the campaign against illiteracy, with the country being declared “illiteracy-free territory” in October 2005 by the United Nations Educational, Scientific and Cultural Organization (UNESCO); and special note was taken of the fourteenth population and housing census conducted in 2011, which included questions concerning self-identification as being Afro-descendent or a member of an indigenous people.

16. In the concluding observations issued by the Committee on the Elimination of Discrimination against Women on the combined seventh and eighth periodic report of the Bolivarian Republic of Venezuela on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW/C/VEN/CO/7-8), the Committee highlighted the State party’s efforts to improve its institutional framework to advance the elimination of discrimination against women and promote gender equality. Such efforts included the establishment of the National Commission on Gender Justice in 2011 and the Ministry of People’s Power for Women and Gender Equality in 2009.¹ The Committee also commended the signing of international instruments in this area.

17. The legislative framework encompasses the following laws:

- Act adopting the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women² (Convention of Belém do Pará, 1995);
- Equal Opportunities for Women Act³ (1999);
- Constitution of the Bolivarian Republic of Venezuela⁴ (2000);
- Act adopting the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime⁵ (2001);
- Act adopting the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women⁶ (2001);
- Indigenous Peoples and Communities Act⁷ (2005);
- Child and Adolescent Protection Act⁸ (2007);
- Act on Women’s Right to a Life Free from Violence⁹ (2007);
- Act on the Promotion of Breastfeeding¹⁰ (2007);
- Persons with Disabilities Act¹¹ (2007);
- Act on the Protection of Families, Maternity and Paternity¹² (2007); Indigenous Languages Act¹³ (2008);
- Indigenous Artisans Act¹⁴ (2009);

¹ Decree No. 6663, Official Gazette, No. 391156, 13 April 2009.

² Official Gazette, No. 35632, 17 January 1995.

³ Official Gazette, No. 5398, Special Issue, 26 October 1999.

⁴ Official Gazette, No. 5453, Special Issue, 24 March 2000.

⁵ Act No. 64, Official Gazette, No. 37353, 27 December 2001.

⁶ Official Gazette, No. 37304, 17 October 2001.

⁷ Official Gazette, No. 38344, 27 December 2005.

⁸ Official Gazette, No. 5859, Special Issue, 10 December 2007.

⁹ Official Gazette, No. 38770, 18 September 2007.

¹⁰ Official Gazette, No. 38763, 6 September 2007.

¹¹ Official Gazette, No. 38598, 5 January 2007.

¹² Official Gazette, No. 38773, 20 September 2007.

¹³ Official Gazette, No. 38981, 28 July 2008.

- Cultural Heritage of Indigenous Peoples and Communities Act¹⁵ (2009);
- Organic Act on Racial Discrimination¹⁶ (2011);
- Education Act¹⁷ (2009);
- Social Responsibility in Radio, Television and Electronic Media Act¹⁸ (2010);
- Organic Act on Labour and Workers¹⁹ (2012);
- Amendment to the Act on Women's Right to a Life Free from Violence²⁰ (2014);
- Act on the Promotion and Protection of the Right to Equal Treatment for Persons living with HIV/AIDS and their Families²¹ (2014).

Current strategies to address discrimination on grounds of sexual orientation or gender identity

18. The Office of the Ombudsman has recognized the urgent need to formulate, develop and implement a strategic institutional policy to promote, defend and monitor the human rights of lesbian, gay, bisexual, transgender, transsexual and intersex persons (LGBTTI). It has responded by establishing linkages and pursuing joint initiatives with other authorities and competent State bodies and with social actors involved in the defence of these rights.

19. To that end, the Office's activities to promote, monitor and defend the human rights of the LGBTTI community aim to:

- (a) Acknowledge that LGBTTI individuals are a vulnerable population;
- (b) Deal with complaints, reports and petitions concerning violations of rights on the basis of sexual orientation or gender identity;
- (c) Assess the human rights situation of the LGBTTI community with participation by the main stakeholders;
- (d) Train staff working in the Office of the Ombudsman in matters concerning the human rights of the LGBTTI community;
- (e) Train officials responsible for enforcing legislation relating to the human rights of the LGBTTI community;
- (f) Organize activities to promote and publicize the human rights of the LGBTTI community;
- (g) Propose legislative and judicial measures in support of the LGBTTI community.

20. The Ministry of People's Power for Women and Gender Equality was established in 2009 and given responsibility for pursuing public policies in this area, including promoting activities to mainstream the gender perspective in public policy. Four strategic pillars have been identified: (a) inclusion of women in the social production sector; (b) proactive political participation of women in all areas of national public life; (c) health and quality of life; comprehensive health care for women; and

¹⁴ Official Gazette, No. 5929, Special Issue, 15 August 2009.

¹⁵ Official Gazette, No. 39115, 6 February 2009.

¹⁶ Official Gazette, No. 39823, 19 December 2011.

¹⁷ Official Gazette, No. 5929, Special Issue, 15 August 2009.

¹⁸ Official Gazette, No. 39579, 23 December 2010.

¹⁹ Official Gazette, No. 6076, Special Issue, 7 September 2012.

²⁰ Official Gazette, No. 40551, 28 November 2014.

²¹ Official Gazette, No. 40571, 30 December 2014.

education and research on equality; (d) awareness-raising of class, ethnicity and gender perspectives; culture and liberation ideology.

21. In 2013, the Venezuelan State, through the Ministry, restructured the system of forums that had initially been set up by women's movements to promote the Women for Peace and Life Movement. The family committees were remodelled into gender equality committees with an eye to boosting women's political and social participation in their communities and strengthening social oversight in such areas as prevention of violence against women, defence of the economy and the promotion of gender equality. Since the end of 2013, a total of 841 women's economic defence committees and 205 women and gender equality committees have been formed.

22. With a view to raising awareness of gender, class and ethnicity perspectives, public policies have been pursued that seek to provide training to women from a gender perspective and thus empower them locally and in the community while promoting gender equality and equity. In 2012 and 2013, 42,953 women received training in social and political issues and 1,285 women received training in the gender perspective.²²

Measures to prevent members of this group from being murdered, assaulted or threatened

23. The Office of the Ombudsman has established a special office with a nationwide mandate to handle human rights of the LGBTTI community and it has spoken out against violations of the human rights of homosexual and transgender persons. The Office has worked to promote and publicize the community's rights and to provide training for public servants responsible for receiving and processing complaints.

24. The Venezuelan State has also launched a national crime prevention programme that is intended to prevent crime-related situations that constitute a threat, danger or risk to citizens' enjoyment of their human rights. The programme targets structural conditions through the application of preventive measures and adjusts penalties to the specific right violated.

25. In addition, the Ministry of People's Power for Internal Affairs, Justice and Peace designs its plans, programmes and projects with an eye to creating a national, state, municipal and local framework of competent bodies to prevent human trafficking through a comprehensive approach designed to guarantee the enjoyment and exercise of rights by the individuals concerned. So far, 50,630 persons have received training in how to prevent human trafficking and provide comprehensive care for victims.

26. The Act on the Protection of Victims, Witnesses and Other Parties to Judicial Proceedings²³ contains safeguards for those groups of persons and defines the scope, modalities and procedures for protective measures. The Act provides for the establishment of a unit to administer resources for the protection and support of these individuals; the unit will be attached to the Public Prosecution Service and will have a budget to cover all its expenses.

Reply to question 4

27. The Office of the Ombudsman filed an action to annul section 57 of the Civil Code. On 16 July 2013, the Constitutional Chamber of the Supreme Court granted the action (through Judgement No. 953) on the grounds that the section conflicted with

²² Annual report. Minmujer/Strategic Office for Public Policy Follow-up and Evaluation, 2013.

²³ Published in the Official Gazette, No. 38536, 4 October 2006.

articles 21 and 77 of the Constitution in that it set out different conditions based on gender and with regard to equality between the spouses. In accordance with the principles and rights set forth in the Constitution, there is no longer any legal impediment to a woman remarrying after the annulment or dissolution of a previous marriage.

28. The Constitutional Chamber found the rule to be discriminatory with respect to gender and the protection of paternity, since imposing the time limit would create a situation of inequality in voluntary recognition between the father and the mother as well as recognition of the child's identity.²⁴ The Chamber clarified that such right would not be undermined by the mother's remarriage but rather depended on the voluntary recognition and the various procedures established in the legal system.

29. The employment rate of women in the formal sector in the first half of 2014 stood at 62.3 per cent, which represents an increase vis-à-vis the first semesters of 2013, 2012, 2011 and 2010. For the informal sector, the rate was 37.7 per cent, which represents a drop vis-à-vis the first semesters of 2013, 2012, 2011 and 2010.

30. The activity rate for the first half of 2014 was calculated at 79 per cent for men and 50.8 per cent for women.²⁵ The activity rate for women aged 25 to 44²⁶ has steadily increased since 2000: for the first half of 2014, the rate stood at 69.2 per cent for the 25–44 age group, compared with 27.7 per cent for the 15–24 age group. For men, it was 95.4 per cent (25–44 age group) and 54 per cent (15–24 age group). This indicates that the proportion of economically active men (15 years and over) exceeds that of women who are willing and able to work. In the case of women aged 45 to 64 and those over 65, there was a steady increase between 1998 and the first half of 2014, with the percentage rising to 44.9 per cent.²⁷

31. In the first half of 2014, the employment rate²⁸ for women stood at 91.7 per cent and for men at 92.6 per cent. In comparison with the first half of 2013, formal employment among women in the first half of 2014 exceeded that of men by 5 percentage points, averaging 62.3 per cent for women and 57.3 per cent for men. In the informal sector, women accounted for 37.7 per cent on average and men 42.7 per cent, which is inversely proportional to the percentages for formal sector employment. This indicates that women have been incorporated into the formal workforce and they are enjoying employment benefits and achieving a level of professionalization that meets the requirements of the labour market.²⁹

32. The Government has launched social programmes and institutions designed to provide comprehensive protection and support for the social production integration of women who are in situations of extreme poverty or social exclusion. These include the 2009–2013 Juana Ramírez Equality for Women Plan, whose four strategy thrusts include one with a political component aimed at women's active and equal political participation in all areas of national life. The Venezuelan State attaches great importance to this issue and therefore has also established, within the Ministry for Women, the Office of the Deputy Minister for Active Socialist and Feminist Participation.

²⁴ <http://www.tsj.gov.ve/decisiones/scon/Julio/953-16713-2013-10-0238.html>.

²⁵ Global workforce indicators by sex from the first half of 1989 to the first half of 2014.

²⁶ Population indicators for persons aged 15 years and older by employment status, age group and sex from the first half of 1989 to the first half of 2014.

²⁷ Ibid.

²⁸ Population indicators for persons aged 15 years and older disaggregated by employment type (formal vs. informal) and branch of economic activity from the first half of 1989 to the first half of 2014.

²⁹ National Institute of Statistics.

33. Under the Equality for Women Plan, the Government prepared a document for public consultation which resulted in the Mama Rosa Gender Equality and Equity Plan 2013-2019. This plan guides the formulation and planning of public policies with a gender perspective, in line with the principle of social justice and with a view to ensuring and restoring the rights of all Venezuelans.

34. With the aim of including women in the social production and socioeconomic sector through the implementation of the Juana Ramírez Equality for Women Plan, some 182,179 grants and 22,811 microcredits were allocated in 2012 and 2013 to meet the challenge of maintaining and improving the national public policy described in the report. With regard to the pay gap, measures have been taken to increase women's salaries and eliminate their relegation to unskilled jobs through training programmes offered by the National Institute for Socialist Education and Training (INCES). Since 2007, INCES has trained a total of 554,242 women as skilled workers; women represented 51.63 per cent of all graduates in a variety of areas, including agricultural production, construction, manufacturing, technology, telecommunications, business and services.

35. These training programmes encourage women to find work in traditionally male occupations. The number of women who graduated in these areas was as follows: construction, 3,351 (31.68 per cent); industrial technology, 234 (36.61 per cent); and agricultural production, including crop cultivation, livestock-raising, agricultural exploitation and processing, agro-industry and forestry, 5,805 (54 per cent).

36. In order to give effect to Presidential Decree No. 9821, approved in April 2012, the Bolivarian Government included women working in the informal sector in the rolls of the Venezuelan Social Security Institute; by 2013, 152,216 persons were registered, of whom 91,330 (60 per cent) were women and 60,887 (40 per cent) were men. In addition, 2,517,401 women and men received a pension under the regular pension system, 516,677 under the country's Amor Mayor pension support programme, and 12,557 housewives received a pension.

Reply to question 5

Implementation of the Act on Women's Right to a Life Free from Violence

37. With regard to the information requested, please see the replies to the list of issues of the Committee on the Elimination of Discrimination against Women on the combined seventh and eighth periodic reports of the Bolivarian Republic of Venezuela (CEDAW/C/VEN/Q/7-8/Add.1), which provide detailed information on this question.

38. In order to improve the quality of support for women in situations of violence, the Government has publicized the Act on Women's Right to a Life Free from Violence to raise awareness among public servants involved in preventing violence against women, providing support, receiving complaints and judicial proceedings. With the expansion of these awareness campaigns to the communities, 5,606 women were trained in 2013. In 2012 and 2013, the Venezuelan State assisted 23,441 women victims of violence by providing psychological, legal and social support services through various judicial and State security bodies.³⁰

39. Regarding structural and institutional measures, in 2009 the Ministry of People's Power for Women and Gender Equality³¹ was established as the lead agency for gender policy in our country. The bodies under its aegis include the National Institute for Women and its regional institutes, the National Office for the Defence of Women's

³⁰ Annual report. Minmujer/Strategic Office for Public Policy Follow-up and Evaluation, 2013.

³¹ Decree No. 6663, Official Gazette, No. 391156, 13 April 2009.

Rights, the Women's Development Bank and the Josefa Joaquina Sánchez Madres del Barrio women's social awareness and training programme. The states and municipalities also have women's centres and shelters in place.³²

40. In 2010, the Plenary Chamber of the Supreme Court established the National Commission on Gender Justice, which has the task of ensuring women's right of access to justice as a safeguard for equality and non-discrimination. The Commission's remit includes the design and development of judicial policies to optimize the gender justice system and strengthen ties between courts specializing in violence against women and communal councils. It is responsible for liaising with magistrates, judges, prosecutors and public defenders in Venezuela and other countries to compare and share criteria and progress in this area.

41. The function of the Commission is to guarantee equality for women and ensure that they are not discriminated against on the basis of gender, in compliance with the international treaties signed by the Republic and the Act on Women's Right to a Life Free from Violence. The Commission is responsible for: (a) developing and designing judicial policies to optimize the gender justice system; (b) coordinating the courts that have jurisdiction over crimes of violence against women; (c) establishing courts with jurisdiction over crimes of violence against women;³³ (d) managing the special courts that deal with gender-based violence; (e) overseeing the functioning of those courts; (f) nominating and removing judges and other members of the judiciary.

42. The Bolivarian Government has noted the significant advances made by the Venezuelan State in implementing and enforcing the provisions of this Act, especially through the work of the National Office for the Defence of Women's Rights. The Office of the Ombudsman has nevertheless carried out a full assessment of the performance of the bodies authorized to receive complaints.

43. The good practices demonstrated by the Venezuelan State include the expertise of prosecutors specialized in defending women, the specialized technical unit providing comprehensive support for women, children and adolescents, and the specialized courts dealing in violence against women. The Forensic Medical Examination Division of the Public Prosecution Service also ensures due process and eases the workload of the subsidiary investigative bodies, particularly with regard to alleged cases of violence against women as they need to be dealt with promptly given the short and critical time frames.

Implementation budget

44. In 2005, an initiative for a gender-sensitive budget was launched to support the mainstreaming of the gender perspective into the planning budget and system of the Bolivarian Republic of Venezuela. The initiative was adopted by presidential action and thereby became a national mandate.

45. The Ministry of People's Power for Women and Gender Equality, as the country's lead agency for gender policy, is mandated to implement public policies to promote gender equality and eliminate violence against women. The Ministry's extensive institutional structure includes offices in all 23 states, with each of its dependent agencies fully represented. The approved budget for the Ministry has progressively increased. Between 2010 and 2014, the approved financial resources doubled, rising from US\$ 245,453,444 to US\$ 582,759,781.

³² These centres and shelters provide a temporary home for women who are unable to remain in their own home because of an imminent threat to their safety.

³³ There are 56 courts of first instance in the country, in addition to appeals courts. One court specializing in violence against women is situated in the metropolitan Caracas area, and one appeals court specializing in violence against women and the adolescent criminal responsibility system, located in the state of Zulia.

46. In addition to the Ministry's state-level directorates, there are 17 state institutes, 115 municipal institutes, 16 women's centres and 20 women's support offices.

47. The inclusive policies implemented by the Ministry are financed out of the resources of the Women's Development Bank and the Madres del Barrio programme. In 2013, there were a total of 220 networks in place thanks to the support policies implemented by the Bolivarian Government. In 2012 and 2013, a total of 4,610 neighbourhood mothers' committees and 254 family and gender equality committees were also established. There is also a newly established fund for women's productive development which has a budget of US\$ 200 million.³⁴

48. The National Institute for Women had a budget of US\$ 25,947,870 in 2013 and US\$ 58,850,858 in 2014. Additional credit of US\$ 10,907,936 was granted for women's shelters, and additional credits for US\$ 26,481,040 were extended to centres providing comprehensive training and assistance to women, resulting in a total of US\$ 92,398,834.

