



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

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SUMMARY RECORD OF THE 538th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 18 November 2002, at 10 a.m.

Chairman: Mr. BURNS

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 19 OF THE CONVENTION

Second periodic report of Venezuela

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Second periodic report of Venezuela (CAT/C/33/Add.5)

1. At the invitation of the Chairman, the members of the delegation of Venezuela took places at the Committee table.
2. Ms. BELISARIO MARTÍNEZ (Venezuela) said that the submission of Venezuela's second periodic report to the Committee against Torture came at a crucial time in the country's political and institutional renewal process. The promotion and protection of human rights was a fundamental objective of her Government, which had sought to enshrine the full enjoyment of citizens' rights and liberties in law, particularly in the new Constitution of 1999. The authorities were making every effort to keep abreast of developments in contemporary international law and to reflect those developments in Venezuelan legislation. Venezuela had acceded to all the core human rights instruments of the United Nations and the Organization of American States (OAS), and had recognized the competence of various international human rights treaty bodies to examine complaints against it. The provisions of the relevant international instruments prohibiting torture had been incorporated into domestic law and could be cited directly in the Venezuelan courts.
3. The new Constitution had ushered in a number of important changes, among them being the shift from an inquisitorial to an accusatory system of criminal procedure. In the aggregate, the new Code of Criminal Procedure contained a number of provisions designed to eradicate torture, for example by making recourse to deprivation of liberty before trial the exception rather than the rule. The new Constitution also spelled out the State's obligation to investigate and punish all human rights violations committed by the authorities, and to compensate victims appropriately. Mechanisms had been established to minimize impunity and stamp out enforced disappearances, and the power to try cases involving human rights abuses had been taken away from the military courts altogether.
4. Efforts had been made to improve the training of members of the security forces. Special attention had been given to the elimination of sex discrimination and domestic violence, as evidenced by the adoption of the Violence against Women and the Family Act (paragraph 51 of the second periodic report). A criminal investigation unit reporting to the Ministry of the Interior and Justice was responsible for receiving complaints lodged by individuals under that piece of legislation. It should be noted, however, that the number of complaints received in the first half of 2002 had declined dramatically. There had been a similar reduction in the number of reported cases of child abuse as a result of the adoption in 1998 of the Organizational Act for the Protection of Children and Adolescents.
5. The report referred in detail to the panoply of institutional mechanisms that had been established to ensure the administration of justice and protect citizens' constitutional rights and

liberties. Of particular importance in that connection was the reorganization of the various departments and units within the Public Prosecutor's Office and the establishment of a Department for the Protection of Fundamental Rights.

6. On the regulatory side, the Committee's attention was drawn in particular to the Partial Reform of the Prison Regime Act and the new Code of Criminal Procedure, which contained very explicit prohibitions of torture and other cruel, inhuman or degrading treatment and provisions on the inadmissibility of evidence obtained through torture. In addition, Venezuela had acceded to the Rome Statute of the International Criminal Court and a number of other international instruments on matters such as the prevention of discrimination against women, the protection of indigenous and tribal peoples, and the prevention of illegal trafficking in migrants. Non-governmental organizations (NGOs) working in those and other fields were allowed complete freedom of action in Venezuela. A number of agreements on international judicial cooperation, including the transfer of prisoners and the serving of sentences, had been signed with other countries.

7. The States of Emergency (Organization) Act adopted in 2001 clearly stipulated that no derogation was possible from the right to life, the right to personal freedom, protection against enforced disappearance, the right to physical, mental and moral integrity, and the right not to be enslaved. The Constitution specified that, under no circumstances, could the orders of a superior officer be invoked as a justification of torture.

8. In matters relating to extradition, Venezuela was scrupulously careful to honour all the safeguards against returning an individual to a country where he might be at risk of torture, the death penalty or life imprisonment. Extradition was not possible for political crimes or for offences not recognized under Venezuelan law. When the punishment in the receiving country exceeded the penalty provided for in Venezuelan law, extradition was granted only when the receiving country undertook not to apply the heavier penalty. Foreigners could be extradited from Venezuela only in accordance with the procedures established by law; by contrast, no Venezuelan citizen could be extradited to face trial abroad. The return of refugees and asylum-seekers to a country where they might be tortured or persecuted was also prohibited by law.

