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Summary record of the 1900th meeting

Held at Headquarters, New York, on 20 March 2001, at 10 a.m.

Chairperson: Mr. Bhagwati

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The meeting was called to order at 10.05 a.m.

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

Third periodic report of Venezuela (continued)
(CCPR/C/VEN/98/3; CCPR/C/71/L/VEN; and written replies distributed in Spanish only, without a symbol)

1. *At the invitation of the Chairperson, the members of the delegation of Venezuela resumed their places at the Committee table.*

2. **The Chairperson** invited the delegation of Venezuela to reply to further questions raised by Committee members at the previous meeting in connection with paragraphs 1-13 of the list of issues (CCPR/C/71/L/VEN).

3. **Ms. López de Penso** (Venezuela) said, with regard to the principle of progressivity (article 19 of the Constitution), that article 23 of the Constitution established that international human-rights treaties took precedence over domestic law, and could be directly invoked in courts and by public bodies. In addition, those international instruments became law upon their adoption.

4. The Constitution also established that, in cases of ordinary crimes and human rights violations, the regular courts took precedence over the military courts. Only crimes that were strictly of a military nature were heard by the military courts. In the case of Pablo Aure, where a conflict had arisen between the regular court and the military court, the Supreme Court had determined that the regular court was the competent one.

5. A question had been raised regarding restrictions on the association of judges (article 256 of the Constitution); such restrictions related only to interests of national security and public morals. Venezuelan law permitted any persons or associations that believed their rights had been violated to bring their complaints before the court. Related information appeared under the answer to issue 11 in the written replies.

6. Article 45 of the Constitution provided sanctions for the authors or accomplices of forced disappearances, and for those who concealed such acts, and instructed civil servants to disobey any orders to

commit such acts. In conformity with the American Convention on Human Rights, the Criminal Code had recently been reformed, establishing that forced disappearance meant any illegitimate deprivation of liberty executed by civil or military authority or any person in the service of the State or by terrorist or rebel groups or associations, and in which information about the person deprived of liberty was withheld. The case of the four disappeared persons in the state of Vargas had gone before the Supreme Court, which had determined that the Public Prosecutor should investigate and fully prosecute the case. In the cases of two of the victims, however, a habeas corpus procedure conducted in the state of Vargas had found no evidence on which to proceed. The Attorney-General had, however, deemed that due process had been impaired, and had called for a special remedy; a decision was expected in the coming week. Article 43 of the Constitution severely proscribed extrajudicial executions. During the current month, an indictment had been brought against a number of police officers in the state of Yaracui for extrajudicial executions; the charge was aggravated homicide.

7. Article 46 guaranteed respect for the physical, moral and mental integrity of persons, and provided rehabilitation for torture victims suffering from sequelae. The Criminal Code established that victims of torture were persons abused by public officials while detained or imprisoned. In addition, the Code of Criminal Procedure set out standards of conduct for public officials, and prohibited them from inflicting, instigating or condoning any act of torture or cruel, inhuman or degrading treatment during arrest or detention. That matter was also discussed within the context of the answer to issue 9 in the written replies.

8. Article 49 of the Constitution protected due process. In addition, the Code of Criminal Procedure provided that no person could be sentenced without a public trial before an impartial judge with all safeguards, rights and guarantees of due process established under the Constitution and laws, as well as under all international treaties to which Venezuela was a party. The principle of the presumption of innocence was also protected both by the Constitution and by the Code of Criminal Procedure: any person charged with a crime had the right to be presumed innocent until such time as his or her guilt was established.

9. Formerly, criminal-court proceedings had been inquisitorial, written and secret; and the indictment,

defence and verdict had been in the hands of a single judge. The presumption of guilt had been a fundamental principle of that system; eight days of preventive detention had been standard practice; and the use of committal orders or release on bail had been exceptions to the rule. The new system was accusatorial, oral and open, and the various functions were performed by different parties, including the Public Prosecutor, the various judges and the public officials responsible for criminal investigation. The prosecution and the defence acted as opponents. The final verdict was decided by judges, members of a jury, or members of a mixed tribunal (*escabinos*). Proceedings were subject to such guarantees and methods as promptness, concentration, the free evaluation of evidence, and public participation. Liberty was the rule; detention was the exception. The accused was detained if caught in flagrante, or if the detention was requested by the Public Prosecutor in cases where there was sufficient evidence to suggest that the accused had committed the crime, or if there was danger of evasion or obstruction of the proceedings. The Code of Criminal Procedure also established that all cases under way at the time of the official publication of that code would be handled by transitional courts constituted for that purpose.