49. The Supreme Court has improved the training provided to civil servants working in the area of violence against women, and the Public Prosecution Service has held several seminars and training courses on gender issues and violence against women for its staff members and for police personnel who receive complaints.

Free legal services

50. The Women's Defence Directorate of the Public Prosecution Service was set up to provide guidance and information to women victims of violence in particular, although it caters to all persons considered under the law to be direct or indirect victims of violence. It provides medical, psychological and social assistance through its Comprehensive Support Unit for Women, Children and Adolescents, which, in addition to performing psychological evaluations, follows up on diagnoses made by social workers and treatment through interviews and visits to the victims' home and surroundings so that adjustments can be made if required. It also liaises directly with the prosecutors' offices specializing in the comprehensive protection of children and adolescents to resolve any conflicts affecting the victim's children or dependants to ensure that the needs of the family are met.

51. The Directorate was established to safeguard the right to free, effective and real access to justice for all women and is competent to provide support and legal assistance and conduct outreach, awareness-raising and coordination in all areas covered by the Convention on the Elimination of All Forms of Discrimination against Women.

Section 393 of the Criminal Code

52. Regarding the clarification sought, the articles of the Criminal Code which are incompatible with the Act on Women's Right to a Life Free from Violence have not been formally repealed, but neither have they been applied inasmuch as they run entirely counter to the purpose and ultimate objective of that Act. The Public Prosecution Service, as a guarantor of due process, is preparing a document that will be presented to the Supreme Court to initiate the process of repealing those articles.

53. With the establishment of the specialized court, there was an increase in this category of complaints because women victims now hoped to gain access to gender-sensitive justice. The absence of a specialized court had previously kept the figures on these victims from being known.

³⁴ Ministry of People's Power for Women and Gender Equality report and accounts, 2006–2013.

Complaints of violence against women

54. The Public Prosecution Service received 73,047 complaints in 2011, 83,113 in 2012 and 71,812 in 2013 concerning women whose rights had been violated. The complaints involved rape, sexual harassment, harassment or bullying, sexual intercourse with especially vulnerable victims, lewd acts, threats, sexual slavery, public offences motivated by gender, forced prostitution, trafficking of girls and adolescent women, physical violence, violence in the workplace, obstetric violence, property-related and economic violence, and psychological and sexual violence.

Investigations conducted

55. With the establishment of the specialized court, there was an increase in this category of complaints because women victims now hoped to gain access to gender-sensitive justice. The absence of a specialized court had previously kept the figures on these victims from being known. Between 2011 and 2013, the Public Prosecution Service brought 32,674 indictments; 114,441 cases were dropped and 149,036 were dismissed.

Types of penalty imposed

56. The statistical information system of the judiciary recorded the following figures on cases filed and resolved annually from 2009 to 2013. The figures are based on final and interlocutory judgements handed down by the courts of first instance specializing in violence against women with responsibility for due process guarantees, hearings and measures.

Sentences issued

57. A total of 155,854 sentences were issued. In 2009, 20 18 sentences were issued; there were 27,195 issued in 2010, 35,935 in 2011, 45,741 in 2012 and 55,067 in 2013 (up to June).

Protection measures granted

58. With regard to safety and security measures granted, in accordance with article 87 of the Act on Women's Right to a Life Free from Violence, 96,414 measures were issued in 2011, 47,167 in 2012, 83,569 in 2013, resulting in a total of 227,150. Of those, 24,037 were adopted in 2011, 11,670 in 2012, 24,887 in 2013, resulting in a total of 60,594.³⁵

Shelters

59. As part of the comprehensive support provided to women victims of gender-based violence, the country's shelters programme, which benefited 141 women between 2009 and 2013, has been expanded. As of September 2014, there are six shelters at the national level; they have been used by 111 persons, including women and their children under 12.³⁶

³⁵ List of issues submitted to the Committee against Torture.

³⁶ Ministry of People's Power for Women and Gender Equality.

Reply to question 6

Measures taken and prevention mechanisms in place to effectively implement the Special Act to Prevent and Punish Torture and Other Cruel, Inhuman and Degrading Treatment

60. In October 2013, the National Commission for the Prevention of Torture and Other Cruel, Inhuman and Degrading Treatment adopted the National Plan for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment. Under this plan, the Commission's objective is to prevent the occurrence of torture and cruel, inhuman or degrading treatment by targeting the conditions that enable it to occur and by permanently monitoring the places where it is likely to occur, while ensuring full reparation to victims as well as structured participation by the People's Power.

61. Between 2002 and 2014, the Office of the Ombudsman received 1,027 reports, complaints and petitions regarding allegations of torture and 9,990 regarding allegations of cruel, inhuman or degrading treatment. During the period under review, there were 70 reported cases of the violation of the right to life; these related specifically to the arbitrary deprivation of life as a result of torture or cruel or inhuman treatment. According to the information contained in the Office's databases on the 1,027 complaints filed for alleged violations of the right to personal integrity (under the subsection "torture"), ex officio investigations were carried out in 70 cases and investigations upon request in 957. The Office follows up on all cases independently of any investigations carried out by the Public Prosecution Service.

62. Regarding the number of trials conducted and disciplinary measures ordered in relation to these cases, in 2012 a total of 8,807 cases were opened and the Public Prosecution Service completed the investigation phase for 5,647 cases; in 2013 a total of 7,706 cases were opened and the investigation phase was completed for 11,825 cases.

Protective measures and comprehensive reparation for victims

63. Under the Act on the Protection of Victims, Witnesses and Other Parties to Judicial Proceedings, the State guarantees effective protection to victims of punishable acts in all cases where their physical or psychological integrity is threatened. The Act, together with article 16 of the Torture Act, establishes the confidentiality — when gathering information during visits to detention centres or interviews with relatives and victims — of the procedures for filing and investigating complaints of torture and ill-treatment involving victims who are deprived of their liberty. Furthermore, article 29 of the Victim and Witness Protection Act provides that the Public Prosecution Service shall keep all requests for protection in a confidential file. The file is to be maintained throughout the process and shall record all action taken by any person or office working on the case.

64. The Public Prosecution Service may order different protective measures to ensure confidentiality for the victim, based on articles 21 and 23 of the Victim and Witness Protection Act. In addition, penalties for violating the confidentiality that must surround all activities related to protective measures granted to victims and other parties to proceedings are provided for in article 28 of the Torture Act and article 48 of the Victim and Witness Protection Act.

65. With regard to the independence of the system for receiving and investigating complaints of torture and ill-treatment, both the Torture Act and the Victim and Witness Protection Act assign responsibility for protecting victims against these offences to the Citizen Power branch, which is independent from the other branches of the State. Article 11 of the Torture Act grants the National Commission for the

Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment, under the Office of the Ombudsman, powers to ensure respect of the right to physical, mental and moral integrity, while the Victim and Witness Protection Act stipulates that its application is the exclusive responsibility of the Public Prosecution Service and the courts.

66. This legislation contains measures to protect the labour rights of victims of torture with a view to ensuring that the exercise of their right to work is not affected as a result of the acts of torture and its sequelae. Thus, under article 9 of the Special Act, all victims of torture have the right to reduce or adapt their working hours, to change their workplace and to temporarily suspend their employment relationship. Also under that article, workplace absences due to a physical or psychological condition resulting from torture or cruel, inhuman or degrading treatment are not deemed a suspension of the employment relationship in accordance with applicable labour legislation.

67. Between 2012 and 2014, 7,650 of the 8,229 requests for protective measures received were processed; 3,343 psychological evaluations were conducted; and 2,633 beneficiaries of protective measures were provided with psychological support.

Criminal Investigation Unit

68. The Public Prosecution Service has a Criminal Investigation Unit against the Violation of Fundamental Rights, which was established on 23 December 2008 (Official Gazette, No. 39086). The unit consists of 80 staff, including 67 experts who perform forensic examinations. This unit carries out the necessary specialized activities in a criminal investigation directly and with full autonomy and independence; this prevents any impunity for human rights violations in which the alleged perpetrators are members of a State security body.

69. The unit, which has two locations (one in Caracas and one in Barquisimeto), lends technical support to the prosecutors of the Public Prosecution Service. It has three divisions: investigations, criminalistics and forensics. The investigations division is responsible for investigation records, interview records, judicial summons and requests for information from public and private entities; a total of 2,244 actions have been carried out in response to requests from prosecutors.

70. In 2013, 1,007 requests for expert investigations were received from prosecutors and the investigations division and were processed, and 875 actions were performed. This in turn generated a significant number of requests in the criminalistics and forensics divisions. In those divisions, 937 expert reports were prepared and 789 actions were performed in the various disciplines involved in the preparation of an expert report — such as ballistics, physicochemical and biological laboratory testing, physical comparisons, technical inspections, mapping, plotting of wound paths, pathological anatomy, forensic medicine, forensic anthropology and toxicology — as a single expert inquiry can entail various laboratory and field analyses or activities so as to draw as much information as possible from the evidence under examination.

Reply to question 7

Steps taken to prevent the excessive use of force by law enforcement officers

71. The nature of policing requires constant and ongoing training of members of the police force to ensure their ethical conduct in accordance with the law. This allows them to enjoy the trust of society and to meet the basic goal of the force, which is to guarantee citizens' rights.

72. The State's interest in improving the services provided by the police was made manifest in 2006 with the establishment of the National Commission on Police Reform, which formulates recommendations in this direction. In 2010, the General Police Council was created as a participatory and advisory body for defining, planning and coordinating public policy on police matters, including the professional conduct of the police. One of the main tasks undertaken by the Council was the regulation of the use of force by State security agencies. A policy was defined for the progressive and differentiated use of force, with specific guidelines for police conduct in situations where the use of force is unavoidable, to ensure that citizens are treated with dignity under the law and to minimize police officers' scope of discretion.

73. A handbook on the progressive and differentiated use of force has been prepared and provides formal guidance on the use of force by the police. It lays out the steps to follow in preparing the report on the use of force that must be submitted to the supervisor, who assesses and, as applicable, confirms the legitimacy of the use of force, bearing in mind the primacy of the principles of legality, necessity and proportionality.

74. All of the foregoing is in full accordance with articles 65, 68, 69 and 70 of the Organic Act on the Police Service and the Bolivarian National Police Force, which stipulate that the use of force by the police shall be guided by the principle of respecting life as the supreme value of the Constitution and the law, by the use of different degrees of force based on the level of resistance and opposition from citizens, by procedures to monitor and supervise the use of force, by continuous police training and by guidelines circulated to the community in support of social oversight in this area. A decision to use deadly force shall only be justified to defend the life of the police officer or of a third party.

75. This Council has also published a guide on the proportionate use of force which sets out that, in the new model, the police fight crime within the rule of law, with respect for human rights and, when necessary, with progressive and differentiated use of force based on the level of resistance encountered but always within the scope of the law. Police officers may use firearms only in extreme circumstances to defend themselves or a third party against the use of deadly force or against an illegitimate aggression but always in accordance with the principles of necessity, proportionality and discretionality.

76. The National Experimental University for Security Forces provides training to members of the police force, including intensive training and refresher courses in the progressive use of force and potentially deadly use of force as part of initial and continuous police training.

77. Concerning the role of members of the Bolivarian National Armed Forces in the Safe Nation Plan, the Ministry of People's Power for Internal Affairs, Justice and Peace is fostering a new culture of public safety based on crime prevention and respect for life in communities across the country through the Safe Nation Plan. This plan is a civilian-military initiative which focuses on providing comprehensive crime prevention, strengthening public safety bodies, overhauling the criminal justice system, introducing alternative dispute resolution mechanisms and providing support for victims of violence.

78. Activities are shared among the various civic prevention and security forces (police forces) and the Bolivarian National Armed Forces as a means of ensuring necessary coordination. The aim of those activities is to strengthen monitoring and patrolling throughout the national territory and thus strengthen crime prevention efforts. The plan includes support from the armed forces because the public safety bodies lack the staff to provide "smart patrolling" under adequate conditions. The

involvement of the armed forces will be reduced gradually, as more police officers are trained and incorporated into patrolling activities.

79. The Criminal Code defines the ill-treatment of detainees and the breach of international covenants as crimes. The Constitutional Chamber of the Supreme Court, in Judgement No. 276 of 24 July 2014, established that section II of article 68 of the Constitution provides for unqualified compliance with the law by police and security agencies responsible for maintaining public order; their action shall entail the obligation not only to guarantee citizens' right to peaceful protest but also to prevent protesters from engaging in excessive actions which may result in injury or risk violating the fundamental rights of other citizens, such as the right to freedom of movement or to work. They must also take care that their own actions are not excessive, ensuring at all times that such situations are managed with absolute respect for human rights and avoiding the use of firearms and toxic substances.

Prompt and impartial investigation of allegations of excessive use of force

80. The Venezuelan State recognizes and guarantees the legitimate right to peaceful demonstration and the responsible exercise of freedom of expression under the conditions provided for by the Constitution and by the international instruments duly ratified by the Republic. Article 68 of the Constitution establishes that: "All citizens have the right to demonstrate, peacefully and without arms, subject only to such restrictions as may be provided for by law. The use of firearms and toxic substances to control peaceful demonstrations is prohibited. The activity of police and security forces in maintaining public order shall be regulated by law."

81. The right to demonstrate is not absolute, however; it is subject to a number of restrictions in accordance with the standards of the international human rights system. Those standards include the obligation to guarantee the right to physical integrity (art. 46 of the Constitution and art. 7 of the International Covenant on Civil and Political Rights), freedom of movement (arts. 12 and 13 of the Covenant), education (article 102 of the Constitution, article 13 of the International Covenant on Economic, Social and Cultural Rights and article 28 of the Convention on the Rights of the Child) and freedom and security of person (articles 44 and 55 of the Constitution and article 9 of the International Covenant on Civil and Political Rights), among others (Human Rights Council resolution 22/10 of 9 April 2013). In all cases, restrictions must be the exception and must be necessary in order to protect society as a whole.

82. The Constitution imposes three conditions on the human right to demonstrate: demonstrations must be peaceful, they must not involve arms and they must comply with the requirements set out in the law. Therefore, violent or armed demonstrations, as well as those that contravene existing legislation, are not included in this right. Some actions, such as obstruction of the public highway or the carrying of weapons, may themselves constitute crimes or infractions defined by law.

83. In this connection, the Committee should be aware that a violent offensive began in Venezuela on 12 February 2014 with the aim of deposing the legitimate authorities chosen by the people in free elections. The strategy of this offensive, which was driven by elements of the political opposition, was to attempt to paralyse the normal functioning of society through street violence. That violence is in no way related to the legitimate right of all Venezuelans to demonstrate peacefully.

84. A series of demonstrations took place in several cities across the country. Some of those demonstrations involved violent incidents, such as fires, the blocking of public highways, the felling of trees and attacks on public and private institutions, universities, health services, subsidized food distribution networks, public infrastructure and private markets.

85. As part of this offensive, violent groups attacked and destroyed a number of public and private facilities. Among these were public transport hubs, assistance centres, universities and schools, including an early-childhood education centre, where 89 children were present at the time of the attack. In addition, entire communities were confined to their homes because of the violence, impeding their rights to freedom of movement, work and education, to name but a few.

86. In the face of these events, the Venezuelan State was duty-bound to take action through the State security forces, and several persons were apprehended in the act of committing crimes. Those apprehended were brought before the courts and enjoyed all the guarantees of due process. In this connection, it should be noted that the Venezuelan State does not, and will not, tolerate police action that violates human rights. The isolated cases that have been reported are being duly investigated by the competent authorities, and legal proceedings have been launched against officers involved in illegal acts. The officers in question have been deprived of their liberty for having disregarded the role of the Venezuelan State as guarantor and protector of human rights.

87. The Office of the Ombudsman publicly stated on several occasions that these incidents of collective violence might constitute not only crimes but also threats to human rights, particularly the rights to life and personal integrity. This fact was sadly confirmed by the deaths of several persons. The Office observed that most of the homicides had been perpetrated with firearms in circumstances with sufficient common elements to suggest a pattern of action indicating that they were intentional and, to some extent, planned and coordinated by the killers. Six of the homicides are suspected to have been carried out by State agents. According to the Public Prosecution Service, 17 public security officers are under investigation; 5 of them are being detained as a precautionary measure and 3 are under mandatory reporting measures.

88. The Office of the Ombudsman has held 143 meetings with State security forces in the states where the events occurred to make and review observations and recommendations with regard to their actions in individual cases and in general situations, such as dealing with demonstrations and the proportionate, progressive and legal use of force. The Office also issued 266 recommendations to bodies responsible for criminal investigations and State security.

89. The President of the Republic has made several public statements rejecting any excessive use of force by the police. At a press conference on 21 February, he said: "I will not protect anyone who shoots someone during a demonstration in this country." This type of declaration is evidence of the Government's political stance on the disproportionate and illegal use of force by security agents. Similarly, the bodies responsible for administering justice have taken action within the scope of their respective competences to investigate and prosecute criminal acts.