9. Clear evidence of Venezuela's respect for extradition norms and its intention to abide by the rule of law was provided by the specific case of Pedro Carmona Estanga, who had been sworn in as President of Venezuela after the coup d'état of April 2002. He had been allowed safe passage out of the country and the right to seek political asylum in Colombia

10. The Constitution contained guarantees that no person could be subjected to torture or cruel, inhuman or degrading treatment. Anyone subjected to such treatment either at the hands of, or tolerated by, agents of the State was entitled to rehabilitation. The Prison Regime Act expressly prohibited torture and the use of coercive measures other than those permitted by law. The Constitution set out that the National Assembly must adopt legislation establishing penalties for torture, either by adopting a special act or by reforming the Penal Code but that had not yet been done. However, the Penal Code did address crimes such as forced disappearances and

offences on human dignity, harassment, torture or physical or moral attacks inflicted on a detained person by guards or warders or by anyone ordering such acts, and the Code of Criminal Procedure set out rules for police action that established the rights of suspects.

11. Questions relating to extradition were governed by multilateral treaties, bilateral extradition treaties, the Constitution and legislation. When ratifying the Inter-American Convention on Extradition Venezuela had reaffirmed its commitment to afford the greatest measure of assistance to other States in prosecuting perpetrators of torture. It had entered into a number of bilateral extradition treaties, including one recently concluded with Mexico.

12. Venezuela had sought international financial and technical support to assist in the training of prison staff who, under the Constitution, had to be university-trained professionals in their field. The United Kingdom and the Inter-American Development Bank (IDB) had provided assistance to the Ministry of the Interior and Justice for the training of hundreds of prison warders, and the IDB had agreed to a loan that would allow some 24,000 technical, professional and administrative staff members, including prison warders and parole supervisors, to receive further training in the period from 2003 to 2008. The European Union supported workshops and seminars for the training of prison staff dealing with juvenile offenders. The National Institute of Prison Studies offered degrees in penitentiary studies, including administration, management, education and security.

13. Her Government was concerned about the situation in the prisons. The new Constitution paid due attention to prisons as a part of the justice system, and required the prison system to promote the rehabilitation of its inmates and to respect human rights. Efforts were being made to prevent problems through a wide spectrum of measures in numerous fields, especially by improving infrastructure and services at such institutions. Major projects covering sports activities, violence and crime prevention, legal assistance and third-level studies for inmates and staff were currently under consideration by the Ministry of the Interior and Justice. A recent decree established that all criminal investigations must respect the principles of human rights and due process, the right to freedom, the right to a defence and respect for established procedures. State agents engaged in criminal investigations must not carry out or tolerate cruel, inhuman or degrading acts or commit physical or moral aggression against a detainee under pain of dismissal.

14. The State was obliged by the Constitution to provide full compensation to the victims or their heirs or assigns of human rights violations perpetrated by its agents.

15. Notwithstanding the financial difficulties it faced and the social and political transformations of recent years, Venezuela was taking action to combat torture. The effort to uphold human rights transcended national boundaries and called for greater international cooperation among those devoted to that cause. Her Government was aware of its responsibility for defending human rights. It ensured respect for those rights through its highest and most basic law, the Constitution, and called for international support only for the implementation of certain policies related to administrative matters.

16. Mr. GONZÁLEZ POBLETE, speaking as Country Rapporteur, said that Venezuela had been a State party to the Convention for over 10 years, had recognized the competence of the

Committee under article 22 of the Convention and had ratified the Rome Statute of the International Criminal Court. Despite the significant effort made by the State party to submit its second periodic report as soon as possible after consideration of the initial report, there was still a significant delay in submission as a result of the very late presentation of the initial report. The State party had recently submitted a supplementary updated report but there had not been enough time to arrange for it to be translated. He would, however, cite some information from the original Spanish version of that text.

17. The second periodic report complied only partially with the Committee's general guidelines for reporting. It contained a wealth of information on legislative measures adopted and on the work of public institutions. However, it did not contain sufficient information on case law and on actual incidents and occurrences that had taken place during the period under consideration. Such information would exemplify achievements and shortcomings in the implementation of the Convention. The guidelines called for the State party to include information on factors or difficulties affecting implementation and on concrete cases in which measures had been enforced. He hoped that the next report would be more complete in that regard.

18. The recently adopted Constitution was by far the most important new piece of legislation both because of its hierarchical significance and the importance of its contents. The report gave a clear description of its provisions, including one that stipulated that human rights treaties ratified by Venezuela took precedence in domestic law and were immediately and directly applicable by courts and other public bodies. Other provisions established that the guarantee of human rights was binding upon the authorities under the Constitution, human rights treaties and the respective laws on the subject and that the absence of any law regulating rights did not impair their exercise.