10. Therefore, except under the circumstances described, a detained person had already been accused. That person could consult a lawyer of his or her choice, and have contact with family members. The Public Prosecutor was responsible for ensuring a detainee's physical well-being, and regularly requested medical consultations by a forensic doctor or by a doctor chosen by the detainee. The Code of Criminal Procedure established that police authorities must treat accused persons in a respectful manner, and must inform the family of the place of detention; it also provided that the detainee had the right to communicate with his or her family and lawyers and to seek legal assistance, and quashed any statement made by the accused in the absence of his or her personal lawyer. The Public Prosecutor initiated proceedings and brought charges.

11. Article 29 of the Constitution established that the State must investigate and punish all crimes against human rights committed by its officials, and that any actions taken to sanction such crimes were imprescriptible, would be tried by the regular courts,

and were exempt from any pardons or amnesties. The *nudo hecho* procedure had been abolished.

12. Article 30 of the Constitution provided for just, full compensation to victims and their heirs; such compensation could be obtained through a civil action based on a criminal action and was initiated by the Public Prosecutor. In an illustrative case that had occurred in the state of Aragua, compensation had been procured for the family of the victim in the amount of 20 million bolivares. The Code of Criminal Procedure provided that the matter of compensation to a victim must be dealt with during the criminal proceedings, and that the Public Prosecutor's Department was responsible for protecting the victim's interests.

13. Disip was a national security organ that could also undertake criminal investigations in cases where national interests were at stake, and was of great assistance to the Government in that capacity. Lastly, the parachutists had provided invaluable humanitarian and social assistance during the natural disaster that had occurred in the state of Vargas, by bringing needed help to isolated areas.

14. **Mr. Saltrón** (Venezuela) said that the new Venezuelan Constitution was one of the most progressive constitutions in the world in the area of human rights, and provided for the creation of the Office of the People's Defender (Ombudsman), an autonomous body with broad powers to promote, defend and monitor the rights established therein, as well as the rights enshrined in international instruments, and to conduct investigations of any public authority or public official, including in the military sphere. Those bodies and persons were, in turn, under a constitutional obligation to provide the requested information. The journalist and lawyer Pablo Aure had been arrested by a military court, and the Ombudsman had sent a communiqué to the Ministry of Defence explaining that, in accordance with the Constitution, Aure must be judged by a regular court. That matter was explained in the answer to issue 11 in the written replies.

15. The Constitution had been drafted by a popularly-elected constituent assembly and approved by public referendum. Transitional articles had then been drawn up, providing for the nomination of the Public Prosecutor, the Ombudsman and the Comptroller-General, to serve during the drafting of the law that provided that those posts would be chosen by the

legislature. The first Ombudsman had been transitional, and had been replaced as soon as the new process had been established. Similarly, the National Human Rights Commission, established by executive decree, had been disbanded when the Office of the Ombudsman had assumed its powers.

16. The Office of the Ombudsman had been created just over a year before, and was in the midst of restructuring. It had 540 public officials throughout the country, with representation in every state. Those officials received complaints from citizens regarding not only the violation of their human rights, but also regarding public services such as health and transportation. Although the statistics for 2000 showed that 16,000 complaints had been received, that did not reflect the number of human-rights complaints and should have no bearing on the fact that only 20 cases of torture had been prosecuted. When the Office of the Ombudsman received complaints of human-rights abuses, it forwarded them to the Public Prosecutor's Department, which was empowered to initiate actions in such cases.

17. Most human rights violations occurred in prisons, and the Office of the Ombudsman conducted weekly visits in order to monitor the treatment of prisoners as part of its overall responsibility for monitoring the provision of public services. With regard to torture, he said that article 46 of the new Constitution declared torture to be a crime and referred to the written replies relating to question 9 (page 24). As for reform of the judiciary, one of the primary tasks of the new Government and the new Constitution had been to eliminate corruption in the judiciary, a process which was still under way. The performance of all judges was being reviewed in order to decide whether they would be removed from their position, maintained or reinstated following investigation. Transparency was a very important part of the reform of the judiciary and new judges were elected by their peers and chosen from the ranks of lawyers and university professors; the lists of judges were made public so that any citizen who saw fit could object.

18. There was complete freedom of speech in Venezuela. Article 58 of the Constitution guaranteed freedom of speech and citizens' right to free and uncensored information, and he stressed the ethical responsibility of the media to provide true and impartial information and should not be considered as a possible threat to freedom of speech.