Complaints, proceedings, trials, penalties and compensation awarded to victims in these cases

90. Regarding the investigations and findings relating to the events of February 2014, the Public Prosecution Service issued a report entitled "Report on Violence, 2014" detailing its activities up to January 2015.

91. The violence that began in the country on 12 February 2014 resulted in the deaths of 43 persons: 33 civilians and 10 police officers and military and public officials.

92. In the area of non-political crimes, as of 31 January 2015 the Public Prosecution Service had completed investigations of 2,844 cases involving 2,844 persons: 1,402 resulted in indictments, 6 were dismissed and 1,436 were dropped.

93. With regard to investigations into alleged human rights violations, as of 31 January 2015, 215 investigations had been completed: 13 resulted in indictments, 184 were dropped and 19 were dismissed. Twenty-two investigations remain open.

94. The officers accused and the type of offence are as follows: two officers of the Chacao police force are under investigation for aggravated homicide; three officers of the Aragua police force, six officers of the Bolivarian National Police Force, three officers of the Bolivarian National Police Force in Anzoátegui, five officers of the Mérida State police force, three officers of the Monagas State police force and one officer of the Falcón State police force are under investigation for cruel treatment; and seven officers of the Bolivarian National Guard are under investigation for homicide.

95. During the violence, 3,351 persons were apprehended and brought before the procedural courts. Of those, 1,507 were placed under precautionary reporting measures, 41 were deprived of their liberty, 59 were granted a conditional stay of proceedings, 1,103 received unconditional release and 731 were placed under other precautionary measures.³⁷

Reply to question 8

Progress in preventing and reducing homicide, abduction and disappearances

96. The Venezuelan State, through the structured action of different government bodies, implements and coordinates public security policy under the A Toda Vida Venezuela public security programme, formulating security measures aimed at protecting Venezuelans and respecting their right to life.

97. The policy is based on the idea that public security should be addressed comprehensively. All the various aspects of security need to be dealt with in order to reduce violence and crime. Comprehensive social prevention policies are therefore a central pillar of the A Toda Vida Venezuela programme and they are aimed at promoting cultural, sporting and recreational activities in the community. Music schools have been created through the National Youth and Children's Orchestra programme, and sports workshops have been developed in partnership with the Ministry of People's Power for Sport and the Directorate General for Crime Prevention of the Ministry of People's Power for Internal Affairs, Justice and Peace. These workshops also assist in reclaiming fields and spaces for sport in order to promote healthy recreation and safe spaces away from crime.

98. Organized communities, together with the Movement for Peace and Life, have been engaged in fostering a culture whose core values are peace and life. Emphasis is placed on having communities take a leading and proactive role in transforming the situations and circumstances that make them more vulnerable.

99. The Ministry of People's Power for Internal Affairs, Justice and Peace has been working to create a new culture of public security built around crime prevention and respect for life all across the country through the Safe Nation Plan. The plan is a civilian-military initiative that focuses on providing comprehensive crime prevention, strengthening public safety bodies, overhauling the criminal justice system, introducing alternative dispute resolution mechanisms and providing support for victims of violence.

³⁷ Public Prosecution Service.

100. The professionalization and comprehensive training of the country's public security officers is a vital part of this effort. The National Experimental University for Security Forces ensures that the public security bodies serving the Venezuelan people are transparent, ethical, trustworthy, effective, open to community participation and social oversight, and able to safeguard citizens' rights and freedoms.

101. The Arms and Ammunition Dispossession and Control Act³⁸ was adopted to govern, regulate and control the carrying, possession, use, registration, manufacturing, commercialization, supply, storage, import, export, transit and transport of all types of weapons, ammunition, accessories, parts and components; to criminalize and sanction any unlawful act relating to firearms and ammunition so as to inhibit, combat and eradicate their manufacture and trafficking; and to draw up plans to implement, coordinate and supervise the disarmament of individuals and groups so as to guarantee and protect the property, belongings and values of citizens and State institutions.

102. The Act's implementing regulations provide for the creation of the National Disarmament Service, which will be responsible for the planning, organization, operation, administration, regulation, custody, surveillance, procedures and monitoring of the handling of weapons and ammunition voluntarily surrendered by the population. In parallel, the Commission for Voluntary Disarmament promotes the voluntary surrender of firearms and ammunition in the Bolivarian Republic of Venezuela under conditions of anonymity, respect and the protection of human rights, thus increasing public safety and prioritizing respect for human life.

103. Thanks to a policy of sustained and planned growth, the Public Prosecution Service now has 803 prosecutors: 708 of them deal with criminal matters and 95 have other competencies.

Murders of 10 members of the Barrios family between 1998 and 2013

104. With regard to the criminal investigation and enforcement of the sentence, nine cases of homicide have been brought in the matter of the Barrios family. Two of those cases resulted in the sentencing of Aragua State police officers Leomar José Rovira Mendoza, José Luís Riasco León and Marco Antonio Moreno Dorta to 13 years, 4 months and 25 days in prison. Two cases of criminal charges have been brought against Aragua State police officers Alexis José Amador Mujica, Carlos Alberto Sandoval, Arturo Montero Martínez, Ericson Ortiz Flores and Ronald Calderón; those cases are at the trial stage. Another case is in the preliminary hearing stage, one was dropped and three are in the preparatory stage. The Public Prosecution Service has appointed Aragua Prosecution Services Nos. 14 and 20 to handle the seven cases that are pending.

105. The Public Prosecution Service requested protective measures consisting of custody supervised by the Bolivarian National Guard and the measures were granted by the tenth trial court of first instance of the criminal court circuit of the state of Aragua on 8 February 2011. On 23 January 2015, a special hearing was held to review compliance with those protective measures, in accordance with the provisions of the Act on the Protection of Victims, Witnesses and Other Parties to Judicial Proceedings. The representative of the Office of the Ombudsman in the state of Aragua, representatives of the Public Prosecution Service, the State Representative for Human Rights and representatives of the Bolivarian National Guard attended those hearings in order to ascertain that the State was fulfilling its obligations in the case.

106. The Aragua state government assigned three dwellings to the members of the Barrios family in order to keep safe and protect their identity.

³⁸ Official Gazette, No. 40190, 17 June 2013.

Armed gangs and registration of weapons and ammunition

107. The Bolivarian Government has stepped up action to encourage armed gangs to surrender their weapons and has intensified its work to identify gangs. The national disarmament plan approved by President Maduro is intended to continue the disarmament policy launched in 2011; it promotes a range of initiatives to support peaceful areas throughout the country and encourage the population to mobilize for disarmament. The plan operates in coordination with the Peaceful Neighbourhoods and Peaceful Sports Fields initiatives of the Movement for Peace and Life and includes young people from all communities through the Barrio Adentro community-based sports programme. Educational opportunities are offered on a voluntary basis as an additional incentive. So far, more than 60 centres for the surrender of weapons have been set up.

108. In 2014, 26,518 firearms were destroyed and, in 2013, an estimated 18,452 firearms were rendered unusable at 181 public events. Processes to render unusable and destroy weapons at the National Steel Plant, located in the state of Lara, produce ferrous material that is used to manufacture steel bars for the Vivienda Venezuela housing programme.

Reply to question 9**National Action Plan to Repress and Punish Trafficking in Persons**

109. This plan is currently being reviewed by the competent bodies. Nevertheless, the Bolivarian Government, as a guarantor of human rights, protects victims of human trafficking by pursuing policies formulated by the Ministry of People's Power for Internal Affairs, Justice and Peace.

110. Although trafficking in women and girls is not prevalent in the Bolivarian Republic of Venezuela, the Ministry, with support from the United Nations Children's Fund (UNICEF), examined risk factors and ways of detecting victims in a 2011 diagnostic study on human trafficking with a view to eradicating this phenomenon. The report found that typically victims were women of low socioeconomic status who came from low-income communities or border regions.

111. As part of the effort to eradicate trafficking in persons, the Venezuelan State submitted to the National Assembly a draft bill on the prevention and punishment of the crime of trafficking in persons and comprehensive assistance for victims.

112. According to the information processed by the offices receiving complaints and providing support to victims within the National Gender and Family Violence Division and the Directorate of Non-Political and Organized Crime of the Agency for Scientific, Criminal and Forensic Investigations, the Directorate General for the Defence of Women of the Public Prosecution Service, the National Office on Organized Crime and Financing of Terrorism, the National Central Bureau of the International Criminal Police Organization (INTERPOL) in Caracas and the National Institute for Women, the crime of trafficking in persons occurs infrequently. However, when this crime does occur, and despite its low frequency, it undermines not only the State's policies and strategies that aim to prevent organized crime but also compliance with national and international legal instruments as well as Venezuelans' human rights.

Measures taken to provide comprehensive protection to victims of trafficking in persons

113. The Constitution, the Equal Opportunities Act, the Child and Adolescent Protection Act and the Organized Crime and Financing of Terrorism Act offer a broad

legislative framework of protection against slavery, servitude and trafficking in women, children and adolescents and they create an obligation for the State to take appropriate monitoring and protective measures.

114. The Venezuelan State has ratified a number of binding and non-binding international instruments and agreements, such as the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography; International Labour Organization Convention No. 182 concerning the prohibition and immediate action for the elimination of the worst forms of child labour, of 1999; the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime; and instruments emerging from the First and Second World Congresses against Commercial Sexual Exploitation of Children and Adolescents and the Montevideo agreements against commercial sexual exploitation and other forms of sexual violence against children and adolescents.

115. In Venezuela, there are two legal provisions that address trafficking in persons when the victim is a woman: article 56 of the Act on Women's Right to a Life Free from Violence and article 41 of the Organized Crime and Financing of Terrorism Act. The first identifies the trafficking of women, girls and adolescents as one of the most aberrant violations of human rights. The Venezuelan State has thus allocated significant resources to create specialized public prosecution offices with exclusive competence to prosecute this crime. The Public Prosecution Service, as the body responsible for criminal proceedings in this highly specialized matter, employs prosecutors competent in gender issues to investigate the crimes covered by the Act on Women's Right to a Life Free from Violence and the Child and Adolescent Protection Act.

116. Reference is made in this connection to the report submitted by the Venezuelan State to the Committee on the Rights of the Child on the implementation of the Optional Protocol on the sale of children, child prostitution and child pornography (CRC/C/OPSC/VEN/1, paras. 212 to 239).

117. The executive branch, through the Central Authority, has drawn up a workplan jointly with the Administrative Service for Civil Registration, Migration and Aliens, the National Civil Aviation Institute and Venezuelan airline companies to train and raise awareness among staff about human trafficking and the smuggling of migrants, in line with the current Security Plan. There is also an inter-agency agreement to train and raise awareness among providers of tourism services and the general public concerning the prevention of this crime.

118. With support from UNICEF, the Office of the United Nations High Commissioner for Refugees and the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders, a high-level training event on human trafficking and criminal prosecution was held in 2011 for police, diplomatic and judicial officials, among others, with a view to their replicating and sharing the information at their home institutions.

119. With regard to the request for information on complaints and penalties imposed in relation to the crime of trafficking, as well as the protective measures and compensation granted to victims, reference is made to the replies to the list of issues submitted to the Committee on the Elimination of Discrimination against Women on 24 June 2014.

Reply to question 10

Regular medical check-ups for detainees after being taken into police custody

120. The right of persons deprived of their liberty to a prompt independent medical examination is recognized by the Constitution, which allows for an individual's physical and health condition to be established at the time of his or her detention. Persons deprived of their liberty whose personal integrity or individual dignity has been violated have the right to an appropriate medical examination, as recognized in article 44, paragraph 2, of the Constitution, which provides, among other things, that all detained persons have the right to have a written record prepared of their physical and mental state and kept in their file, produced either by themselves or with the assistance of specialists.

121. Persons deprived of their liberty who have allegedly been subjected to acts of torture or other cruel or inhuman treatment are protected by a recent Special Act explicitly providing for their right to be examined by medical staff. Article 8 of that Act provides for medical examinations and the monitoring and recording of detainees' physical, psychological and mental state, which must be duly documented and authenticated by the corresponding medical examiner.

122. The Public Prosecution Service includes the Criminal Investigation Unit against the Violation of Fundamental Rights, which was established on 23 December 2008 (Official Gazette, No. 39086). The unit comprises a staff of 80, including 67 experts who carry out forensic examinations.

123. The victim support units that operate at the national level are staffed by a multidisciplinary team made up of 165 persons, including 31 psychologists and 33 social workers. The team seeks to prevent secondary victimization by assessing the needs, distress and problems caused by the crime and making the necessary referrals; it also seeks to ensure the safety of the victim and the victim's family against any type of intimidation or reprisals.

124. Article 516 of the Code of Criminal Procedure grants competence in the area of health, among other areas, to the Ministry for Penitentiary Services to design, formulate, monitor and evaluate policies on comprehensive care for detained and convicted persons, ensuring that those policies are progressive and that they protect human rights.

125. The Court of Criminal Cassation of the Supreme Court of Justice has laid down jurisprudence on medical examinations as a form of evidence. In its Judgement No. 279 (file No. C01-0541) of 11 June 2002, the Court found that "Article 46 of the Constitution of the Republic relates to the right to respect for a person's physical, psychological and 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 subjected 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 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 notification and ensuring respect for the modesty of those being examined, who, moreover, should be permitted to be accompanied by a person whom they trust. Such examinations, inasmuch as they do not represent any risk to the life or health of the person being examined and as they may be of crucial importance in elucidating the facts under investigation, 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."

Presence of a lawyer during questioning

126. Article 49 of the Constitution grants the right to due process in all legal and administrative proceedings, deeming defence and legal assistance to be inviolable rights at every stage of the investigation and proceedings. In particular, all persons have the right to be notified of the charges for which they are being investigated, to have access to the evidence and to be given adequate time and means necessary to mount a defence. Any evidence obtained in violation of due process shall be null and void. All persons found guilty have the right to appeal the judgement, subject to the exceptions established in the Constitution and by law.

127. With regard to the measures taken to ensure the enjoyment of rights under article 127 of the Code of Criminal Procedure, the Public Prosecution Service guarantees all the rights enshrined in the Venezuelan legal system by mandate of article 285 of the Constitution. Accordingly, all public prosecutors in the Public Prosecution Service must ensure defendants' effective enjoyment of their rights at the time they are charged, when they are brought before the court and throughout the proceedings. Public prosecutors expressly and clearly inform defendants of the charges being brought against them, which are recorded in a document signed by the defendants and their counsel. Defendants are informed of their rights. If they are to be deprived of their liberty immediately, they may communicate with their families and trusted lawyers; and they, and their lawyers, are given access to the court documents so that they may exercise their right to a defence.

128. The Code of Criminal Procedure, the Criminal Investigation Police Service Act, the Scientific, Criminal and Forensic Investigation Unit and the National Institute of Forensic Medicine and Sciences establish the procedures for the interrogation of persons placed under arrest, in detention or in prison. The activities of officials are overseen by the Public Prosecution Service and the Office of the Ombudsman.

129. The Venezuelan State recognizes that guaranteeing the rights of the prison population poses a significant challenge. It however remains committed to addressing this challenge as it tackles the legacy of more than half a century of violent mafia culture in the country's prisons.

The right to be informed of their rights

130. Under article 49 of the Constitution, persons deprived of their liberty must be informed of their rights so as to ensure due process and the right to a defence. That is expanded upon in article 127 of the Code of Criminal Procedure, which establishes the right to be assisted, from the initial stages of the investigation, by counsel appointed by themselves or their families or, failing that, by a court-appointed counsel, and the right to be informed of their constitutional right not to make a statement and, in the event that they consent to make a statement, their right not to make it under oath. Inasmuch as the procedural regulations require that defendants are to be assisted by counsel as from the initial stages of the investigation, their fundamental rights are thus guaranteed throughout the criminal proceedings against them. All persons deprived of their liberty are to be assisted and advised by counsel, based on the rights enshrined in the Constitution.

131. The right of accused persons to be informed of their constitutional right not to make a statement is a fundamental guarantee to which they are entitled. Concerning defendants' statements as part of the investigation or after they have been apprehended, article 132 of the Code of Criminal Procedure provides that defendants shall make a statement during the investigation before the respective Public Prosecution Service official either at their own initiative or when summoned to do so. When accused persons are apprehended, the due process judge shall be notified

immediately so that they may make a statement before him or her. Once the investigation has been completed, accused persons may make a statement if they request to do so and any such statement will be submitted to the judge during the preliminary hearing. During the oral trial, they may make a statement at the time and in the manner set out by the Code.

132. Article 133 of the Code clearly establishes that before a statement is taken, accused persons must be informed of their constitutional right not to make a statement and, in the event that they consent to make a statement, their right not to make it under oath. Accused persons must also be informed that their statement is a means for them to defend themselves and, therefore, they have the right to explain anything that serves to counteract the accusations against them and to request that any investigations that they consider necessary be carried out.

133. Article 119 of the Code governs the activities of police bodies carrying out criminal investigations, expressly establishing the duty of police forces to inform persons of their rights at the moment they are detained.

134. In 2013, the Attorney General's Office produced a document entitled "Due Process in Venezuelan Legislation", which set forth parameters for the activities of the public prosecutors of the Public Prosecution Service when exercising the punitive power of the State.