19. The hierarchical rank of human rights treaties had previously been established by a ruling of the Supreme Court and not by a constitutional provision but that had been covered by the new Constitution. The new Constitution also recognized the right of individuals to submit complaints to the appropriate international bodies (including the Committee under article 22 of the Convention) and established the responsibility of the State to comply with the resulting decisions. He hoped that the delegation of Venezuela would explain in concrete terms what domestic procedures and legislation had been adopted to that end.

20. The Constitution further specified that, in the event of human rights violations carried out by the authorities, the State was obliged to investigate and to impose legal penalties. Such offences were not subject to the statute of limitations. If convicted, the perpetrator could not benefit from any measure implying impunity, such as an amnesty or a general pardon. Criminal offences, offences involving human rights violations and crimes against humanity must be heard in ordinary, not military, courts.

21. The Constitution provided (art. 271) that the extradition of foreign nationals must in no case be denied in respect of certain criminal offences, including human rights violations, and that judicial proceedings for the purpose of punishing such offences must not be barred by the statute of limitations. It would be useful if the delegation could explain the scope of that article in

greater detail. The Constitution also stipulated that the State must provide for the compensation and rehabilitation of victims of human rights violations. The Committee would like details of the legal provisions and administrative measures adopted to that effect.

22. Under the Constitution, a warrant was required for the authorities to arrest a person, except in flagrante delicto, and the detainee must be taken before a judge within 48 hours. That was an improvement on the previously authorized period of detention, which had been eight days. The Constitution also provided certain guarantees for detainees that would apparently help to avert torture, including a clause that called for detainees to be able to contact their families and lawyers, to be apprised of the charges against them and to be registered publicly, with the details of the arrest and detention including information concerning the officers responsible.

23. The report did not explain, however, whether the register of detentions was organized on a local or a national basis, whether it was open to public examination or what penalties might be applied to officers who failed to register detentions.

24. Turning to the Code of Criminal Procedure, he recalled that, in its final comments on Venezuela's initial report, the Committee had warmly welcomed the new Code, which had made good the deficiencies of the old one (A/54/44, para. 130). He noted the recent amendments to articles 53, 121 and 304, mentioned in the updated version of the report, which would undoubtedly make it easier for victims of torture and ill-treatment to obtain legal aid and reparation, and for perpetrators to be prosecuted.

25. He recalled, too, the Committee's conviction that the full implementation of the new Code should contribute to the eradication of torture in Venezuela (A/54/44, para. 130). The lack of specific information in the report made it impossible, however, to tell to what extent that hope had been fulfilled. Information from reliable sources showed in fact that the police continued to practise torture and cruel, inhuman or degrading treatment; incident rates appeared indeed, to be heading back up to the levels prevailing before the entry into force of the new Constitution and Code of Criminal Procedure. That was a point of considerable concern, particularly in the context of criticism of the new Code, which was apparently deemed in some quarters - including government sectors - to be too liberal and to inhibit the ability of the police to control crime. In the view of such people, effective crime control was not compatible with human rights.

26. Another cause of real concern was the existence of reports, including some from the Office of the Ombudsman, pointing to the continuing abuse of power by police investigation departments. Those reports called for urgent preventive measures to be implemented, since the departments concerned were precisely those responsible for investigating complaints of torture. There were also numerous complaints against the police departments responsible for law and order, such as the State and municipal police forces and the National Guard.

27. The new Constitution and the States of Emergency (Organization) Act ensured that constitutional guarantees, including the prohibition of torture, were not suspended during states of emergency. The provisions of article 2, paragraph 3, of the Convention were adequately reflected in article 25 of the Constitution.

28. Turning to article 3 of the Convention, he commended the new Asylum and Refugees (Organization) Act of October 2001 on the legal process it established for dealing with asylum applications and on its exemplary provisions that it should be interpreted in conformity with the contents of the international human rights instruments and that the interpretation most favourable to the rights of the applicant should prevail.

29. Referring to the section of the report on article 4 of the Convention (paras. 68-72), he said that, despite the fact that the new Constitution maintained, and indeed improved upon, the prohibition on torture contained in the old Constitution, and, in its transitional provisions, specifically enjoined the National Assembly to pass legislation on torture, Venezuelan law still failed to define torture and thus remained in breach of article 4. It would be impossible, therefore, for Venezuelan courts to bring a prosecution under article 5. In fact, even if an offence of torture were to be defined in accordance with the terms of article 1 of the Convention, article 4 of the Penal Code would still implement only article 5, paragraph 1, and would not allow Venezuela to establish universal jurisdiction. The Venezuelan courts would not be able to proceed against a foreigner in Venezuela who was suspected of torturing another foreigner, even in cases where extradition was denied.