19. In addition to the traditional divisions of the executive, the legislature and the judiciary, two new concepts, the power of the citizenry and the electoral power had been created. Regarding the former concept, independent public authorities — the Ombudsman, the Public Prosecutor and the Comptroller-General — were responsible for preventing, investigating and punishing inappropriate behaviour on the part of the civil service. In addition, a bill was before the National Assembly which would create a Morals Council which would have the right to investigate any branch of the civil service for unethical behaviour. Electoral power was based on the citizens' right to be consulted and to remove publicly elected officials through referendums, as authorized in articles 70 and 71 of the Constitution. That was the context for reform of the national unions, whose leaders had been elected nearly 30 years before. Despite criticism from the domestic and international labour movements, the Supreme Court had approved the holding of referendums to elect new union leaders. The Ombudsman had acted as mediator and agreement had been reached on elections to choose the new leadership of the three major union federations.

20. He acknowledged that the Constitution provided for the possibility of declaring states of emergency and rule by presidential decree, but the latter power had to be authorized by the National Assembly and, as set out in articles 337-339 of the Constitution, basic rights were still protected and any infringement thereof must be of a clearly temporary nature and justified only by exceptional circumstances. Any emergency measures which violated the Constitution could be revoked by the National Assembly or the Supreme Court. Any group or citizen could appeal to the Supreme Court to have a decree annulled, in accordance with article 266 (5) of the Constitution and he noted that, in general, in addition to domestic remedies, and in accordance with article 31 of the Constitution, any citizen had the right to appeal to international bodies if he felt his rights had been violated.

21. **Mr. Avendaño** (Venezuela) noted that the Government was committed to the promotion of human rights and had created human rights offices in ministries such as the Ministries of the Interior, Justice and Defence. With regard to the new union elections, he stressed that the Government's concern was to ensure that the three major labour groups elected their leadership through a fully democratic process and following consultation with their members.

22. **Ms. Betancourt** (Venezuela) said that article 69 of the Constitution provided for the protection of refugees' right of asylum; the Government was complying fully with international norms in that regard and with the principle of voluntary repatriation. A bilateral agreement had been signed between the Ministries for Foreign Affairs of Colombia and Venezuela in 1999 relating to refugees and asylum questions. There was no specific legislation relating to repatriation, but under article 23 of the Constitution, the Convention relating to the Status of Refugees and its Protocol, to which Venezuela was a party, were applicable. The lack of relevant domestic legislation had perhaps led to delays in the processing of requests for asylum, but she stressed that the process was under way and a law on refugees and asylum was being prepared. An ad hoc committee had been created to review requests for asylum and the new law would formally establish that committee.

23. In response to the question from Mr. Henkin on the responsibilities of the State of origin and the host State, she reiterated that Venezuela and Colombia had negotiated a bilateral agreement, with the assistance of the United Nations High Commissioner for Refugees, and a mechanism was being formalized to deal with requests for asylum. With regard to requests for extradition, the Government was continuing to apply the provisions of the Inter-American Convention on Extradition of 1981. As for the question raised by Mr. Amor relating to the free circulation of persons, she noted that that right was guaranteed by article 50 of the Constitution; foreign citizens could not be deported without due process and no Venezuelan citizen could be deported for any reason. She reiterated that, notwithstanding some delays, the Government was endeavouring to deal with all requests for asylum fairly and in accordance with its international obligations and was maintaining close cooperation with the United Nations High Commissioner for Refugees.

24. **Ms. Medina Quiroga** said she still had concerns with regard to the applicability of some provisions of the Military Code of Justice, and wondered how many prisoners were in detention and whether the reform of the judiciary was still under way. In addition, given the provisions of the Constitution relating to recall referendums for elected officials (articles 71 and 72) and the fact that members of the Supreme Court were elected (article 264), she wondered whether Supreme

Court judges were likewise subject to recall, for example by the National Assembly (article 265).

25. **Mr. Henkin**, referring to the treatment of refugees, stressed the host country's responsibility for ensuring that refugees could be safely returned to their country of origin.

26. **Sir Nigel Rodley** wondered how long persons being held in pre-trial detention remained in police custody before being transferred to a detention centre and how long they had to wait while in police custody before having access to legal counsel. With regard to allegations of torture, he requested details on how many criminal investigations, followed by prosecutions and convictions, had occurred. Referring to the Aure case, he wondered whether that case had been returned to the civil courts, whether Mr. Aure was entitled to any damages and whether any damages had been paid. He was encouraged by the Office of the Ombudsman's visits to prisons every weekend but wondered whether the results of those visits were reported publicly and whether actions were taken to remedy any problems found; he also expressed concern at the administration allowing prisons to be run by the inmates. Noting that the State party had indicated that the Office of the United Nations High Commissioner for Refugees had been involved in dealing with refugees from Colombia, he wondered whether representatives of the High Commissioner had in fact been allowed access to border areas and had been able to ensure that repatriation was really being carried out on a voluntary basis.