Reply to question 11

Action taken between February and June 2014

135. In February 2014, a series of demonstrations began in several of the country's cities. Some of them involved violent incidents such as fires, the blocking of public highways, the felling of trees and attacks on public and private institutions, universities, health services, subsidized food distribution networks, public infrastructure and private markets.³⁹ As a result of these violent incidents, 43 persons died and 878 were injured, in addition to incalculable damage to public and private property.

136. Appropriate action by the Venezuelan State was necessary in order to respond to these events. Several persons were apprehended in the act of committing crimes and brought before the courts, enjoying all the guarantees of due process. Additionally, 13 State security officers were apprehended and are under investigation by the competent authorities on allegations of abuse committed by the police and other security bodies. More details on the figures and specific actions undertaken by the Public Prosecution Service are given below.

137. To conduct the investigations and expedite court proceedings, more than 100 public prosecutors were deployed throughout the country. Accompanied by forensic experts, they visited centres where persons were held in pretrial detention and interviewed all detainees, all of whom promptly received a forensic medical examination.

138. The Public Prosecution Service has fully complied with its duty to carry out prosecutions on behalf of the State, prioritizing the defence of victims and respect for human rights, in strict compliance with the mandate of the Constitution and legislation, and ensuring the smooth functioning of the administration of justice,

³⁹ Some of these violent incidents were documented in the report *Un Golpe a la Paz. I parte* (A Blow to Peace, part I – 12–26 February 2014) of the Office of the Ombudsman. See: <http://www.defensoria.gob.ve/dp/index.php/publicaciones/informes-especiales/3123-febrero-2014-un-golpe-a-la-paz>.

pretrial proceedings and due process. The Public Prosecution Service is required to investigate alleged human rights violations and it does so through the Directorate for the Protection of Fundamental Rights, whose staff has participated in training and awareness-raising on the defence of individuals' universal rights. To perform this task, it has 177 chief and assistant public prosecutors at the national level. The stability of these public prosecutors is being secured through competitive examinations in order to ensure the objectivity, independence and impartiality of investigations. There are also Criminal Investigation Units against the Violation of Fundamental Rights and laboratories specializing in forensic science, criminology and criminal investigation that are devoted solely to expert investigations of cases of human rights violations. The police bodies accused of committing such violations are thus not involved in investigating them, given that they might impede the normal progress of the investigation. The laboratories employ highly specialized staff and have modern, latest-generation equipment, which increases both their capacity and the promptness and accuracy of findings.

Total number of investigations and investigation findings

139. See reply to question 7.

Reply to question 12

Pretrial detention

140. The recent revision of the Code of Criminal Procedure established a maximum period for pretrial detention of 45 days, which cannot be extended. During that time, public prosecutors must lay charges or request that the proceedings be suspended or dropped. It is not the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement. Furthermore, anyone who is deprived of his liberty by arrest or detention is entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his or her detention and order release if the detention is not lawful.

141. In that regard, the Code of Criminal Procedure establishes, in accordance with the International Covenant on Civil and Political Rights, all guarantees necessary for the legitimate deprivation of liberty. Article 229 of the Code provides that liberty is the general rule during criminal proceedings and that deprivation of liberty is a precautionary measure to be resorted to only when other precautionary measures are not sufficient for purposes of the trial.

142. Article 127 of the Code conforms to the International Covenant on Civil and Political Rights in that it establishes rights for accused persons, including the rights to be informed immediately of the specific charges against them, to communicate with their families and lawyers, to be assisted as from the initial stages of detention and to request that the Public Prosecution Service carry out investigations, among others.

143. Article 236 of the Code, in accordance with the International Covenant on Civil and Political Rights, allows for restrictions on personal freedom provided that they are regulated by law and in line with legal procedure. Accordingly, a due process judge, at the request of the Public Prosecution Service, may order the pretrial detention of an accused person if and only if: (a) a punishable act has occurred that warrants a custodial sentence; (b) there is substantiated evidence that the accused is the perpetrator; and (c) there is a reasonable presumption, having regard to the specific circumstances of the case, that the accused might abscond or obstruct efforts to establish the truth.

144. In accordance with article 236 of the Code, once the Public Prosecution Service has made a request to the due process judge, said judge shall decide on the request within 24 hours and shall issue a warrant for the accused's arrest provided that the conditions laid down in article 236 are met. Within 48 hours of being apprehended, the accused shall be brought before the judge for an initial hearing in the presence of the parties and the victim, and a decision shall be made regarding whether the measure imposed shall be maintained.

145. Article 236 of the Code was amended to eliminate the 30-day period and 15-day extension granted to public prosecutors to lay, suspend or, if necessary, drop charges once pretrial detention had been ordered by the judge during the initial phase of proceedings, providing instead for a single 45-day period. If that period expires and the judge or public prosecutor has not laid charges, the detainee is released by decision of the due process judge, who may impose an alternative preventive measure. The article as amended provides that: "If an accused person who is being tried while at liberty or under an alternative preventive measure fails to appear in court for an unjustified reason, the due process judge, ex officio or at the request of the Public Prosecution Service, shall issue the corresponding arrest warrant in order to ensure the accused's appearance at court, without prejudice to the possibility of, after the hearing and if deemed necessary by the judge, imposing a further preventive measure substituting pretrial detention."

146. Article 237 provides that in order to determine the probability of an accused person's absconding, it is necessary to examine, among other things, whether he or she is able to leave the country or hide, the sentence that may be handed down in the case, the scale of the damage and the behaviour of the accused during proceedings, to the extent that it may reveal his or her willingness to undergo a criminal prosecution. This article also presumes there is a risk of escape in cases involving crimes punishable by imprisonment of 10 years or more.

147. A new article (art. 355) was included in the Code dealing with persons accused of less serious crimes. They may be placed under preventive measures substituting pretrial detention unless they have been found in contempt of court.

148. With regard to the duration of and compliance with alternatives to the conduct of proceedings, a new article (art. 361) was included that sets out the alternative measures that may be requested by an accused person at the initial hearing. These consist of a conditional stay of proceedings or a compensation agreement structured in installments, which shall not last fewer than three months or longer than eight months, in accordance with the conditions imposed. This article defines the process for requesting alternatives to the conduct of proceedings and the responsibility of the judge to grant them.

Alternative sentences

149. One of the most prominent aspects of the recent revision of the Code is the extended scope of application of alternative measures to the conduct of proceedings.

150. Articles 38 and 43 on the principle of discretion to prosecute and conditional stays of proceedings, respectively, provide that those alternative measures may be used in all cases that are punishable by less than 8 years' imprisonment.

151. Compensation agreements between accused persons and victims now extend to all cases of culpable acts against individuals. Therefore, in cases of punishable conduct, the State now has greater leeway to explore alternatives to prison. It has repeatedly been stated that alternative measures to the conduct of proceedings will facilitate the social rehabilitation of criminal offenders.

152. This stance is further supported in cases where the conditions laid out in article 359 of the new Code are met. When a conditional stay of proceedings is granted, the accused persons must commit to compensating the damage caused to victims, either materially or symbolically, and undertake community service in one of the social programmes operated by the Government.

153. These alternative measures and their respective conditions bring accused persons face to face with their victims, given that they must compensate for the damage that they caused; they are also brought face to face with their communities through community service. Such a setting clearly offers greater possibilities for social rehabilitation, which in turn constitutes an effective crime prevention policy.

154. In principle, and in accordance with the provisions of article 354, alternative measures to the conduct of proceedings may be applied to all crimes deemed as less serious (i.e., crimes punishable by sentences not exceeding 8 years).

155. In view of the foregoing, it is important that, when issuing their opinions, all judicial officials involved in criminal proceedings to which an alternative to the conduct of proceedings may be applied prioritize these important criminal justice policies promoted by the State.

Adolescents deprived of their liberty

156. A total of 1,020 adolescents in conflict with the law (60 female and 960 male) are currently in detention facilities.⁴⁰

Measures taken to reduce procedural delays

157. Through the Constitution, the Venezuelan State guarantees *amparo* and assistance for all citizens, stating that: “Every person has the right to the protection of the courts in the enjoyment and exercise of constitutional rights and guarantees, including those inherent in the individual and not expressly provided for in the Constitution and international human rights instruments.”

158. The Constitution provides for effective remedies in two areas of protection: legal protection coming under the judiciary; and the protection afforded by any other competent body of a non-judicial nature that safeguards all rights in general and can determine the obligations of the respective bodies in their relations with the persons subject to their administrative actions.

159. With a view to improving access to justice and preventing procedural delays, a number of new public prosecutor offices, courts and advocacy services have been gradually established. There are now a total of 1,179 courts, 1,852 prosecutors in branch offices, 873 public defenders and the prison system.⁴¹

160. The Public Prosecution Service has established units specializing in different fields. These include the units responsible for the prison system, which are tasked with ensuring compliance with applicable regulations and monitoring prisons to ensure respect for the human rights of inmates. In 2009, a new category of prosecutor’s offices was created and given responsibility for acting at the pretrial and trial stages with the aim of accelerating cases at these stages and thereby preventing procedural delays.

⁴⁰ See the replies to the list of issues regarding the third and fourth periodic reports of the Bolivarian Republic of Venezuela on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

⁴¹ Ibid., p. 8.

161. Lastly, the Ministry of People's Power for Penitentiary Services has been created with an eye to humanizing and modernizing the prison system and achieving healthy coexistence through respect for the prison population. Action will focus on classification and organization, prison work, prison food, education, hygienic surroundings, personal toilet facilities, civility in common areas, and the provision of medical care, preparing inmates in this way for their subsequent integration into society.

Reply to question 13

Capacity of the national prison system and the total number of inmates

162. Venezuela currently has 82 prisons: 50 of them are for adults and 32 are for adolescents in conflict with the law.

163. The installed capacity of the prisons is currently 51,127 and is predicted to rise to 53,372 by May 2015.

164. In 2014, there were 52,099 persons deprived of their liberty, of whom 34,238 had been accused and 17,861 had been convicted.

Measures to reduce overcrowding in prisons and police holding facilities

165. The Venezuelan State established the Ministry of People's Power for the Penitentiary Service with the aim of strengthening policies guaranteeing the rights of persons deprived of their liberty and creating a new prison regime that provides inmates with spaces for work, study and social rehabilitation. The country's prisons have been rebuilt, repaired and remodeled, and installed capacity has been expanded over the past three years.

Access to medical services, food and drinking water

166. The new regime guarantees the physical integrity of all persons deprived of their liberty, not only in terms of safety but also of comprehensive support encompassing health, hygiene and a balanced diet.

167. In 2013, the Public Prosecution Service provided comprehensive care to persons deprived of their liberty on a total of 26,842 occasions, including medical assistance; interviews of detainees; donations of drugs, books and eyeglasses; barber services; identity cards; forensic medical examinations; and basic literacy kits under the Government's adult literacy programme.

168. The Ministry of People's Power for Penitentiary Services and the Ministry of People's Power for Public Health have implemented a number of medical care programmes, including for tuberculosis and HIV prevention and treatment and a vaccination programme, thus guaranteeing the right to health within prisons.

169. Through coordination with other State plans, detainees have received ophthalmological care and eyeglasses. They are also included in elective surgery programmes in hospitals at the national level. Additionally, all prisons have areas for nursing and medical staff to provide primary health care. All of these spaces provide care to detainees through consultations with different medical and dental specialists, along with the medical and dental care provided in prison outpatient units and by the health and dental professionals who visit prisons.

170. Special mention is made of the medical supplies provided. To date, 1,087,984 units have been acquired for the benefit of the prison population. Medical equipment

has also been acquired for the immediate and effective care of prisoners, including wheelchairs, gurneys, dental chairs, mobile clinics and vehicles for transporting drugs.

171. The following groups of persons have been identified as being in a vulnerable situation because of a health condition: 36 prisoners have HIV/AIDS, 164 have diabetes and 405 have high blood pressure.

172. As part of the public health policy, the Bolivarian Government provides antiretroviral treatment free of charge to persons with HIV. Discrimination against persons with HIV/AIDS is neither practised nor tolerated in any prison in the country. Similarly, access to drinking water and suitable sanitation is guaranteed for the entire prison population.

Persons deprived of their liberty as convicted and unconvicted prisoners

173. With the creation of the Ministry of People's Power for the Penitentiary Service, those deprived of their liberty are now classified as convicted or unconvicted prisoners in prisons under the new penitentiary regime, that is to say in 87 per cent of prisons. The two groups therefore benefit from infrastructure that ensures suitable detention conditions for them. The detention centres for unconvicted prisoners aim to ensure special, optimum conditions for these individuals, ensuring that the time spent awaiting trial is not spent idly but rather provides encouragement to reform.

Adolescents deprived of their liberty

174. The positive legislation of the Bolivarian Republic of Venezuela includes a child and adolescent protection system, which comprises 31 facilities, and a juvenile criminal responsibility system, which has an additional 32 facilities.

175. It is important to highlight that under the Organic Act on the Protection of Children and Adolescents, adolescents who are apprehended while committing a crime and deprived of their liberty are brought before the competent courts within 24 hours of their detention. If their deprivation of liberty is to continue, they are transferred to specialized facilities. Their time in police pretrial detention centres is therefore very short.

176. The pretrial detention centres are periodically inspected by the national human rights institute. In 2013 alone, the Office of the Ombudsman carried out 534 inspections of police pretrial detention centres throughout the country. These inspections result in recommendations that are issued to the State bodies that oversee those establishments so that the detected issues may be addressed.

Reply to question 14

Control of violence and the possession of weapons in prison

177. The State has been engaged in a gradual but aggressive attack on the mafias which operate in prison establishments to restore the internal discipline that ought to exist in such places. Acts of violence among inmates have been virtually eliminated following the introduction of the new prison system, as the order, discipline, sanitary conditions, daily inspection regime and training, study and working conditions in which detainees are living no longer give rise to problems of this kind.

178. A key task in the effort to reduce levels of violence in prison is to enhance the initial and ongoing training provided to prison staff. Prison guards complete their initial training at the National Experimental University for Security Forces, and the administration staff involved at all levels are professionals in their various fields of expertise. All of the 7,623 staff working in the Ministry for Penitentiary Services have

academic qualifications and experience in the prison sector. Ongoing training is provided by the National Academy for the Prison Service and the Prison Service Training School, both of which were established in 2014 and run regular professional skills development courses.

179. Efforts to improve inmates' living conditions, which have been substantially enhanced in terms of comprehensive care, health, hygiene and balanced nutrition, are also contributing to a reduction in violence in prisons. In addition, the Cayapa Plan, a State-led initiative designed to expedite judicial proceedings and thus reduce prison congestion, gives the agencies involved in the administration of justice the flexibility to establish mobile criminal courts to deal with prisoners' cases that are subject to procedural delays, as and when required.

Access monitoring system

180. As part of its efforts to safeguard human rights, the Venezuelan State carries out daily inspections in prison facilities nationwide. This practice has been effective in the drive to eliminate weapons, explosives and other prohibited objects. The Ministry of People's Power for Public Security has entered into a strategic agreement for the use of advanced technology under the cooperation framework between the People's Republic of China and the Bolivarian Republic of Venezuela. This remote monitoring and security system will provide security, surveillance and comprehensive monitoring inside prison facilities in real time. The system covers security and surveillance in the areas surrounding prison facilities, at vehicle entry and exit points and at entry and exit points used by family members, public officials and police officers, among others, as well as continuous security and surveillance within the prisons themselves. Measures are included to reduce loss of and damage to materials and equipment, reduce incidents and improve the effectiveness of security.

181. The technology-based prison security systems in use in prison facilities include the following:

- (a) An access monitoring system combining human and technical resources which is designed to prevent prohibited items being brought into prisons;
- (b) An X-ray inspection system for checking baggage, handbags, suitcases and boxes, which conveys such items by belt to the inside of the machine, where they are scanned, and provides a comprehensive picture of the objects inside them;
- (c) Closed-circuit television and video surveillance technology incorporating night vision equipment, computer-assisted operations and a movement detection facility which places the system in alert mode whenever a moving item is detected in front of the cameras;
- (d) Interlocking doors providing an innovative, high-tech access control solution where electronic surveillance, by means of a card reader or keypad, is used to measure the body weight of persons entering or exiting and verify their identity against biometric systems while they are inside the cabin;
- (e) Walk-through metal detectors, designed to detect metals, knives, firearms and other metal objects;
- (f) Hand-held metal detectors, designed to detect metals, knives, firearms and other items with a plastic coating;
- (g) Body scanner (planned) that displays a three dimensional black and white silhouette and highlights any hidden objects;

(h) Digital video recorders that provide an interactive, digital-format television and video recording system with various options for processing video footage recorded, access to programming guides and an advanced content search function.

182. All these electronic devices are also intended to reduce search times and make searches more accurate, such that they encroach less on the privacy of prisoners, visitors and public officials and help to humanize and modernize the prison system.

Acts of violence in Sabaneta prison

183. Zulia Prosecution Service No. 11 was chosen to undertake the criminal investigation into the clashes that are reported to have taken place in the Maracaibo (Sabaneta) National Prison on 16 and 17 September 2013 and which left 3 injured and 16 dead. The associated criminal proceedings are ongoing. The prison was stormed and its evacuation was ordered.