30. The report cited various multilateral and bilateral extradition treaties in connection with articles 6, 7 and 8 of the Convention. However, since the Inter-American Convention on Extradition had been ratified by only four States - Costa Rica, Ecuador, Panama and Venezuela - and both the Inter-American Convention and the Bustamante Code required the acts in question to be characterized as an offence in the legislation of both the requesting State and the requested State, Venezuela's provisions on extradition were rather limited in scope. Consequently, the Venezuelan authorities should make an effort to amend their domestic legislation on extradition. In that connection, it should be remembered that article 271 of the Code of Criminal Procedure clearly stated that in no case could the extradition of foreign nationals responsible for offences against human rights be denied. He would welcome further comment on that point, which had not been mentioned in either the report or the delegation's introduction.

31. Mr. RASMUSSEN, speaking as Alternate Country Rapporteur, said the report had devoted three and half pages to article 10 of the Convention, but the discussion was not really relevant to the Convention, since it did not deal with training in the prohibition of torture for the officials specifically mentioned in that article. Article 10 was fundamental to the prevention of torture and he suggested that the Government of Venezuela might obtain a copy of the training manual produced by the Government of Spain, for use as a basis for training its own law-enforcement personnel. Similarly, it might find a starting point for training medical personnel in a programme for police doctors in Mexico, in which the Office of the United Nations High Commissioner for Human Rights (OHCHR) had been involved.

32. The report did not cover the systematic review of rules and regulations governing interrogation in its discussion of article 11. The Committee was thus interested in learning what interrogation procedures were used in Venezuela and whether there was, in fact, any systematic review of the relevant rules. Paragraphs 109 to 134 of the report chiefly addressed the second part of article 11, on arrangements for the custody and treatment of detainees. Particular reference was made to overcrowding, but it was not clear exactly what steps had been taken to deal with the problem, and he would be grateful for some information on the methods used. He

would also welcome some data on Venezuela's prison capacity and population, disaggregated by status - convicted or pre-trial detainees - sex and age. Were juvenile offenders defined as those under 16 or under 18?

33. Referring to paragraph 124 of the report, he wondered how detention facilities were monitored in general. He found the expression "may visit" rather worrying: it seemed to indicate that such visits were not systematic. He would like to know whether there was a special inspections unit and whether annual reports were presented. Was the Ombudsman entitled to visit detainees?

34. The disciplinary regime applicable to prisoners was well described, but he wondered if there were any other major sanctions not mentioned in the report.

35. In May 1999, the Committee had, in its conclusions and recommendations, expressed concern at "the failure of the competent organs of the State to fulfil their duty to investigate complaints and punish those responsible" (A/54/44, para. 137). He asked the delegation to inform the Committee how the Venezuelan authorities had addressed that issue.

36. The second periodic report had not dealt very fully with article 13 of the Convention. The Committee had received information of threats by members of the security forces designed to prevent victims from complaining of alleged ill-treatment. Such cases had not apparently been investigated by the authorities and he invited the delegation's comments on the subject.

37. In May 1999, the Committee had recommended that Venezuela establish a governmental programme aimed at the rehabilitation of torture victims (A/54/44, para. 150). He would like to be informed whether any financial or logistical support had been lent by the Government to rehabilitation programmes and asked how the Government planned to comply with the recommendation in the future.

38. The report indicated that Venezuelan legislation was in compliance with the provisions of article 15 of the Convention (paras. 145-147). While that indication was gratifying, he would like to know the number of relevant cases in 2001, as proof of the fact that the provisions of the Code of Criminal Procedure were actually being applied.

39. In view of the brevity of the section of the second periodic report concerning article 16 of the Convention, he would like some more information about the complaints procedure in Venezuela. The material provided by NGOs referred to large numbers of allegations of ill-treatment in the country's prisons. In that connection, it would be useful to know whether and how medical examinations of detainees upon their arrival in prison were carried out and recorded. He wondered whether it was the responsibility of the individual victims to lodge complaints with their lawyers or whether the authorities played a proactive role in investigating allegations of ill-treatment by public officials.

40. In 2001, the Ombudsman had received 1,834 complaints of ill-treatment, an astonishingly high figure, and the fact that no one had been punished suggested the existence of total impunity. One explanation for the fact that no communications had been submitted to the

Committee, despite Venezuela's declaration under article 22 of the Convention, was that people were afraid to take such an initiative. He would like confirmation of the figures and information of any government policy or plans to address the problem, for example by increasing the Ombudsman's powers.