27. **Mr. Rivas Posada**, speaking on a question of procedure, inquired whether Committee members would have time to make statements of a general nature following their dialogue with the State party.

28. **Mr. Solari Yrigoyen** requested further clarification regarding the apparently new principle of progressivity of human rights contained in article 19 of the Constitution and regarding articles 22 and 23 dealing with inherent rights and the applicability of international instruments as well as article 256 which forbade judges from forming associations. He also wondered, in the context of the reform of the judiciary, how many judges had been affected, whether all judges had been replaced and, if not, how many had been removed from office and how many had been reinstated.

29. **Ms. Chanet** wondered what follow-up procedure there was for the Committee's observations. She also requested further information on the new Criminal Code, including translation into the Committee's working languages, and wondered how the Code was being implemented. With regard to pre-trial detention other than that for cases of in flagrante delicto, she wondered who decided whether to hold someone in pre-trial detention — a judge and/or a jury — and whether there was any appeal of that decision and also wondered if there were provisions for secret detentions. If the Public Prosecutor's Department was responsible for making such decisions, given that it was also largely responsible for the investigation and trial, there was a potential conflict of interest.

30. **Mr. Avendaño** (Venezuela), in response to the questions raised by Ms. Medina Quiroga, acknowledged that the current Military Code of Justice, a vestige of the past, was outdated and incompatible with the Constitution but stressed that legal and constitutional mechanisms existed to correct any abuses, as shown by the Aure case, and he noted that a new Code was being drafted to reflect the current situation. With regard to the question from Mr. Solari Yrigoyen on article 256 of the Constitution and the number of judges affected by the reform of the judiciary, he would make inquiries and endeavour to provide the Committee with that information.

31. As soon as he could obtain statistics on the number of persons in pre-trial detention, he would forward them to the Committee.

32. Judges accused of irregular conduct in the performance of their duties were subject to disciplinary proceedings. They retained their salaries in the course of those proceedings and all their legal rights and were reinstated if found innocent. The Government had been criticized for delays in the proceedings, but was determined at all costs to take as much time as needed to be thorough and meticulous.

33. In reply to another question by Ms. Medina Quiroga, he said that government officials, including the President of the Republic and representatives in the National Assembly, could be removed from office by referendum if they had been elected by popular vote. Since Supreme Court justices were not elected by popular vote but rather by the National Assembly, they could be dismissed only by a vote of the National Assembly.

34. **Ms. López de Penso** (Venezuela) said that there were two types of detention procedures. The first was in flagrante delicto, in which the arrest must be reported to the Public Prosecutor's Department within 24 hours and the accused person was brought before a chief judge, who had 20 days in which to complete all trial formalities. Detention could also be ordered by a chief judge in cases where the accused was likely to abscond or obstruct the trial proceedings. The Public Prosecutor could submit an opinion concerning the place of detention which would be determined by the judge, depending on the circumstances. An example of the latter form of detention was that of a Colombian citizen who had allegedly been involved in a kidnapping in Venezuelan territory and had been apprehended by the Public Prosecutor's Department under an order from a prison judge for fear he would abscond.

35. In reply to the question concerning torture cases, she said that the Public Prosecutor's Department played a key role in investigation of torture cases, which if prosecuted at all, were sentenced in an expedited procedure under the Code of Criminal Procedure. She would supply figures on the number of torture cases as soon as they were available.

36. With regard to enforced disappearances, she announced that the Public Prosecutor's Department had established a unit responsible for verifying violations of human rights and personal integrity by public officials. As a preventive measure, all prosecutors were required to provide information on indictments and the corresponding action taken. In various states, penalties for extrajudicial executions, including the killing of a student, had been imposed as an example and a deterrent. The Public Prosecutor's Department had made every effort to proceed with great caution in handling such cases.

37. Replying to a question posed by Mr. Solari Yrigoyen, she said that the "principle of progressivity" meant that prerogatives developed with a view to strengthening the protection of human dignity were incorporated in domestic legislation and institutional practice. That principle was embodied in a number of constitutional articles, particularly article 23, which established the absolute precedence of international human-rights treaties. The courts were obligated to decide cases in which violations of personal integrity or human rights were not covered by the Constitution or international instruments.