184. The Office of the Ombudsman maintained a presence at the prison, ascertained the identities of those who were injured and killed, was an observer to the transfer of the 3,424 detainees to other prisons in the country, and ensured that those prisoners received medical care and were able to attend court hearings and receive visits from family members. The Ombudsman's team also took part in a round-table discussion with representatives of the institutions concerned (the National Guard, Ministry of People's Power for Penitentiary Services, Zulia State criminal court circuit, Zulia State Office of Public Security and the Public Prosecution Service) during which the situation was evaluated and measures for addressing it were adopted.

185. The Ombudsman's team also reviewed the criminal cases initiated by the Public Prosecution Service and assigned to Zulia State Prosecution Service No. 11 (file No. MP-393911-2013). With the case at the preparatory stage only, on 12 May 2014 the Special Advocate for Zulia State recommended that the prosecution service should speed up the investigations.

Yare Prison

186. The irregular events reported to have occurred on 19 August 2012 at Yare Prison entailed a conflict among prisoners in the workshop and administrative zones which broke out at the end of family and prisoner visiting time. The events are being investigated by Miranda Prosecution Service No. 16 pursuant to an order dated 20 August 2012.

Andean Region Penitentiary Centre

187. As a result of the riots reported in July 2012 following the announcement of a transfer of prisoners from the Andean Region Penitentiary Centre in Mérida, an arraignment hearing was held at the centre on 22 July 2012 for 62 of the prisoners and 1 visitor. Mérida State Public Prosecution Service No. 4 was assigned to prosecute, along with National Prosecution Service No. 47 with full jurisdiction at the national level. Four cases are currently in progress and have been joined.

188. In the course of these events, the Office of the Ombudsman kept the situation under constant review, visited the prison and organized various mediation and conciliation activities among the prisoners involved in the dispute.

189. The inquiry into the events is being conducted by Public Prosecution Service No. 4 and is currently at the investigation stage. The case has been moved to Bolívar State because those involved have been transferred to the detention centre in that state.

Rodeo I and Rodeo II Capital Detention Centre

190. Investigations have been initiated into the disturbances which reportedly occurred at the Rodeo I Capital Detention Centre during the departure of family visitors on 12 June 2011, when a firefight broke out between prisoners. Prosecution Service No. 41, with full jurisdiction at the national level, and Prosecution Service No. 4 of Miranda State have been assigned to hear the cases, which are currently at the investigation stage.

191. Having been notified of the events at the Rodeo I Capital Detention Centre, the Ombudsman travelled immediately to the facility, where she was informed of the death of 17 prisoners and the names of the deceased. She remained at the centre from 12 to 15 June 2011 in order to ensure inmates' human rights were respected. However, the violence continued, and the Bolivarian National Guard stormed the centre. During this process, 19 National Guardsmen were wounded and 1 was killed.

192. Following these events, 2,500 prisoners were transferred to other prisons to allow for the facilities to be repaired and refitted and to safeguard the security and the physical integrity of the detainees; the transfer was in no way a disciplinary measure.

193. While the conflict was going on, the Ombudsman went to the detention centre to speak with the ringleaders and some of the prisoners and try to persuade them to give themselves up and lay down their arms. However, the ringleaders did not accept her offer of mediation, and this made any mediated negotiations impossible. For this reason, constant surveillance was organized to ensure that detainees could be provided with the necessary medical care and food and that they were treated properly by the Bolivarian National Guard.

Reply to question 15

194. Judges abide by constitutional provisions relating to the protection and guarantee of human rights. Article 334 of the Constitution assigns judges a prominent role in this respect: "Within the scope of their jurisdiction and in accordance with the provisions of this Constitution and the law, all Venezuelan judges are under an obligation to ensure the integrity of this Constitution. In the event of discrepancy between the Constitution and another law or legal provision, constitutional provisions shall prevail and the courts shall in all cases, including in the absence of an application, be responsible for deciding the appropriate course of action."

195. In 2014 the Judicial Commission appointed a total of 1,547 judges including provisional, stand-in and travelling judges.

196. Article 33 of the Code of Ethics for Venezuelan Judges is linked to article 40 of the Judicial Service Act. The latter reads as follows:

"Without prejudice to any criminal and civil responsibility which might arise, judges shall be dismissed, subject to due process, in the following situations:

1. If, having previously been disciplined by suspension from duty, they commit a further error of conduct of the same nature as the act which prompted their suspension;
2. If they harm the reputation of the judiciary or commit acts of a grave nature that, while not constituting offences, are in violation of the Code of Ethics, undermine the dignity of the office or discredit the profession in public opinion;
3. If they request or receive favours, loans, gifts or any other form of benefit from any party, attorney or third person;

4. If they have committed a serious and inexcusable judicial error which is recognized in a judgement of the Appeal Court, High Court or the respective chamber of the Supreme Court, as applicable, and their dismissal has been requested;
5. If they repeatedly and without justification fail to comply with statutory deadlines and time limits or repeatedly defer sentencing;
6. If they undertake activities that should be performed by a lawyer;
7. If they exert direct or indirect influence on other judges in an attempt to induce them to proceed in a certain manner in cases which they are hearing, investigating or are due to hear.
8. If they are political activists or engage in political activity of any kind, other than exercising their right to vote;
9. If they are covered by any of the grounds of incompatibility established by law;
10. If they serve in court while subject to legal suspension;
11. If they infringe the prohibitions and obligations imposed upon them by law;
12. If they promote, organize or facilitate strikes, stoppages, partial or complete suspension of activities or slowdowns, or take part in or tolerate such activities;
13. If in the course of legal proceedings they recount events that did not take place or fail to recount the events that took place;
14. If they fail to share case files when sharing is mandatory, or do so on an irregular basis only;
15. If they fail to comply with the provisions of the Court Fees Act;
16. If they engage in abuse of authority or *ultra vires*.”

197. Pursuant to article 217 of the Constitution of 1961, the Organic Act on the Judicial Council was enacted in 1998. With the establishment of the Judicial Council and the Courts Inspectorate, the first predecessor of the administrative disciplinary procedure came into being.

198. However, it was the arrival of President Chávez in 1999 and the enactment of the decree to reorganize the judiciary in accordance with the Constitution of the Bolivarian Republic of Venezuela that marked the start of the process which has since culminated in the establishment of the Judicial Disciplinary Tribunal. The process began with the declaration of a state of judicial emergency in 1999, paving the way for the reorganization of the judicial branch and creation of the Judicial Emergency Commission. In December 1999, the National Constitutional Assembly announced the public authorities transition regime and at the same time created the first Commission for the Operation and Restructuring of the Judicial System.

199. In the course of subsequent years, various other provisions for the restructuring and reorganization of the judiciary were enacted, as well as regulations for the appointment and tenure of judges in the judicial branch. Lastly, in August 2009, the National Assembly enacted the Code of Ethics for Venezuelan Judges. The code was revised in August 2010.

200. The Judicial Disciplinary Tribunal is the judicial body responsible for ensuring application of the Code of Ethics for Venezuelan Judges, i.e., the body responsible for disciplining judges who, in the course of judicial proceedings, violate legal or

regulatory provisions, omit to discharge one of their duties, fail to discharge them in a timely manner or discharge them negligently, or for any other reason or circumstance fail to comply with ethical principles and obligations. The Code of Ethics may also be applied to other justice system officials who, in the course of judicial proceedings, violate legal or regulatory provisions, in cases where the responsible bodies fail to exercise their disciplinary authority.

201. One of the authority's key activities is to disseminate information about the Code of Ethics for Venezuelan Judges and raise awareness among the public in general, the aim being to empower citizens with the means and mechanisms necessary to give effect to the complaints that drive the work of the various bodies forming part of the Judicial Disciplinary Tribunal.

Annual figures for the number of judges and other justice officials removed from office since 2004

202. The Judicial Disciplinary Tribunal began its official duties on 16 September 2011. A total of 181 cases inherited from the former Commission for the Operation and Restructuring of the Judicial Authority provided the point of departure for activities such as awareness-raising, support, legal assistance and those inherent to the judicial process itself.

203. By the end of the first quarter of 2013, the Tribunal's document processing and distribution unit had logged 6,126 cases. Of this total, 1,276, or 21 per cent of cases logged, corresponded to complaints.

204. The Judicial Disciplinary Tribunal resolved 123 cases and the General Court Inspectorate conducted inspections of 1,629 judges, attesting to the efficiency of the justice system officials concerned and their compliance with ethical principles.

Measures taken to ensure fair trial; status of the investigation

205. With regard to the criminal proceedings against Ms. Lourdes Afiuni, it is important to emphasize that due process has been ensured at all times. The case dates back to 10 December 2009, when Ms. Afiuni, in exercise of her duties as Caracas Supervisory Judge No. 35, scheduled a preliminary hearing in the case against Mr. Eligio Cedeño, which was attended by the Tribunal's registrar, the accused, his defence team, two lawyers from the Attorney General's Office and Ms. Afiuni. Ms. Afiuni went ahead with the hearing even though no representatives of the Public Prosecution Service were present. At the hearing, without the views of the Public Prosecution Service having been heard, she decided that the accused should be released on bail and allowed him to leave the court building unlawfully, as no substantive legal ruling or release order had been issued at the time; the release order was issued only after the accused had left the building.

206. On the same day, Ms. Afiuni was arrested by officers of the Bolivarian National Intelligence Service in execution of a warrant issued, at the request of the Public Prosecution Service, by Caracas Supervisory Court No. 50. Having subsequently been brought before this Court, she was placed in pretrial detention on charges of corruption, abuse of authority and facilitating escape. The corresponding indictment was issued on 26 January 2010. The preliminary hearing was held on 17 May 2010 and was followed by an open, public trial.

207. Subsequently, on 2 February 2011, Caracas Trial Court No. 26 ordered that her pretrial detention be replaced by conditional release subject to a requirement to report to the court every two weeks. On 29 November 2011, the Public Prosecution Service asked Court No. 26 to grant an extension in accordance with article 244 (now 230) of the Code of Criminal Procedure. The hearing was held on 9 December 2011 but was

not concluded, as the defence team withdrew from the chamber. When the hearing continued on 13 December 2011, the extension request was declared admissible and the court agreed to allow a period of two years, running from 10 December 2011 to 10 December 2013, for the proceedings to be concluded.

208. It is important to emphasize that the records of the court proceedings show that the postponement of the open, public trial was attributable to the accused and her lawyers, their actions being the determining factor in the procedural delays. The trial finally began on 28 November 2012. Ms. Afiuni is not currently being detained.

Acts of intimidation and rape during her detention

209. While being held in the National Women's Correctional Institution between December 2009 and February 2011, Ms. Afiuni was visited on 18 occasions by representatives of the Office of the Ombudsman based on-site. The first visit was on 18 December 2009 and the last on 17 January 2011. Ms. Afiuni made no mention or complaint of any attack on her personal, physical, psychological or sexual integrity during these visits.

210. On 4 February 2011, at the request of the Public Prosecution Service, Ms. Afiuni was granted house arrest after having undergone surgery for a health problem. The public learned of her alleged rape in November 2012, following publication of the book *Afiuni: La Presa del Comandante* (Afiuni: The Comandante's Prisoner).

211. In view of the situation, on 27 November 2012, the Public Prosecution Service asked First Instance Trial Court No. 17 of the Criminal Court Circuit of Caracas Metropolitan Area District Court to transfer Ms. Afiuni to the headquarters of Public Prosecution Service No. 37 so that she, as the victim, could provide details of the time, place and nature of the acts. The transfer was granted on 28 November 2012 and was carried out on 29 November 2012. However, the alleged victim refused to make a statement.

212. On 14 June 2013, at the request of the Public Prosecution Service, First Instance Trial Court No. 17 authorized Ms. Afiuni's conditional release subject to a requirement to report to the court every two weeks.

213. As regards the allegation that Ms. Afiuni was sexually assaulted at the National Women's Correctional Institution, on 29 November 2012 Public Prosecution Services Nos. 37 and 82, the former with full jurisdiction and the latter with jurisdiction for the defence of women, travelled to the prison to investigate the accusation. In the presence of her lawyers, Ms. Afiuni refused to repeat the accusation and recount the acts she allegedly suffered. However, while being held in the prison, she received regular visits from sentence enforcement officers of the Public Prosecution Service who were responsible for safeguarding her human rights and under instructions to hear any and all accusations from her. However, they noted that no anomalies and no symptoms that might be indicative of human rights violations were apparent. All this is duly noted in official records which were also signed by Ms. Afiuni.

Reply to question 16

214. Article 261 of the Constitution of the Bolivarian Republic of Venezuela provides that: "Military criminal courts constitute an integral part of the judicial system and military court judges shall be selected through competitive processes. The scope of military courts' jurisdiction, their organization and their methods of operation shall be determined by the adversary system and in accordance with the provisions of the Code of Military Justice. Cases involving ordinary offences, human rights violations and

crimes against humanity shall be tried in the ordinary courts. The jurisdiction of the military courts shall be limited to offences of a military nature.”

215. Article 123 of the Code of Military Justice provides that: “Military criminal jurisdiction shall cover: the territory and territorial waters of Venezuela; the ships and aircraft of the National Armed Forces; foreign territory occupied by the National Armed Forces; military offences committed by military personnel or civilians, jointly or separately; ordinary offences committed by military personnel in military units, barracks, garrisons, educational institutions and other establishments and in installations of decentralized bodies of the Armed Forces, during military functions, in the course of duty, while on mission or on the occasion of missions; and connected offences, when the military offence carries an equal or heavier penalty than the ordinary offence, without prejudice to the foregoing paragraph.”

216. With regard to paragraph 3 of the aforementioned article, article 128 of the Code of Military Justice provides that: “In the cases to which paragraph 3 of article 123 applies, if the ordinary offence has been committed by military personnel and civilians, as main perpetrators or accomplices, all the defendants shall be subject to military jurisdiction.”

217. In addition, article 124 of the Code stipulates that: “Persons at all times subject to military jurisdiction shall include: [...] (5) Employees and workers without military status who provide services in military establishments or facilities, in respect of any offence or misdemeanour committed within such establishments or facilities.”

218. Furthermore, article 125 of the Code establishes that: “In times of war or suspension of constitutional guarantees, military jurisdiction shall be extended to: [...] (2) All persons who, irrespective of the reasons or circumstances, are attached to the armed forces, for offences and misdemeanours committed in territory covered by the security services. (3) Persons not forming part of the armed forces who, within the operations zone, commit any of the offences established in Section III, Book Two, of the Code, or any acts prohibited or declared punishable by the Commanders in Chief pursuant to instructions issued prior to the commission of such acts.”

219. It is clear from the above provisions of the Code of Military Justice that civilians may be tried in military courts only if they have been involved in offences of a military nature, as established in military legislation.

Reply to question 17

220. The justice system is composed of the Supreme Court of Justice and such other courts as may be determined by law, the Public Prosecution Service, the Office of the Ombudsman, the criminal investigation bodies, court officers and officials, the prison system, alternative forms of justice, citizens who take part in the administration of justice in accordance with the law and lawyers authorized to practise.

221. As part of the Venezuelan justice system, Venezuelan lawyers enjoy all the rights and freedoms established in the Constitution for the full exercise of their functions, without restrictions other than those established in the Constitution and laws.

222. The criminal proceedings against Mr. José Amalio Graterol, private counsel to Ms. Afiuni, are unconnected to his role as counsel for the defence in her case. The criminal proceedings against him relate to an alleged offence of obstructing justice, as defined and criminalized in article 110 of the Organic Act on the Judiciary, which establishes that: “Any person who, using violence, intimidation or fraud, impedes or obstructs the conduct of judicial proceedings or the Public Prosecution Service shall be liable to a term of imprisonment of between 6 months and 3 years.”

223. As a result of Mr. Graterol's conduct in the course of a trial in which he was defending a person in Vargas State, a flagrante delicto procedure was initiated against him before First Instance Supervisory Court No. 2 of Vargas State Criminal Court Circuit, according to information provided by the Public Prosecution Service. At the time the Public Prosecution Service asked the court to release Mr. Graterol conditionally on bail, subject to a requirement to report to the court every two weeks, in accordance with article 256, paragraphs 3, 8 and 9, of the Code of Criminal Procedure, which provides that: "Provided that the grounds for pretrial detention can be reasonably satisfied using some other measure less onerous for the accused, the competent court shall instead, *proprio motu* or on the request of the Public Prosecution Service or the accused, and on the basis of a reasoned decision, impose one of the following measures: [...] (3) A requirement to report regularly to the court, or the authority designated by the court. [...] (8) A requirement, which may be met either by the accused or a third party, to provide adequate financial security, in keeping with the principle of proportionality, in the form of cash deposits, securities, the guarantee of two or more appropriate persons, or real collateral. (9) Any other precautionary or preventive measure that the court, by reasoned decision, deems expedient or necessary [...]."

224. The Public Prosecution Service also requested that the summary procedure be adopted, in accordance with article 372 of the Code of Criminal Procedure, which provides that: "The Public Prosecution Service may ask that the summary procedure provided for in this Section be adopted, in the following circumstances: (1) In the case of flagrante delicto, whatever penalty the offence carries. (2) In the case of offences that carry a custodial sentence with a maximum term of no more than four years. (3) In the case of offences that do not carry a custodial sentence."