41. According to the official figures, the prison population had fallen considerably. Nevertheless the number of killings of prisoners, by guards or fellow prisoners, stood at 460 for the period October 1999 to September 2000, only a small reduction compared with the previous 12-month period. A European Union delegation had apparently expressed concern at the harsh conditions in Venezuela's prisons and the fact that they were controlled by their inmates. He asked for the delegation's comments on those allegations.

42. Mr. MARIÑO MENÉNDEZ said he would like details of the rules governing the use of firearms by law-enforcement personnel in Venezuela.

43. Turning to the question of refugees and asylum-seekers, in connection with article 3 of the Convention, he asked whether the legislation adopted in 2001 (the Asylum and Refugees (Organization) Act) maintained the distinct category of "displaced persons in transit" which was not in keeping with the provisions of the Convention relating to the Status of Refugees. He wondered whether the Venezuelan frontier police had been issued with specific instructions not to return such persons to another State until their requests for asylum could be examined, in accordance with the principle of non-refoulement. The Refugees Convention was more restrictive than the Torture Convention and he would like to know which convention applied with regard to non-refoulement. He also asked whether there was an individual right to diplomatic asylum under Venezuelan law.

44. He invited the delegation to comment on reports that members of a group of transgender activists in the State of Carabobo were being persecuted. One member of the group had apparently been murdered in January 2002 and others had been subjected to administrative detention or measures that might be considered to be ill-treatment under article 16 of the Convention.

45. Ms. GAER expressed her appreciation of the full account given in the second periodic report of the encouraging steps taken to deal with domestic violence and violence against women and the family.

46. She endorsed Mr. Rasmussen's expression of concern at the extent of prisoner-on-prisoner violence and the number of deaths in prisons. According to the statistics, despite a large drop in the prison population, the number of deaths in prison had barely changed. No doubt other acts of violence, not resulting in death, also took place but the Committee had not been given any statistics relating to that situation. It would therefore be useful if the Committee could receive information about how violence, especially sexual violence, was monitored in the prisons and punished. She asked how the victims could complain, whether a pattern had been discerned and what steps were taken to prevent such acts.

47. In view of the allegations by NGOs that the number of victims of torture had risen steadily, despite a reduction in the number of cases, she would like to know what measures had

been adopted to bring those responsible to justice. According to the NGOs, the main perpetrators were the police, army and intelligence services, but she would like official statistics of the cases and investigations concerned. In particular, she would like to know whether anyone had been brought to justice. The NGOs asserted that there had been no official follow-up to the 120 cases reported at the time of the previous review. The Committee should be informed of any progress made in cooperation between the State and NGOs in that connection.

48. With respect to the case of alleged persecution of transsexuals in the State of Carabobo, referred to by Mr. Meriño Menéndez, she would like clarification of statements reported to have been made by the Governor of that State which had apparently encouraged the eradication not only of the practices involved but also of the persons concerned.

49. Since NGO reports referred to the use of rape as a form of reprisal, she asked if any steps had been taken to track down the perpetrators of such acts. She was alarmed by the observations of the Human Rights Committee concerning allegations of the rape and torture of women prisoners by members of the security forces. It appeared that the victims were afraid to complain. She asked whether the authorities had taken, or were considering, proactive steps to address those serious allegations.

50. Mr. MAVROMMATIS said that he welcomed the reported reduction in the number of cases of torture, apparently as a result of a variety of legislative changes, but was alarmed at the allegations of an extremely high number of acts of ill-treatment in prisons. He invited the authorities to examine the causes of such a high rate of human rights violations, and wondered whether the country's past had created a culture of impunity.

51. The Committee had been informed of the dismissal of incompetent judges in Venezuela. It would be useful for it to know exactly what rules had been applied and whether they were in keeping with the principle of an independent judiciary.

52. Article 21 of the Constitution, quoted in paragraph 12 of the second periodic report, stated that discrimination was not permitted on "grounds of race, sex, belief or social status". He invited the delegation to comment on the omission of any reference to religion and to colour. He would also like clarification of the fact that, with the exception of diplomatic forms of address, only the term "citizen" should be used.

53. Mr. SILVA (Venezuela), having briefly described the role of the Ombudsman in connection with the protection of human rights under the Constitution and the application of international instruments, said that, as a new institution, the Office of the Ombudsman was still feeling its way and was encountering many obstacles.

The meeting rose at 1.05 p.m.