38. Turning to Ms. Chanet's question, she said that incommunicado detention was extremely rare under the new judicial procedures, since criminal proceedings and the work of the police were monitored daily by special investigators. The number of detainees and complaints filed and processed were all verified and there were daily inspections to determine whether the 24-hour rule had been followed in cases of in flagrante detention. Replying to another question by Ms. Chanet, she said that criminal proceedings were overseen by a chief judge but were carried out by an examining magistrate and an enforcement judge. The Public Prosecutor's Department was required to ensure that detainees' health and personal integrity were not at risk, if necessary by relocating them to other detention centres.

39. **Mr. Saltrón** (Venezuela) said that the Office of the People's Defender (Ombudsman) (CCPR/C/71/L/VEN, para. 1) attempted to ensure strict compliance with the Constitution and took a proactive approach; periodic visits were made to prisons and detention centres with a view to averting human rights violations. His Office was providing human rights training to police officers in order to combat arbitrary conduct, following confirmation by human rights non-governmental organizations that extrajudicial executions had taken place.

40. **Ms. Betancourt** (Venezuela), continuing her responses concerning the application of international law in Venezuela, said that the Government obtained guarantees of personal security for all refugees and asylum-seekers who wished to return voluntarily to their countries of origin. It did not honour requests for extradition if the accused person might be subject to the death penalty, life imprisonment or a prison term of over 30 years, all of which were prohibited by the Venezuelan Constitution. Representatives of the Office of the United Nations High Commissioner for Refugees (UNHCR) and the Red Cross had monitored a huge influx of refugees across the border with Colombia. Shelter and other forms of support were being provided in Venezuela to those awaiting a decision on their applications for asylum. In March 2000, the Venezuelan and Colombian authorities had held another meeting to address the situation, and another assessment at the border would soon be made by Venezuelan authorities, accompanied by representatives of UNHCR.

List of issues (continued) (CCPR/C/71/L/VEN)

Gender equality; protection of families and children
(articles 3, 23, 24 and 26 of the Covenant)

41. **The Chairperson** invited the delegation of Venezuela to reply to the questions in paragraphs 14-19 of the list of issues, relating to gender equality and protection of families and children: factors which prevented women from enjoying their rights on an equal footing; the practical effects of the Equal Opportunities for Women Act with regard to equality of remuneration and employment; the establishment of the National Office for the Protection of Women's Rights; the terms of reference of the new National Office; provisions protecting women from sexual harassment at work; up-to-date statistics concerning women's status in public- and private-sector employment and in education and elective office; protection and remedies provided by the civil or criminal courts in cases of domestic violence; the characterization of domestic violence and rape within marriage under the new Code of Criminal Procedure; existing programmes to train police officers to deal with cases of rape and violence within the home; whether marriage to the victim constituted grounds for discharge from criminal liability in cases of rape; the compatibility of age differences between men and women for purposes of marriage, restrictions on remarriage by a woman and the differences in the rules applicable respectively to men and women with regard to the acquisition of nationality through marriage with articles 3, 23 and 26 of the Covenant; concrete measures adopted to protect street children against violence and abuse by security forces and to promote their welfare; measures to protect children and young persons from sexual exploitation and trafficking; measures to prevent exploitation of child labour; the number of children in Venezuela (including indigenous and immigrant children) without identity documents and the measures taken to ensure that they had equal access to public education, health care and other social-welfare services.

42. **Mr. Avendaño** (Venezuela), reading out from the delegation's Spanish-only written responses to the questions in the list of issues, said that factors preventing women from enjoying their rights on an equal footing included a traditional culture which fostered gender inequalities and discrimination; the burden of household duties and the lack of childcare

services; the lack of educational and gender-awareness programmes; the situation of extreme poverty in which many women lived; and limited access to employment.

43. As a result of the Equal Opportunities for Women Act, the female workforce had increased in the first half of 1999; indeed, it was increasing more rapidly than the male workforce. For cultural reasons, that meant that employed women were faced with a double and even triple working day.

44. The National Office for the Protection of Women's Rights had been established under the Equal Opportunities for Women Act, promulgated in September 1993, but had become operational as part of the National Women's Institute in July 2000. The Ombudsman for Women's Rights was the legal entity of the National Women's Institute, whose purpose was to defend women's rights enshrined in the Constitution, national legislation and international instruments, and to eliminate any distinction, exclusion or restriction based on sex which deprived women of their human rights in the political, economic, social, cultural and civil sectors. Thus far, the Ombudsman had handled cases of, inter alia, abuse, alimony and drugs. The relevant figures requested by the Committee would be forwarded as soon as possible.

45. A new regulation under the Labour Act of January 1999 defined sexual harassment in the workplace — for example, seeking sexual favours or undesired intimacy, using expressed or tacit threats regarding employment or conditions of work — as gender discrimination.