225. On 8 June 2012, the court hearing the case ordered Mr. Graterol's conditional release. The court also agreed to adopt the summary procedure for the proceedings.

226. Consequently, on 11 July 2012, the prosecutor overseeing the case formally indicted Mr. Graterol on the offence of obstructing justice, as defined and criminalized in article 10 of the Organic Act on the Judiciary, before First Instance Trial Court No. 3 of Vargas State Criminal Court Circuit.

227. On 23 July 2012, Mr. Graterol's defence counsel petitioned the Appeal Court to revoke the decision of First Instance Trial Court No. 3 of Vargas State Criminal Court Circuit, dated 16 July 2012, in which it had ruled that Mr. Graterol should remain in pretrial detention since there had been no change in the circumstances that had determined the order.

228. On 1 August 2012, the Appeal Court of Vargas State Criminal Court Circuit responsible for ordinary criminal cases and cases concerning the criminal responsibility of adolescents and violence against women declared the appeal of Mr. Graterol's defence counsel inadmissible and upheld the decision of First Instance Supervisory Court No. 2 of Vargas State, dated 8 June 2012, which had ordered Mr. Graterol's detention.

229. At the public hearing held subsequently on 14 September 2012, every section of the indictment was admitted in its entirety and it was determined that the trial should continue on 9 October 2012. The trial ended on 18 December 2012 with the defendant being sentenced to 6 months' imprisonment for obstructing justice. An appeal against the sentence was lodged on 3 April 2013. In July 2013, the sentence was upheld.

Reply to question 18

230. In Venezuela, prosecutors have historically been appointed on a temporary basis since, prior to the promulgation of the 1999 Constitution, appointments to the prosecution service were made not through competitive processes but directly by the Attorney General for each constitutional term. However, the single transitional provision of Section VI of the Organic Act on the Public Prosecution Service sets out general guidelines for the competitive process for recruitment to the Public Prosecution Service as well as guidelines for the promotion and transfer of persons forming part of the Service and for the reclassification of their posts.

231. In addition to the Organic Act on the Public Prosecution Service, article 146 of the Constitution establishes that positions in the public administration are career appointments, and that the appointment of public officials to such positions should therefore be by public competitive process. The Constitution also establishes that promotions shall be guided by objective merit-based criteria and that transfers, suspensions and dismissals shall be on the basis of performance.

232. Article 43 of the Staff Regulations of the Public Prosecution Service states that: "Available status shall be understood to mean the situation in which career prosecutors, officials and employees find themselves when they are affected by a reduction in posts or have been removed from a post to which appointment and removal are discretionary and to which they might subsequently be reappointed. The period of availability shall not exceed one month. During this month, the person who has been removed from service shall be entitled to receive his or her salary and other remuneration due. Paragraph One: Any person who enters the Public Prosecution Service in a senior prosecutor's post and whose appointment is not confirmed at the end of the corresponding period and who chooses not to repeat the competitive process shall not be assigned available status but shall be subject to the provisions of article 30 of the Organic Act on the Public Prosecution Service."

233. Article 44 of the Staff Regulations stipulates that: "During the period of availability, the Public Prosecution Service shall endeavour to reassign the available person to a career position offering equal or similar seniority and remuneration to the position occupied at the time of the workforce reduction, as appropriate". Article 45 provides that: "During the period of availability, persons who have been removed from their post may be asked to accept a vacant position of lesser seniority on a temporary basis, until such time as they can be placed in a position of equal status to the position in which they were serving at the time of their removal or assignment to a position to which appointment and removal are discretionary. Acceptance of reassignment shall be confirmed in writing, with a copy being placed in the file of the person concerned. If the person does not accept the reassignment and his or her reassignment is thus not possible, the provisions of the following article shall apply". Article 46 states that: "If it has not been possible to reassign the person before the end of the period of availability, the person shall be retired from service, shall be entitled to receive social security benefits and shall be placed on a roster of pre-qualified candidates."

234. Article 105 states that: "Public prosecutors, prosecution service officials and employees shall be retired from service in the following situations: (a) By duly accepted written resignation; (b) Upon dismissal; (c) Upon retirement; (d) Due to permanent disability or disability lasting more than one year; (e) Upon the death of the prosecutor, official or employee; (f) Due to workforce reduction; (g) On failing to pass the assessment for acceptance as a career civil servant."

235. Article 166 states that: "Public prosecutors who have completed 10 or more years of service, even if not all 10 have been spent representing the Public Prosecution

Service, shall be assessed to determine their eligibility for a career appointment by a committee appointed by the Attorney General and composed as follows: (1) For the assessment of public prosecutors who have served as prosecutors in the Supreme Court of Justice either in plenary sessions or in chambers, by three directors of the legal department of the Attorney General's Office; (2) For the assessment of all other representatives of the Public Prosecution Service, by the Appointments Director, the Inspections Director, the Director for Reviews and Doctrine and the Director of the Public Prosecution Service's Higher Education Institute."

236. Lastly, article 167 states that: "Public prosecutors who have not completed 10 years of service at the time the Organic Act on the Public Prosecution Service enters into force must complete the corresponding competitive process in order to remain in their position and receive a career appointment."

Reply to question 19

237. Article 134 of the Constitution establishes that: "In accordance with the law, all persons have a duty to perform such civilian or military service as may be necessary for the defence, preservation and development of the country, or for dealing with situations of public calamity. No person may be subjected to forced recruitment. All persons have a duty to render services in the electoral functions assigned to them by law."

238. The Organic Act on the Bolivarian National Armed Forces and the Conscription and Military Enlistment Act (both of which were published in the Official Gazette, No. 39359, dated 21 October 2009) have been revised to align them with the armed forces' constitutional mandate.

239. The procedure for military enlistment is established in the aforementioned act and its implementing regulations. Venezuelans of military age who wish to perform their constitutional duty to serve in the military go voluntarily to the military recruitment office in their district. At the district recruitment office, a psychological test is administered to determine whether or not the candidates have been subject to coercion. If the test results are positive, candidates are given the opportunity to leave and may report the case to the Public Prosecution Service so that appropriate action can be taken.

240. In Venezuela, no State security agency or official body is permitted to coerce citizens of any age in order to force them to report to a military recruitment office.

241. The aforementioned recruitment campaigns provide the public with information about the date and place to which citizens of military age who wish to enlist in the armed forces should report. The benefits and responsibilities of joining the military are also described.

242. The new recruits then undergo medical, dental, social and psychological testing in order to determine whether or not they are suited for military service. Those who are selected are assigned to the unit in which they will serve until they are discharged.

Reply to question 20

243. Articles 19 and 20 of the Covenant are fully in line with the provisions of the Constitution of the Bolivarian Republic of Venezuela, which states, in article 57, that: "All persons shall have the right to freely express their thoughts, beliefs and opinions orally, in writing or through any other means of expression, and to use for this purpose any medium of communication or dissemination without being subject to censorship."

All persons who exercise this right shall assume full responsibility for the ideas expressed. Anonymity, propaganda for war, discriminatory messages and messages which incite religious intolerance shall not be permitted.” Article 58 states that: “Communication shall be free and pluralistic and shall carry the duties and responsibilities specified by law. All persons shall have the right to timely, accurate and impartial information, without censorship, in accordance with the principles of this Constitution, as well as the right to reply and to make a correction when they feel directly affected by inaccurate or offensive information. Children and adolescents shall have the right to receive adequate information for their comprehensive development.”

244. The Act on Social Responsibility in Radio, Television and Electronic Media⁴² faithfully implements constitutional principles, providing, in article 2, that the general objectives of the Act include: ensuring that families and individuals have the legal mechanisms necessary to allow them to exercise adequately the social role and responsibility corresponding to them as listeners and viewers, in conjunction with communication service providers and the State; guaranteeing respect for freedom of expression and information, without censorship, within the inherent limits of a democratic and social State based on the rule of law and justice and with the responsibilities which exercising this freedom carries, in accordance with the Constitution, international human rights treaties ratified by the Bolivarian Republic of Venezuela and the law; and promoting the effective exercise and observance of human rights, in particular those concerning the protection of honour, privacy, confidentiality, self-image and reputation and access to timely, accurate and impartial information, without censorship.

245. Thus, one of the main responsibilities of the National Telecommunications Commission (CONATEL) is to ensure compliance with the Act on Social Responsibility in Radio, Television and Electronic Media, whether by monitoring broadcasters, television companies and websites or by dealing with complaints from viewers and listeners about content thought irresponsible or to constitute a violation of the law on the part of the media.

246. CONATEL monitors radio and television service providers, electronic media suppliers, advertisers, independent national producers and users to ensure that they exercise social responsibility, the aim being to foster a democratic balance between duties, rights and interests, to promote social justice and to contribute to citizen development, democracy, peace, human rights, culture, education, health and the social and economic development of the nation.

247. CONATEL is responsible for protecting the people of Venezuela, as users of the media, from messages of the type defined in the Act as being in violation of their rights. In exercise of this duty, in 2014, it monitored more than 700,000 hours of content broadcast by the media.

248. In this exercise, CONATEL identified at least 18,071 violations of the Act on television and a further 6,740 violations on radio. It subsequently issued the respective warnings and initiated administrative disciplinary proceedings in cases where such action was merited.

249. Specifically, in 2014 it conducted investigations into the content of 35 radio and television programmes and processed more than 250 complaints received from viewers or listeners about the programming on certain media. It also produced more than 12,683 technical reports and assessments of content broadcast by the media and processed more than 1,600 applications for audiovisual content.

⁴² Official Gazette, No. 39601, 7 February 2011.

250. In this area, Venezuelan legislation is fully aligned and consistent with articles 19 and 20 of the International Covenant on Civil and Political Rights, and the procedures carried out by the relevant regulatory bodies have been conducted in the manner provided by law.

251. The provisions of the Criminal Code which define the offence of defamation do not in any way impede the free exercise of the right to freedom of expression enjoyed by all citizens at all times. As the highest authority interpreting the Constitution, the Constitutional Chamber of the Supreme Court of Justice found in Judgement No. 1942 of 15 July 2003⁴³ that, on the basis of the provisions of article 335 of the Constitution, the articles of the Criminal Code that dealt with defamation were constitutional. Likewise, in its judgement on the Globovisión case, the Inter-American Court of Human Rights ruled definitively that: “It has not been established that the State has violated the right to seek, receive and impart information, within the meaning of article 13.3 of the American Convention on Human Rights.”

Reply to question 21

252. Article 156 of the Constitution provides that: “The national government is responsible for: [...] (28) The postal service and telecommunications system, and the management and administration of the electromagnetic spectrum”. Article 3 of the Organic Act on Telecommunications⁴⁴ provides that: “The overall management of the telecommunications system and radioelectric spectrum is the responsibility of the national government and shall be governed by this Act.”

253. Similarly, article 5 of the Organic Act on Telecommunications defines the establishment and operation of telecommunications networks and the provision of telecommunications services, including radio, television and national audiovisual production, as services in the public interest which can be exercised only by parties who have obtained the relevant administrative authorization, concession or permit, where required, in the circumstances and subject to the conditions established in the Act, its implementing regulations and the general terms and conditions established by CONATEL for this purpose.

254. The radioelectric spectrum of Venezuela thus constitutes a State asset which can be used and operated only by parties in possession of the relevant concession or usage permit associated with an administrative authorization granted by CONATEL.

255. In exercise of the powers reserved for the Venezuelan State in the Constitution, the Bolivarian Republic of Venezuela has adopted an independent sovereign policy for the use of its radioelectric spectrum, resulting in its comprehensive democratization, as evidenced in the emergence of more than 300 community radio stations, social and public service television channels such as Telesur and TVES, and the launch of the Simón Bolívar and the Francisco de Miranda satellites, as instruments serving the culture of peace and human coexistence and the values of solidarity and respect for the people of Venezuela.

256. The aforementioned law regulates all aspects of the procedure for obtaining administrative authorization or adding new elements to existing authorizations, as well as the procedure for obtaining concessions for the use and operation of the radioelectric spectrum.

257. The number of privately owned media companies in Venezuela is rising steadily. In 1998 there were 331 privately owned commercial FM radio stations and 11 public

⁴³ <http://historico.tsj.gob.ve/decisiones/scon/julio/1942-150703-01-0415.HTM>.

⁴⁴ Official Gazette, No. 39601, 7 February 2011.

service stations. By 2012 these figures had almost doubled; there were 499 commercial FM stations, 83 public service stations and 247 community radio stations. In 1998 there were 36 commercial television channels and 8 public service channels broadcasting free-to-air. The figures for 2012 were again almost double; there were 67 commercial channels, 13 public service channels and 38 community channels. The coverage of community channels, it should be noted, is limited to a parish or district, and such channels are sometimes short-lived.

258. This sustained growth in privately owned media and their clear preponderance over public service media, both in number and broadcasting capacity, attests to the transparency and democratization of the communications media.

Reply to question 22

Measures taken to protect the physical integrity of human rights defenders and journalists

259. Social organizations and movements working to promote and protect human rights have the full support of Venezuelan State institutions, subject to the limitations on the exercise of their activities laid down in the Constitution and the law. To date, no media outlet has been subjected to censorship, and no journalists or members of the above-mentioned organizations have suffered any infringements of their rights or restrictions on the exercise of their profession.

260. Human rights defenders who consider that their rights have been violated can lodge a complaint with the Office of the Ombudsman, accompanied by substantiating evidence so that the matter may be dealt with promptly through the proper channels. They can also request the Public Prosecution Service to gather evidence in order to establish whether an offence has been committed. However, to date, no complaints of that kind have been made.

261. In its Decision No. 864 of 21 June 2012, the Constitutional Chamber of the Supreme Court⁴⁵ stated that: "The investigation of serious human rights violations is one of the fundamental obligations of the State in ensuring that basic rights are safeguarded, inasmuch as judicial investigations allow light to be shed on the circumstances in which the events that engage the responsibility of the State occurred. That is a necessary step in enabling the families of the victims and society at large to know the truth and in ensuring that those responsible are punished and that measures are introduced to prevent human rights violations from recurring." Thus, in general, the proper investigation of serious human rights violations is a key component in achieving justice and in strengthening and consolidating a State that is genuinely governed by the rule of law, in other words a State that ensures effective and unconditional protection for basic human rights. Furthermore, the obligation to conduct a diligent investigation into serious human rights violations requires that the State establish practices, public policies, institutions and measures that are designed to protect the integrity and lives of its citizens.

262. As part of ongoing efforts to further strengthen criminal law, the Venezuelan State and the judicial branch, acting in accordance with the law and the international human rights instruments ratified by the Bolivarian Republic of Venezuela, have adopted and implemented policies and programmes to strengthen the criminal justice system. These include the following:

⁴⁵ Constitutional Chamber of the Supreme Court, Decision No. 864, 21 June 2012.

(a) The Act on the Protection of Victims, Witnesses and Other Parties to Judicial Proceedings,⁴⁶ which is intended to protect the rights and interests of victims, witnesses and other parties to judicial proceedings and to regulate protective measures, specifying the scope of such measures and associated arrangements and procedures;

(b) The public security policy pursued under the A Toda Vida Venezuela crime prevention programme, the third component of which provides for an overhaul of the criminal justice system in order to take account of the fight against impunity and to provide effective guarantees for human rights.

263. Social organizations and movements working to promote and protect human rights have the full support of Venezuelan State institutions. There are no limitations on the exercise of their activities other than those laid down in the Constitution and the law. To date, no media outlet has been subjected to censorship, and no journalists or members of the above-mentioned organizations have suffered any infringements of their rights or restrictions on the exercise of their profession.

The case of Rodrigo Diamanti, president of the NGO Un Mundo Sin Mordaza

264. Juan Rodrigo Diamanti Vidaurre was arrested because he refused to comply with a summons to report to the Bolivarian National Intelligence Service (SEBIN) in order to testify as a witness in an investigation. The investigation was initiated following a search carried out on 1 May 2014 at the premises of Un Mundo Sin Mordaza, a civil association headed by Mr. Diamanti. Explosive devices and other items of a criminal nature were reportedly seized during the search.

265. Under Venezuelan criminal procedure law, searches are part of the evidence-gathering process and must be conducted in accordance with the requirements set out in article 196 of the Code of Criminal Procedure. Under that provision, a warrant is required for a search, unless the search is intended to prevent the commission or continuation of an offence or concerns persons who are wanted for arrest; records are always kept of such searches.

266. As a result of the information obtained and its relationship to the above-mentioned organization whose premises were searched, Mr. Diamanti was summoned to testify, a procedure that is in accordance with articles 208 to 222 of the Code of Criminal Procedure regulating the law of evidence.

267. Juan Rodrigo Diamanti is not exempt from the provisions of article 208 of the Code, under which any inhabitant of the country or person present in its territory has a duty to appear when summoned by a court for the purposes of giving testimony, to testify truthfully about what he or she knows or is asked regarding the matter under investigation and not to conceal facts, circumstances or evidence relating to the content of his or her testimony.

268. Article 212 of the Code expressly provides that if a witness fails to respond to the first summons, he or she shall be compelled to appear by law enforcement officials. If, after appearing, he or she refuses to testify without legitimate cause, the Public Prosecution Service will be notified so that it may undertake the necessary investigation.

269. Following a request from the Public Prosecution Service, Mr. Diamanti was arrested by officials of the security forces as he was trying to leave the country on a flight to Panama, without a return ticket, having ignored a subpoena issued by the Prosecution Service requiring him to testify. Furthermore, the circumstances led the

⁴⁶ Official Gazette, No. 38536, 4 October 2006.

Prosecution Service to believe that Mr. Diamanti was obstructing the above-mentioned investigation.

270. As a result of the investigation, Mr. Diamanti was taken to the headquarters of the National Intelligence Service in Caracas and then brought before the competent court. An indictment hearing was held on 9 May 2014, in accordance with article 236 of the Code of Criminal Procedure, at which he was charged with incitement to public disorder and obstructing the public highway, both of which are punishable offences under articles 285 and 357 of the Criminal Code. The court ordered the precautionary measures provided for under article 242, paragraphs 3 and 4, of the Code of Criminal Procedure. The case is currently at the investigation phase.

The case of Mijail Martínez and Víctor Martínez

271. On 26 November 2009, Mijail Baudilio Martínez Niño was in a van outside his home in Barquisimeto waiting to take his mother, Rosa Luzmila de Martínez, to work. As his mother was getting ready to leave, she heard someone speaking in a loud voice in the street. She looked out of a front window and saw someone who was not known locally acting suspiciously behind the van. She therefore decided to go outside. At that moment, she saw the individual in question start walking backwards just as Mijail Martínez began to walk slowly towards him; then, from a distance of about two and a half metres, the individual pulled out a gun and fired three shots at Mijail Martínez. The perpetrators of the shooting were identified as Carlos Alberto Zavarce Caruci, known as Carlos el Sucio, and Eliezer Jesús Colmenarez Silva.

272. The following steps were taken as part of the ensuing criminal investigation: various mobile phone companies were requested to provide logs of calls; a search warrant was requested; ballistics tests were carried out; the site was mapped; the crime scene was examined by experts and an autopsy was carried out. After conducting the corresponding investigations and establishing criminal responsibility, Public Prosecutor's Office No. 2 of the Lara State judicial district filed formal charges with the third procedural court of first instance for the criminal court circuit of Lara State against Carlos Zavarce for complicity in intentional murder, which is a punishable offence under article 406, paragraph 1, and article 424 of the Criminal Code. On 9 June 2011, at a preliminary hearing before the above-mentioned court, the defendant was held for trial on all charges and remanded to the Uribana prison facility. On 2 November 2012, the sixth procedural court of first instance ordered the pretrial detention of Eliezer Jesús Colmenarez Silva.

273. On 14 June 2011, Jean Carlos Pérez Moreno was detained for the same offences pursuant to an arrest warrant issued at the request of the Public Prosecution Service, in accordance with article 250 of the Code of Criminal Procedure. On 28 July 2011, Jean Carlos Pérez Moreno was charged with aggravated homicide committed out of futile or base motives; he was ordered to stand trial and was remanded in custody.

274. As a result of the criminal investigation carried out into the death of Mijail Martínez by the Public Prosecution Service, the eighth procedural court of first instance for the criminal court circuit of Lara State ordered protective measures for Víctor Martínez, the victim's father, on 26 November 2009. Under those measures, which were extended on 24 January 2012 at the request of the Public Prosecution Service, officials from the Lara State police force were assigned to protect Mr. Martínez, in accordance with the Act on the Protection of Victims, Witnesses and Other Parties to Judicial Proceedings.

The case of Marianela Sánchez

275. On 6 September 2012, the Inter-American Court of Human Rights ordered the adoption of provisional measures in favour of Ms. Sánchez in her capacity as a “human rights defender” working as Legal Coordinator of the Venezuelan Prisons Observatory. The measures were maintained by an order of 13 February 2013.

276. With respect to the alleged abduction of Hernán Antonio Bolívar, the husband of Marianela Sánchez, it should be noted that the Public Prosecution Service was merely presented with a complaint, which was dealt with by Prosecutor’s Office No. 72 of the Caracas Public Prosecution Service. The complaint concerned alleged threats against Mr. Bolívar and his family. On 9 October 2012, the case was closed on the grounds that the investigation had found insufficient evidence to bring charges, without prejudice to the possibility of subsequently reopening the case.

277. On 31 July 2014, the thirty-sixth procedural court for the Capital District judicial circuit extended the protective measures, following a request to that effect. The measures, which were ordered in favour of Ms. Sánchez and members of her family, took the form of round-the-clock surveillance, police escorts or daily visits from officers of the Metropolitan Police stationed in La Candelaria. Such extrajudicial measures are provided for under article 21, paragraphs 1 to 9, of the Act on the Protection of Victims, Witnesses and Other Parties to Judicial Proceedings. The measures were ordered for the duration of the criminal investigation into the alleged events by Prosecutor’s Office No. 39 of the Caracas Metropolitan Area and for a reasonable time thereafter, in accordance with article 30 of the Act. Article 42 of the Act provides that the duration of such measures is six months.

The case of Humberto Prado

278. On 31 May 2007, the thirty-sixth court of first instance acting as the criminal procedural court for the Caracas Metropolitan Area ordered protective measures in favour of Humberto Prado, who is an indirect victim in a criminal case being investigated by Prosecutor’s Office No. 39.

279. In 2011, Mr. Prado lodged a complaint with the Public Prosecution Service in connection with alleged threats from persons unknown. Although the complaint was dismissed on the ground that the act in question was an offence that came under the scope of a private prosecution and that under Venezuelan law such an offence requires that the victim lodge a formal complaint, the Public Prosecution Service applied to the courts for protective measures in the form of round-the-clock surveillance.

280. On 6 July 2011, the Inter-American Court of Human Rights ordered the adoption of provisional measures in favour of Mr. Prado in the case concerning *Matters of Certain Venezuelan Prisons*. The measures, which were granted to Mr. Prado in his capacity as a “human rights defender”, were maintained by orders of the Court dated 7 August 2012, 6 September 2012 and 13 February 2013.

281. The Venezuelan State has taken steps to ensure strict compliance with the measures granted by the thirty-sixth court of first instance in favour of Mr. Prado, with follow-up undertaken by various human rights protection bodies, the Office of the Ombudsman and the Public Prosecution Service, in coordination with the competent court.

282. On 15 September 2014, Prosecutor’s Office No. 39 requested an extension of the protective measures granted to Mr. Prado. On 25 September 2014, the thirty-sixth court approved that request for the duration of the criminal proceedings in order to ensure the physical integrity of Mr. Prado and his family, in accordance with article 30 of the Act on the Protection of Victims, Witnesses and Other Parties to Judicial

Proceedings. As part of those measures, the court ordered that Mr. Prado's residence and his place of work should be monitored by officers of the Bolivarian National Police Force three times a day.

Reply to issue 23

283. The right to peaceful, unarmed demonstration is enshrined in articles 53 and 68 of the Constitution as a political right that is an inherent aspect of the participatory and proactive democracy enjoyed by the Venezuelan people. Furthermore, the State has ratified those treaties that refer to the right of peaceful assembly and demonstration, such as the International Covenant on Civil and Political Rights. Article 21 of the Covenant establishes the right to peaceful assembly and further provides that the exercise of this right shall be subject to no restrictions other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order or the protection of the rights and freedoms of others.

Prior authorization procedure for exercising the right to peaceful demonstration and public assembly

284. Meetings in public places are regulated by law in order to better protect the fundamental rights of the Venezuelan people. The constitutional right to demonstrate is regulated by Title II of the Political Parties, Public Meetings and Gatherings Act,⁴⁷ Chapter I of which is entitled "On Public Meetings and Gatherings".

285. As previously mentioned, article 53 of the Constitution establishes that every person has the right to meet with others, publicly or privately, without prior authorization, for lawful ends and without arms and that meetings in public places shall be governed by law. Pursuant to article 53 of the Constitution, in principle the only requirements for the holding of a demonstration or public meeting are those set out in article 43 of the Political Parties, Public Meetings and Gatherings Act. Under this provision, the organizers of public meetings must give at least 24 hours' notice — during normal business hours, in writing and in duplicate — to the highest civil authority of the judicial district where the event is to take place, stating the chosen place or route, date, time and general purpose of the event. On receipt of the notification, the authorities are required to endorse the copy they hand to the organizers with their approval of the place or route and time of the event.

286. Without prejudice to the above, the Act states that the competent authority may, in certain special circumstances only, restrict or modify the holding of public meetings. Thus, for example, where there are grounds for fearing that the holding of simultaneous meetings or demonstrations in the same locality may disturb public order, the authority may decide, in agreement with the organizers, that the events should be held in different places or at different times (art. 44). Similarly, where the places chosen for the event in question are places where the holding of public meetings or demonstrations is prohibited, the civil authority may, at the request of political associations, authorize such events as long as they do not adversely affect public order, free movement or other civil rights (art. 46).

287. The Political Parties, Public Meetings and Gatherings Act provides that the authorities must ensure the orderly conduct of public meetings and demonstrations that have been organized in accordance with the legal requirements. The Act lays down penalties for anyone who interrupts, disrupts or seeks to impede or obstruct the holding of such a meeting or demonstration.

⁴⁷ Official Gazette, No. 6013, Special Issue, 23 December 2010.

288. In its Decision No. 276 of 24 April 2014, the Constitutional Chamber ruled on the scope of the Act with respect to the constitutional right to peaceful demonstration. Its ruling was made in response to a request for interpretation filed by the mayor of the municipality of Guacara in the State of Carabobo. The request concerned the relationship between article 68 of the Constitution and articles 41, 43, 44, 46 and 50 of the Political Parties, Public Meetings and Gatherings Act.

289. In that connection, it should be noted that article 335 of the Constitution provides that the Constitutional Chamber is the highest interpreter of the Constitution and that the Chamber's rulings in that regard are binding. In the above-mentioned decision, the Chamber stated that the first part of article 68 of the Constitution "refers to the right to peaceful demonstration as one of the political rights of citizens, which, together with the right to peaceful assembly provided for in article 53 of the Constitution, forms part of the right of citizens to freedom of conscience" (art. 61).

290. Accordingly, the Chamber stated that in the Venezuelan legal order the right to demonstrate is not an absolute right, in the sense of a class or type of right that may not be abridged in any way, as for example is the case with the right to life and the right to health, whose exercise is comprehensively guaranteed without restrictions of any kind. It further stated that the authorities may properly impose restrictions on the exercise of the right to demonstrate. This was expressly acknowledged by article 68 of the 1999 Constitution — and before that by article 115 of the 1961 Constitution — which provides that the exercise of the right to demonstrate is subject to such limitations as may be provided by law. Thus, according to the Chamber's interpretation, the Political Parties, Public Meetings and Gatherings Act regulates, in detail, the right to peaceful protest, but without in any way implying a complete and absolute limitation on the exercise of that right.

The National Security Act and participation in peaceful demonstrations

291. Article 68 of the Constitution requires strict compliance with the law by police and security forces responsible for maintaining law and order. In performing their duties, those forces are required not only to safeguard the right of citizens to demonstrate peacefully but also to prevent demonstrators from committing excesses that may lead to injury or to violations of the fundamental human rights of others, such as the rights to free movement, work and life.

292. Article 8 of the National Security Act establishes the obligation of the State, through its government bodies, to strengthen democratic institutions on the basis of political plurality and free citizen participation in public affairs.

293. In the interest of protecting the independence, freedom, democracy, sovereignty, territorial integrity and comprehensive development of the nation, the Bolivarian Republic of Venezuela has, pursuant to the above-mentioned Act, established security zones in which public meetings or demonstrations are not permitted for various security reasons, including the protection of demonstrators and participants in such events.

294. Security zones are areas of the national territory which are subject to special regulations because of their strategic importance, characteristics or constituent features. The regulations, which cover persons, property and activities within such areas, are designed to ensure that those zones are protected from internal or external risks or threats. Article 8 of the Act provides that the following areas may be classified as security zones: border security zones; areas adjacent to the seashore, lakes, islands and navigable rivers; corridors for oil, gas and multipurpose pipelines, aqueducts and main power lines; areas surrounding military and public facilities, basic and strategic industries and essential services; the airspace over military facilities, basic and

strategic industries and essential services; areas adjacent to main air, land and sea routes; and any other security area deemed necessary for the security and defence of the nation.

295. Any such area is not per se a security zone; it must be designated as such by the National Executive, in consultation with the National Defence Council; as explained above, such zones are essential for the survival and development of any country. Therefore, the existence of such security zones on Venezuelan territory can hardly be deemed to be a restriction or limitation on the exercise of the right to peaceful demonstration.

The Organized Crime and Financing of Terrorism Act and the right of association

296. The Organized Crime and Financing of Terrorism Act in no way affects the free exercise of the rights of association, expression and peaceful assembly. The Act defines a terrorist act as an intentional act which, given its nature or context, may seriously damage a country or an international organization, as defined as an offence under Venezuelan law, where committed with the aim of seriously intimidating a population; or unduly compelling a government or international organization to perform or abstain from performing any act; or seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization.

297. Under the Act, terrorist offences may include the following acts: attacks upon a person's life which may cause death; attacks upon the physical integrity of a person; kidnapping or hostage taking; causing extensive destruction to a government or public facility, a transport system, an infrastructure facility, including an information system, a fixed or floating platform located in the exclusive economic zone or on the continental shelf, a public place or private property likely to endanger human life or result in major economic loss; seizure of aircraft, ships or other means of public or goods transport; manufacture, possession, acquisition, transport, supply or use of firearms, explosives or of nuclear, biological or chemical weapons; release of dangerous substances, or causing fires, floods or explosions the effect of which is to endanger human life; interfering with or disrupting the supply of water, power or any other fundamental natural resource the effect of which is to endanger human life.

298. The rights to freedom of demonstration, association and assembly provided for in the Constitution are not related in any way to the offences regulated by the Act. It is therefore important to draw a distinction between those rights and the acts recently carried out by anti-democratic sectors of the country and equated by those sectors with the above-mentioned rights. Accordingly, the State recognizes that the rights to freedom of peaceful assembly and of association play a decisive role in the emergence and existence of democratic systems, as they are a channel allowing for dialogue, pluralism, tolerance and broadmindedness, where views or beliefs reflecting all sociopolitical standpoints consistent with the Constitution are respected.

299. In the Bolivarian Republic of Venezuela groups of persons or communities that come together voluntarily in public or private spaces, whether open or closed, for specific goals aimed at expressing or defending common interests by peaceful means and without arms, whether in assemblies, vigils, demonstrations, processions, rallies or any other form of meeting or gathering, for any lawful purpose and in accordance with the law, will always be respected and protected by the Government of the Bolivarian Revolution, in compliance with the Constitution, as illustrated by the countless meetings that have been held peacefully and within the law.

Reply to issue 24

300. Article 121 of the Code of Criminal Procedure provides a definition of those who are deemed victims — including associations, foundations and other entities — of offences that affect collective or broad interests, provided that the purposes of such bodies are directly related to those interests and that those bodies were formed prior to the commission of the offence in question. Accordingly, under the Code the conduct of such organizations is regulated clearly and without restriction.

301. The amended Code extends the powers of community organizations to act in criminal proceedings where such proceedings have been conditionally suspended in respect of the defendant. Article 360 provides that “probation is to be supervised and monitored by the trial judge, who must designate a representative of the community council or any existing local social organization to act as the coordinator, director or manager of the social programme or activity to which the defendant is assigned. The person thus designated is required to submit a monthly compliance report to the municipal court judge. That report must have been endorsed by the relevant people’s power organization in order to guarantee the principle of citizen participation.”

302. Similarly, with regard to prison privileges, article 489 provides: “Once an open regime has been approved, the sentence enforcement judge shall request the community council nearest to the offender’s place of work to provide the assistance necessary to support the offender’s social and employment rehabilitation.”

303. As part of this assistance, the community council shall seek to inform the offender about the characteristics of the community, its history, values and cultural identity with a view to encouraging the offender to identify with those cultural markers. Article 516, paragraph 13, also promotes the involvement of such organizations when it provides that one of the responsibilities of the Ministry for Penitentiary Services is to “ensure the participation of family members, community councils, social organizations and any other type of organization whose work relates to prison matters”. This further demonstrates that organizations have a key role to play at the various stages of criminal proceedings.

The Defence of Political Sovereignty and National Self-Determination Act

304. Availing itself of the sovereign right to safeguard and defend the interests of the nation from any foreign interference, the Government enacted the Defence of Political Sovereignty and National Self-Determination Act in 2010. The Act provides that the assets of political organizations and political rights organizations must derive exclusively from national funding sources.

305. To that end, article 3 provides that: “For the purposes of this Act, the term ‘political organizations’ means those organizations that carry out public or private activities aimed at promoting the participation of citizens in public forums, exercising scrutiny over the public authorities or promoting candidates aspiring to elected public offices. The term ‘political rights organizations’ means those organizations that are established with a view to promoting, disseminating information about and defending the full exercise of citizens’ political rights.”

306. With regard to funding, article 4 provides that: “The assets and other income of political organizations and political rights organizations must derive exclusively from national funding sources.” With respect to donations, article 5 provides that: “Political organizations, political rights organizations and natural persons who carry out political activities may only receive donations or contributions from national natural or legal persons and from within the national territory.”