46. As for women in public office, he said that 16 of the 165 representatives in the National Assembly were women. In the executive branch, the Vice-President of the Republic was a woman and there were five female ministers in the Executive Cabinet. As Committee members knew, Ms. López de Penso was the Deputy Attorney-General of the Republic.

47. The Act on Violence against Women and the Family, promulgated in September 1998, established a government mechanism for preventing, prosecuting and eliminating violence against women and the family and for assisting victims of violence. Protection was also provided by the criminal courts, which heard complaints and made every effort to ensure that victims participated fully in the proceedings. The courts could order an evaluation of the home environment and of

physical and psychological damage to the victim, and could take preventive measures.

48. The new Code of Criminal Procedure covered personal injury and rape in general but contained no special provision for rape within marriage. A regional pilot programme on domestic violence had been launched in the La Pastora district of Caracas as a model for the integral treatment of women and the family. It was hoped that the district would become a "no-violence zone". The pilot project was being carried out by the National Women's Institute, in cooperation with the Inter-American Development Bank, the Foundation for the Advancement of Women and the La Pastora Network to Combat Violence against Women and the Family. The pilot programme offered assistance and emphasized communication. Article 395 of the Criminal Code discharged persons accused of rape from all criminal liability if married to their victims.

49. As to the question concerning marriageable age, there was indeed a marked difference between men and women under the Civil Code, which established 14 years as the minimum age for women and 16 years as the age for men. Restrictions on remarriage by a woman and differences in the rules applicable respectively to men and women with regard to the acquisition of nationality through marriage were fully compatible with articles 3, 23 and 26 of the Covenant.

50. The protection of street children had been strengthened under the Basic Law for the Protection of Children and Adolescents, which had entered into force in April 2000. The law reaffirmed the principles of the Constitution concerning integrity of the person and prohibited torture or other cruel, inhuman and degrading treatment of children and adolescents and guaranteed the protection of children and adolescents against any form of exploitation, abuse or torture. It provided for medical and psychological or psychiatric treatment for children and adolescents, including in health centres, and for the separation of the child from the persons abusing them. Under that law, public officials or any other persons accused of torturing or administering cruel treatment, or sexually exploiting or abusing children or adolescents were subject to prosecution.

51. From 1995 to 1998, the National Children's Institute had sponsored discussions at the national level on adapting Venezuelan legislation on the rights of the child. Since 1995, it had been developing a network of

protection for children and adolescents, in coordination with governmental and non-governmental sectors, which provided immediate assistance to children and adolescents and promoted awareness of the rights of the child. Thus far, 112 local networks were functioning, and workshops were being offered on the Basic Law for the Protection of Children and Adolescents. The Basic Law also included protective measures regarding child labour.

52. Concerning the questions in paragraph 19 of the list of issues, education and health in Venezuela were constitutional rights, and in practice were normally provided by the State, without discrimination of any kind. Decision No. 185 of the Ministry of Education, Culture and Sport, published in the *Gaceta Oficial* No. 36,805 of 11 October 1999, laid down the rules for the school enrolment of children and adolescents lacking personal identity documents. Foreigners living in the country, whether legally or illegally, enjoyed free access to education and health care on the same footing as Venezuelan citizens.

Interference with privacy and discrimination (articles 17 and 26 of the Covenant)

Rights of people belonging to minorities (articles 26 and 27 of the Covenant)

Dissemination of information relating to the Covenant (article 2 of the Covenant)

53. **The Chairperson** invited the delegation of Venezuela to reply to the questions in paragraphs 20-23 of the list of issues, relating to interference with privacy and discrimination (legislation applicable to sexual relationships conducted in private between consenting adults of the same sex; and measures to prohibit discrimination against individuals on grounds of their sexual orientation), rights of people belonging to minorities (measures to enable indigenous communities to benefit on an equal footing from health services and education in their own language and to participate in decisions relating to their lands, and to activities such as mining and forestry, which affected the enjoyment of their own culture, including their traditional pursuits; and measures to give them access to the judicial system through the intermediary of trained interpreters), and dissemination of information relating to the Covenant (information on the education and training programmes on the Covenant and its Optional Protocol for public officials, teachers, judges,

lawyers and police officers; and measures to disseminate information on the submission of the third periodic report and its consideration by the Committee).

54. **Mr. Avendaño** (Venezuela), referring to paragraph 20 of the list of issues, said that Venezuela did not have any special measures to provide direct protection against discrimination for adults of the same sex engaging in consensual sexual relations.

55. Replying to the questions in paragraph 21, on the rights of people belonging to minorities, he explained that the new Constitution, in force since December 1999, incorporated new rights and guarantees for indigenous peoples: the right to own land held from ancestors (article 119); the right to be informed and consulted in advance of the exploitation of natural resources in indigenous habitats (article 120); the right to an inter-cultural educational system reflecting their sociocultural characteristics and their values and traditions (article 121); the right to the recognition of their traditional medicine (article 122); the right to vocational training (article 123); the right to protection of intellectual property rights in their own knowledge, technologies and innovations (article 124); and the right to guaranteed representation in the National Assembly and other decision-making forums (article 125). One of the most important measures adopted to ensure that indigenous communities could enjoy equal rights to health and education services in their own languages was the guarantee enshrined in article 122 of the new Constitution of their right to integrated health care with due regard to their practices and cultures, and to traditional medicine and complementary therapies.

56. As to access to the judicial system through the intermediary of trained interpreters, he said that, as well as affording minorities their constitutional rights, the Public Prosecutor's Department was bound to ensure them due process. That meant acting objectively, with due regard to the situation of both the victim and the accused and to all the circumstances of the case, taking steps to ensure that indigenous citizens had the services of an interpreter and obtaining detailed social reports so that the cultural development of the individual could be properly assessed by the court.

57. With regard to the question in paragraph 22, human rights education was now provided by law, under articles 19, 21 and 26 of the Constitution. It was part of the teaching of several school subjects, and

since 1966 had also been taught in primary schools, on the basis of the Constitution, the Universal Declaration of Human Rights, the Convention on the Rights of the Child and the Basic Law for the Protection of Children and Adolescents. Study of the new Constitution, which was inspired by respect for human rights, had been compulsory in institutions of higher education for roughly the past four years. The Ministry of Education had also drawn up human rights training programmes for police officers, health personnel, workers and trade union officials, with a view to creating groups of professionals in the communities able to teach and protect human rights, for example, the national Police Training Academy included in its curriculum the study of human rights. The National Children's Institute, for its part, had drawn up human rights training programmes for police officers, social workers, public officials, children and members of minorities, and a special programme for the staff of detention centres which included study of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the Standard Minimum Rules for the Treatment of Prisoners.

58. In reply to the question in paragraph 23, he explained that every official of the Public Prosecutor's Department was required to be familiar with the Covenant. Moreover, article 285 of the Constitution required the Department to ensure, in all legal proceedings, respect both for constitutional rights and for the international treaties to which Venezuela was a party.

59. **The Chairperson** invited further comments or questions from the members of the Committee.

60. **Mr. Scheinin** said he was still puzzled, indeed shocked, by the information given concerning the status of women in Venezuela. The Committee had been told that marriage secured a degree of exemption from punishment for crimes committed against women. He noted an alarming discrepancy in the legal age for marriage as between men and women: girls could marry as young as 14, and it appeared that they could consent to sex as early as 12. When did Venezuela intend to remove the legal discrimination between the sexes?

61. With regard to the rights of people belonging to minorities, there was much in the new Constitution to be commended, but he wondered what practical experience had been gained in Venezuela of

implementing the rights enshrined in it. He also wanted to know how articles 120 and 123 were applied to land disputes, especially where mining and forestry were involved. As for article 126, he hoped the Venezuelan representatives would comment on the notion of "peoples", which apparently was not interpreted in conformity with international law.

62. **Ms. Medina Quiroga** observed that much of the information supplied referred to the legislation in force, rather than what happened on the ground. Access to justice was guaranteed on paper, but was it upheld in practice? Concerning equal opportunities for women, the State itself fell into the trap of treating childcare as the responsibility of one parent only, the mother; both parents suffered where provision was inadequate. As for pay differentials between men and women and the double shifts worked by women who went out to work and then had to cope with housework in the evenings, she would like to know what Venezuela intended to do to solve the problem.

63. It was not clear what changes were planned to reduce the incidence of violence against women and families. How did the law protect women from domestic violence? Like Mr. Scheinin, she was concerned to learn that marrying their victims could reduce criminal responsibility for rapists. As for prescribing a lesser penalty for assaults on prostitutes, it was contrary to the Covenant to determine that a penalty for crime depended on the circumstances of the victim. Moreover, the payment of compensation for rape if the rapist did not marry the victim discriminated against single women and widows. She was also concerned that a woman's sexual conduct could be described by the law as "honest"; who was entitled to make such a judgement, and if it was decided that a woman was not "honest", how would she be compensated for rape? Marriage was supposed to be based on the free consent of both parties; how could a child of 14 give such consent, especially if she had been raped? There appeared to be no justification in international law for the requirement for a woman's second or subsequent marriage to be postponed for 10 months, a provision which appeared to rest on the desire to exclude paternity claims against the second husband. The status of women in society must be improved, and she was surprised that the existing provisions on marriage coexisted in Venezuela alongside a new and progressive Constitution.