The Act on Registering and Enlisting for the Comprehensive Defence of the Nation

307. The Act regulates registration and enlistment for the comprehensive defence of the nation; its provisions cover, among others, legal persons. For the first time, legal persons are taken into consideration as part of national defence; they are required to register and to cooperate with the registration requirements. In that regard, article 40 states that: “Legal persons must register and update their data in the Comprehensive Defence Registry within 60 days after the date of their formal registration in the relevant registry; within the framework of joint responsibility, legal persons shall be classified in the regulations of the Act for the purposes of securing their participation in the security and comprehensive defence of the nation.”

The People’s Power Act and the Communes Act

308. The Ministry of People’s Power for Communes and Social Movements is responsible for, among other things, helping to organize social movements and providing them with support to carry out their work. The assistance provided covers such areas as the formation of communes and social movements, participation in and the organization of communes and social movements and their economic development. The Ministry is supported in its efforts with funding from, among others, the Sovereign People’s Bank, the Foundation for the Development and Promotion of Popular Power Community Councils, the Microfinance Development Fund, the Che Guevara job training programme, the Centre for Studies on Population Growth and Development and the Autonomous Service and National Fund for Community Councils. These institutions provide a support base for the establishment and operation of popular power organizations.

309. Non-governmental organizations and associations in Venezuela are regulated according to the scope and sphere of their activities. Relevant legislation provides for the establishment of such bodies and sets out their rights and duties toward the nation.

310. Nothing in Venezuelan legislation expressly prohibits or impedes the operation of non-governmental organizations or associations. To the contrary, legislation is enacted to enable organized groups of individuals to achieve their objectives, provided that such legislation is not to the detriment of the human rights of others or inconsistent with other laws. To presume that the activities of non-governmental organizations are obstructed by national laws is to ignore the spirit of the Venezuelan Constitution and the basic laws that implement its provisions.

Reply to issue 25

311. The Government provided information on the provisions governing trade unions and the involvement of the National Electoral Council in trade union elections in paragraphs 136 and 137 of its fourth periodic report to the Human Rights Committee (CCPR/C/VEN/4).

312. However, we would further like to make clear that the principle of trade union democracy is recognized in the Constitution and that specific regulations in that regard are set out in detail in the Labour and Workers Act.

313. In 2009, National Electoral Council rules were amended in accordance with recommendations made by the International Labour Organization. Under the new rules adopted in 2009, the role of the Council was limited to (a) receiving advance notice from the trade union organization of the electoral timetable and the rules governing the election, as set out in its statute; (b) offering those trade union organizations that voluntarily request it, and in full respect for their autonomy, technical advice on the holding of their elections; and (c) examining cases of complaints concerning the

internal electoral process made by members, once the procedures established by the statutes have been exhausted.

314. Accordingly, trade union organizations are required to inform the electoral authority about the calling of elections and may, if they deem it necessary, seek from it technical advice and logistical support in organizing the elections with a view to ensuring that the rights and interests of its members are safeguarded. When the voting process is completed, the trade union electoral commission submits the relevant documentation to the electoral branch in order for the results to be published. The regulations on providing technical advice and logistical support for trade union elections establish parameters and guidelines for use by the electoral authority when, and only when, trade unions voluntarily request such advice and support.

315. The right to strike is enshrined in the Constitution and regulated in detail in the Labour and Workers Act. In order to exercise the right to strike, the requirements set out in the Act must be met. There is therefore no law that prohibits the right to strike or that makes it a criminal offence to exercise that right.

Reply to issue 26

316. All the provisions of the Convention on the Rights of the Child have been incorporated into Venezuelan legislation. Appropriate means are available to enable citizens to invoke the provisions of the Convention directly before the courts and to require their application by the national authorities. In this connection, article 78 of the Constitution specifically provides that children and adolescents are full subjects of law and shall be protected by specialized courts, bodies and legislation, which shall respect, guarantee and implement the provisions of the Constitution, the Convention and other relevant international treaties which the Republic has signed and ratified.

317. The Niños y Niñas del Barrio programme is a comprehensive national plan of action for children that has been in place since 2008. It seeks to safeguard the rights of children and adolescents in the Bolivarian Republic of Venezuela — in particular those living in extreme poverty — and to give new impetus to the State's efforts in this regard.

318. The programme reflects the general aims of the national economic and social development plan for 2007–2013 (the Simón Bolívar National Project). More specifically, it forms part of the strategic approach entitled Supreme Social Happiness and the strategic goal of reducing extreme poverty to zero and accelerating poverty reduction. In this regard, the programme's activities are focused on providing comprehensive care for children who have been separated from their families; providing specialized care for children and adolescents who are addicted to psychoactive substances; restoring the dignity of child and adolescent victims of labour exploitation; and providing care for children and adolescents living in situations of social risk.

319. These activities, which are overseen and coordinated by community councils, are part of government measures implemented under the Child and Adolescent Protection Act to transfer powers to organized communities in pursuit of greater social inclusion. The plans and programmes that are being implemented under the Niños y Niñas del Barrio programme are set out below.

320. *National Plan for Family Inclusion.* This plan represents a major step forward in protecting the fundamental rights of children and adolescents. It was established with a view to promoting and safeguarding the right of children and adolescents to family life through the following arrangements: family reintegration, family placement and adoption, including family tracing measures. International adoption programmes have

also been revived, always as an exceptional measure, in association with the Directorate for Consular Relations of the Ministry of People's Power for Foreign Affairs under the 1993 Convention on Protection of Children and Cooperation in respect of Intercountry Adoption, which governs such matters.

321. *Community Centres Comprehensive Protection Programme*. This programme seeks to create opportunities to involve the People's Power in the provision of prevention and protection services for children at risk. With the support of the Children's Institute, organized communities provide protection for children aged 0 to 12, including those who are at social risk; those living permanently in the street; victims of neglect at the hands of their parents, representatives or guardians; those who have dropped out of school; those who have been forced by their family situation to start work prematurely; or the casualties of any other condition involving the denial or restriction of their rights.

322. *Programme on Restoring the Dignity of Adolescent Workers*. This programme provides opportunities for adolescent workers to engage in economic activities that do not compromise their dignity. This involves institutions working together to fight any labour exploitation likely to affect the health and overall development of adolescents; encouraging adolescents to be involved in the development of protection policies; and implementing socio-productive projects that improve their own and their families' lives, in accordance with articles 94 to 116 of the Child and Adolescent Protection Act.

323. *National Training Programme in Mass Communication for Children and Adolescents*. This programme is aimed at the young people's organization Semillero de la Patria Simón Bolívar. It provides for the establishment of communication brigades to teach Venezuelan children and adolescents to become mass communicators through the mastery of various forms of communication and expression. Thanks to this programme, 750 children and adolescents have joined various alternative and/or community media outlets.

324. *Comprehensive Protection Units*. These units incorporate the tracing and strengthening of families as a key cross-cutting component of their activities with the aim of promoting the transition to a new institutional framework centred on the fundamental role of the family. There are currently 32 such units in 16 states, providing comprehensive protection to 1,920 children and adolescents. The aim of this programme is to protect children and adolescents who have been separated from their families by offering them a dignified environment in which they can be cared for temporarily until being reunited with their families of origin or placed in foster homes.

325. The Specialized Comprehensive Protection Units are a nationwide pilot experiment designed to address the needs and demands of communities and families of children with disabilities who are at risk, in accordance with article 29 of the Child and Adolescent Protection Act.

326. *Centre for Comprehensive Care*. This breakthrough initiative is aimed at providing care for homeless and at-risk children and adolescents through an approach based on initial outreach efforts, comprehensive support measures and reintegration into the family, society and the world of work. The programme is being implemented in the Capital District and in Zulia State by the Divino Niño outreach brigade. Thanks to the efforts of this team, care has been provided for a total of 1,986 homeless children and adolescents.⁴⁸

⁴⁸ The outreach strategy is based on daily street rounds in different neighbourhoods and aimed at identifying those living rough. The street educators involved are qualified personnel who receive ongoing academic training and are experienced in reaching out to vulnerable persons, handling crisis situations and aiding psychosocial recovery. The team is assessed and provided with capacity-building training to help it to establish the necessary empathy with a distinctive group of people who, in order to survive both as

327. *Community Shelters Programme*. This programme was set up to provide care for children and adolescents whose rights to life, physical integrity and health are seriously threatened and who have been afforded shelter protection measures by Protection Councils. A community shelter accommodating 122 children and adolescents is currently operating in the State of Vargas, and six others are under construction or being fitted out.

Reply to issue 27

328. In June 2010, the Supreme Court of Justice admitted a petition for annulment on the grounds of unconstitutionality filed by the Office of the Ombudsman in respect of article 46 of the Civil Code. This article establishes a distinction in the age for marriage, making it compulsory for a woman to have reached the age of 14 and for a man to have attained the age of 16, a difference which is contrary to the principle of equality and non-discrimination provided for in articles 21 and 77 of the Constitution.⁴⁹ The petition submitted by the Office of the Ombudsman called for marriage requirements to be applied on an equal basis for men and women. In a ruling of 16 October 2014, the Constitutional Chamber of the Supreme Court stated that it “partially upholds the petition for annulment, declares void part of article 46 of the Civil Code, interprets article 46 of the Civil Code in a gender-neutral way and sets the minimum age of marriage at 16 years, it being understood that henceforth — from the date of the publication of the ruling in the Judicial and Official Gazette — no one under the age of 16 years may marry”.

329. In the ruling, the Constitutional Chamber called on the National Assembly to consider amending article 46 of the Civil Code with a view to bringing the legal age for marriage into line with the age of majority (18 years).

330. Lastly, the Chamber ordered the full text of the decision to be published in the Official Gazette of the Bolivarian Republic of Venezuela, with the following statement in the summary: “Decision of the Constitutional Chamber of the Supreme Court of Justice, which declares void that part of article 46 of the Civil Code that states ‘women below the age of fourteen (14) years and men’, thus establishing that the article is to be construed as meaning that no one under the age of sixteen (16) years may marry.”⁵⁰

Reply to issue 28

331. Chapter VIII of the Constitution is devoted to the rights of indigenous peoples. For the first time in the country’s history, it recognizes the existence of the indigenous peoples, their natural resources and their right to ethnic and cultural identity. The Constitution further recognizes their rights to receive comprehensive health care, to maintain their own economic practices, to protect their intellectual property rights and to participate in political life.

332. The Ministry of People’s Power for Indigenous Peoples⁵¹ is the lead institution for government policies on indigenous peoples. The Indigenous Peoples and Communities Act is a major step forward in developing and safeguarding the rights of

individuals and as a group, have developed their own particular street culture made up of shared customs, codes and language.

⁴⁹ Supreme Court of Justice, petition for annulment filed by the Office of the Ombudsman,

<http://www.TribunalSupremo.deJusticia.gov.ve/decisiones/scon/Junio/556-8610-2010-10-0161.html>.

⁵⁰ Decision published in the Official Gazette of the Bolivarian Republic of Venezuela, No. 40,553, 2 December 2014.

⁵¹ Established by Decree No. 5103 of 28 December 2006, Official Gazette, No. 5836, Special Issue.

indigenous peoples and communities recognized in the Constitution and the international treaties, agreements and conventions duly signed by the Republic. The Act recognizes indigenous peoples as rights holders with respect to their habitat and as legal persons; it guarantees their right to a healthy, safe environment and their right to participate in the management, administration and preservation of natural resources within their habitat; it recognizes their traditional ways of life and their economic systems; it prohibits the transfer and unjustified relocation of indigenous populations and, when such measures are exceptionally considered necessary, provides that they may only be carried out with the full consent of those concerned.

333. In addition to constitutional provisions and in accordance with international agreements on indigenous rights, the State has ratified the Act adopting the International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169), which provides that signatory Governments must recognize the importance for the cultures of indigenous peoples of their relationship with the land, and in particular the collective aspects of that relationship.

334. The Venezuelan State has made progress in the land demarcation process, principally in the Sierra de Perijá region in Zulia State, by carrying out censuses and surveys on a hectare-by-hectare basis, and through working groups. The Demarcation Commission has held information workshops to inform indigenous inhabitants about the demarcation process. At the same time, efforts have been made to find common ground that will allow a solution to be found to the conflict in the area, where the indigenous population was requesting that their lands should be demarcated, that coal-mining operations in the area should cease and that payment should be offered for the improvements stock-raisers had made to the ranches used by the Barí for their hunting and other activities.⁵²

335. Significant in this regard are the studies made for the drafting of a plan regulating the management and use of the soils, forests and water resources in the protected zone covering the Guasare, Socuy and Cachiri river basins in Zulia State. The rivers in question rise in the Sierra de Perijá mountains, an area where indigenous communities are settled and countless archaeological and palaeontological sites are to be found. Under the draft plan, drawn up on the basis of government guidelines, coal mining will be restricted to the two concessions currently operating (Paso Diablo and Mina Norte) in order to prevent environmental conflicts, given the strategic nature of the basins as a source of water for the city of Maracaibo and its surrounding area. Following consultations with all stakeholders, the Ministry of People's Power for the Environment announced — through the Vice-Ministry of Land Management — the suspension of coal-mining concessions in the Sierra de Perijá region in Zulia State as from March 2007.⁵³

336. The Demarcation Commission — consisting of representatives from the Ministry of People's Power for the Environment, the Ministry of People's Power for Energy and Petroleum, the Ministry of People's Power for Internal Affairs, Justice and Peace, the Ministry of People's Power for Agriculture and Land, the National Indian Council of Venezuela and eight representatives from an equal number of native communities — is speeding up the demarcation process in the Sierra de Perijá region in Zulia State. As a result, land titles have already been granted to three of the six pilot centres that have been established, each of which is located in a different Yukpa community. Land demarcation work has been strengthened with the inclusion of officials from the

⁵² Report of the Ministry of People's Power for Indigenous Peoples, 2010, p. 320 ff.

⁵³ Mid-term review (footnote 12 above), p. 54.

Office of the Ministry of People's Power for Indigenous Peoples and a group of students from the Indigenous University of Venezuela.⁵⁴

337. The Venezuelan State, acting through the Ministry of People's Power for Indigenous Peoples, has over the last 15 years undertaken a process which emphasizes the protection of the right to a habitat and ancestral lands. However, it must be acknowledged that this process has not moved forward as quickly as planned. Nonetheless, it must be emphasized that the political will exists to meet this continuing challenge and to achieve significant progress in ongoing efforts to restore the dignity of our indigenous peoples and communities.

Reply to issue 29

338. As the result of local needs and a request to demarcate indigenous lands, violence broke out between some indigenous peasant representatives, other ethnic groups (Wayuu) and cattle breeders, who claimed rights within the proposed self-demarcation area put forward by the Yukpa people. That situation caused delays and difficulties in recognizing the rights of the population in general and the indigenous peoples in particular.⁵⁵

339. The Venezuelan State, acting through the relevant bodies, initiated an investigation into allegations concerning the presence of contract killers in the area. The National Assembly, through the Subcommittee on the Participation, Guarantees, Duties and Rights of Indigenous Peoples acting together with representatives of the Office of the Ombudsman, the Ministry of People's Power for Indigenous Peoples and the Ministry of People's Power for the Environment, held various meetings with representatives of the Yukpa ethnic group and with owners of farms located in the area in order to discuss the issue.⁵⁶

340. As regards the Yanomami people, in 2012 it was reported that 80 members of this ethnic group had been killed. In the light of this information, an inter-institutional commission, headed by a representative of the Public Prosecution Service, subsequently travelled to the upper Orinoco valley but found no evidence whatsoever to support the claim. The Attorney General explained that the commission had visited all the communities in the area and interviewed local people, but it had been unable to confirm that any such event had occurred in any of the places visited.

Reply to issue 30

341. For Venezuela it is important to stress that all government bodies work continuously to publicize and promote the Covenant, as well as other international human rights instruments. Accordingly, training on the international human rights conventions and covenants is included as a compulsory subject on the curriculum of schools established for officials of the Office of the Ombudsman, the Supreme Court of Justice, the Public Prosecution Service and the Public Defence Service. It is also important to note that, as these institutions run courses for members of the People's Power, specialized training is also provided for organized communities, civil associations and social organizations and movements.

342. Similarly, the Ministry of People's Power for Foreign Affairs has made it standard practice to regularly and systematically call upon members of associations

⁵⁴ Report of the Ministry of People's Power for Indigenous Peoples, 2010, p. 320 ff.

⁵⁵ Ibid.

⁵⁶ Ibid.

and organized groups to participate in the process of submitting reports to the international human rights system, highlighting the achievements made and the challenges that remain in complying with human rights conventions in our country. It has been a difficult task to ensure that organizations of all kinds — including those working with and for women, persons with disabilities, indigenous peoples and people of diverse sexual orientation — are familiar with the procedures of human rights committees and contribute written submissions. As indicated in the report, the Ministry of People's Power for Internal Affairs, Justice and Peace and the National Electoral Council, together with other entities and ministries, were mainly responsible for contributing information on implementation of the Covenant.

343. A website on human rights achievements and challenges is available for real-time consultation of relevant policies and plans (www.epuvenezuela.gob.ve). The site has had more than 1.7 million visitors.