64. She asked how resolution 185 of 1999, on the registration of children without identity documents, was being implemented. She had learned that some Venezuelan children were being recruited into the Colombian guerrilla army; one girl (“Celeste”) had served from the age of 10 to the age of 18.

65. Since there were no special measures to protect homosexuals from discrimination, she wondered whether there was any general law to protect them, and whether the crime of sodomy was still on the statute book.

66. **Mr. Kretzmer** associated himself with the remarks of the previous speaker. Like her, he felt that the reports from Venezuela were long on legislative detail but short on practice. The Committee’s guidelines required States parties to provide information not merely on the law, but also on what actually happened in the country. He was especially concerned about trafficking in women, which was a modern form of slavery affecting prostitutes in particular. He asked what the Venezuelan authorities were doing to prosecute the traffickers and to protect victims who escaped. The addendum to the third periodic report (CCPR/C/VEN/98/3, para. 114) mentioned trafficking in children, and replies had been given to the questions in paragraph 18 of the list of issues, but only to say that there were laws and programmes in force to combat the exploitation of children; he wanted to know how the programmes had been put into effect, how many children they reached, and how many people were involved in such programmes.

67. The law on sexual harassment seemed very good, but experience showed that it was necessary to monitor its implementation in the workplace, because women might be reluctant to complain for fear of losing their jobs. Was that the case in Venezuela, and had there been any prosecutions for such offences?

68. According to paragraph 58 of the addendum to the third periodic report, abortion was a punishable offence under the Criminal Code, except for therapeutic purposes. He had learned that health personnel in Venezuela were obliged to report suspected cases of illegal abortion. That meant that women would be deterred from using health facilities. The high rate of maternal mortality appeared to be due partly to the frequency of unsafe illegal abortion. What was Venezuela doing to protect the health and lives of

women while proscribing abortion? What did the “therapeutic purposes” comprise, and did they include rape?

69. **Mr. Yalden** said he had already put some questions in writing about human rights violations in the private sector. He was not clear whether the rights of indigenous peoples were protected by the Office of the Ombudsman. He agreed with both the previous speakers that the reports from Venezuela were vague about what happened on the ground to protect the rights enshrined in what was certainly a progressive Constitution. He observed that the figures given for the participation of women in the economy dated back to 1993; moreover, the data for women’s pay were not disaggregated to give a clear picture of their place in the economic hierarchy. The figures for women’s representation in parliament and in the Cabinet were not in themselves sufficient to show how women participated in political life. As for the rights of indigenous peoples, the reports did not show what results were being achieved in practice from their incorporation in the Constitution. Nor was there any indication of the results of the requirement to provide education for minorities in their own language. Did schools actually provide such education? If so, how many children took part, up to what age and with what results?

70. **Mr. Amor** said he was concerned at the paucity of practical information in the reports. Like Mr. Kretzmer, he wanted more information about abortion, and about efforts to offset the unequal treatment of men and women. Referring to article 18 of the Covenant in connection with paragraph 309 of the addendum to the third periodic report, he queried the relationship between the State and the Catholic Church. What was the status of other religions, including the newer religious movements, and what procedures were in place to ensure equality of treatment when religions became “legally established”? Did the religions of indigenous peoples enjoy equal protection in spite of not being registered? In paragraph 288, what did “the supreme inspection of the National Executive” mean with regard to religious faiths, and did the law recognize values other than religious ones when exercised with regard to them?

71. **Mr. Ando** was also concerned with the issue of religious equality, and sought an explanation of what was meant, in paragraph 292, by the “historical and sociological circumstances” leading to the practice of

State subsidies to the Catholic Church. He also wanted to know more about the provisions of the draft law on the entry of foreign religions, mentioned in paragraph 294.

72. **Mr. Rivas Posada** emphasized the importance of practical mechanisms for the protection of human rights under law. Many replies from Venezuela mentioned legislation in draft which still had to be applied; it was important to ensure that follow-up machinery was put in place and that the law's effects were monitored. A special contemporary problem was the preponderance of displaced persons in many countries. He asked whether and how the Office of the Ombudsman in Venezuela acted to protect immigrants and refugees. Their problems could not be solved by unilateral or even bilateral action alone, and he therefore welcomed the mention of the work of the United Nations High Commissioner for Refugees.

The meeting rose at 1.05 p.m.