



International Covenant on Civil and Political Rights

Distr.: General
14 August 2015
English
Original: Spanish

Human Rights Committee

Concluding observations on the fourth periodic report of the Bolivarian Republic of Venezuela*

1. The Human Rights Committee considered the fourth periodic report submitted by the Bolivarian Republic of Venezuela (CCPR/C/VEN/4) at its 3164th to 3166th meetings (CCPR/C/SR.3164 to 3166), held on 29 and 30 June 2015. At its 3191st and 3193rd meetings (CCPR/C/SR.3191 and 3193), held on 20 and 21 July 2015, the Committee adopted the following concluding observations.

Introduction

2. The Committee welcomes the submission of the fourth periodic report of the Bolivarian Republic of Venezuela, albeit seven years late, and the information contained therein. It expresses appreciation for the opportunity to renew its constructive dialogue with the State party's high-level delegation on the measures that the State party has taken during the reporting period to implement the provisions of the Covenant. The Committee appreciates the State party's written replies (CCPR/C/VEN/Q/4/Add.1) to the list of issues (CCPR/C/VEN/Q/4), which were supplemented by the oral responses provided by the delegation, and for the supplementary information provided to it in writing.

Positive aspects

3. The Committee welcomes the following legislative and institutional steps taken by the State party:

(a) The adoption of the Indigenous Peoples and Communities Act, in December 2005, and the establishment of the Ministry of People's Power for Indigenous Peoples, in December 2006;

(b) The adoption of the Act on Women's Right to a Life Free from Violence, in March 2007, and its partial amendment, in November 2014, among other things, to include the offence of femicide;

(c) The establishment of the Ministry of People's Power for Women and Gender Equality, in March 2009;

(d) The adoption of the Racial Discrimination Act, in August 2011;

* Adopted by the Committee at its 114th session (29 June-24 July 2015).



(e) The adoption of the Act to Punish Politically Motivated Crimes, Disappearances, Torture and Other Human Rights Violations in the Period 1958-1998, in November 2011;

(f) The adoption of the Special Act on the Prevention and Punishment of Torture and Other Cruel, Inhuman and Degrading Treatment, in June 2013, and the approval of the National Plan for the Prevention of Torture and Other Cruel, Inhuman and Degrading Treatment, in October 2013.

4. The Committee welcomes the ratification of, or accession to, the following international instruments by the State party:

(a) The Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, on 8 May 2002, and on the involvement of children in armed conflict, on 23 September 2003;

(b) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, on 13 May 2002;

(c) The Convention on the Rights of Persons with Disabilities, and the Optional Protocol thereto, on 24 September 2013.

Principal subjects of concern and recommendations

Domestic applicability of the Covenant

5. The Committee notes with satisfaction that the Constitution provides that human rights treaties are immediately and directly applicable by the courts and other public bodies. However, it finds the limited nature of the information provided on cases in which the courts have invoked or applied directly the provisions of the Covenant to be regrettable (art. 2).

The State party should adopt the necessary measures to increase awareness of the Covenant and its applicability in domestic law among judges, lawyers and prosecutors with a view to ensuring that domestic law is applied and interpreted in the light of the Covenant.

National Human Rights Institution

6. The Committee is concerned that, at its March 2015 session, the Sub-Committee on Accreditation of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights recommended that the Ombudsman's Office should be downgraded to B status (art. 2).

The Committee recommends that the State party take the necessary steps to ensure that the Ombudsman's Office is able to carry out its mandate to protect and promote human rights fully, effectively and independently, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles).¹

Gender equality

7. The Committee takes note with satisfaction of the measures adopted by the State party in the area of gender equality, including legislative measures such as those arising from the decisions of the Supreme Court regarding articles 46 and 57 of the Civil Code and article 393 of the Criminal Code. However, the Committee is concerned at reports that legal provisions that discriminate against women remain in

¹ General Assembly resolution 48/134 of 20 December 1993, annex.

force, such as those on adultery contained in Title VIII of the Criminal Code (arts. 2, 3 and 26).

The Committee recalls its general comment No. 28 (2000) on the equality of rights between men and women and recommends that the State party intensify its efforts to ensure de jure and de facto equality between men and women in all areas. In particular, it recommends that the State party take the necessary steps to ensure that no legal provisions that discriminate against women remain in force. It further recommends that the State party step up its efforts to eliminate gender stereotypes regarding the role and responsibilities of men and women in the family and in society.

Alleged acts of discrimination and violence on the grounds of sexual orientation or gender identity

8. The Committee acknowledges the efforts of the Ombudsman's Office with regard to the rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) persons. However, it is concerned at reports of discrimination and acts of violence, including murder, directed at these persons on the basis of their sexual orientation or gender identity (arts. 2, 6, 7 and 26).

The State party should redouble its efforts to combat stereotypes of and prejudice against LGBTI persons and ensure that acts of discrimination are prevented and that acts of violence against such persons are investigated effectively and that those responsible are prosecuted and punished appropriately. Furthermore, the State party should consider enacting wide-ranging and comprehensive anti-discrimination legislation that sets forth a definition containing a complete list of prohibited grounds for discrimination, including sexual orientation and gender identity.

Violence against women

9. While it welcomes the State party's efforts to combat violence against women, the Committee takes note with concern of reports that such violence remains a serious problem (arts. 3, 6 and 7).

The State party should step up its efforts to prevent and combat all acts of violence against women and to investigate such acts and to prosecute and appropriately punish those responsible. It should also ensure that all victims promptly receive appropriate reparation and protection, including access to a sufficient number of shelters throughout the country.

Voluntary termination of pregnancy

10. The Committee welcomes the State party's statement that the criminal provisions concerning abortion are not applied in practice. Nevertheless, it notes with concern that voluntary termination of pregnancy, except when it is essential in order to save a woman's life, is still an offence under the Criminal Code, which leads pregnant women to seek clandestine abortions that endanger their lives and health (arts. 3, 6 and 7).

In the light of its previous concluding observations (CCPR/CO/71/VEN, para. 19), the Committee recommends that the State party amend its legislation to establish exceptions to the general prohibition of non-therapeutic abortions and see to it that women do not resort to clandestine abortions under unsatisfactory conditions that may endanger their lives and health. It further recommends that the State party take the necessary steps to ensure the provision of appropriate sexual and reproductive health services.

Right to life

11. While it takes note of the State party's crime prevention efforts, the Committee is concerned at reports of a very large number of violent deaths in the country, including cases allegedly committed by law enforcement officials (art. 6).

The State party should redouble its efforts to prevent and combat violent deaths, including increased action to disarm the civilian population. It should also ensure that all cases of violent death are investigated promptly, thoroughly, independently and impartially and that the perpetrators are brought to justice and duly punished.

Conditions of detention

12. The Committee is concerned at the conflicting reports it has received regarding levels of overcrowding and conditions of detention, in particular with respect to access to adequate health services, in places of deprivation of liberty. It is also concerned at reports of the large number of persons who are deprived of their liberty, sometimes for very long periods, in police facilities designed to house individuals for only a few days. While it takes note of the information provided by the State party that indicates that the number of victims of violence in places of deprivation of liberty is declining, the Committee is concerned at reports that acts of violence continue to take place (arts. 6, 9 and 10).

The State party should:

(a) Step up its efforts to improve conditions of detention in all places of deprivation of liberty, including by making sure that there is no overcrowding, and ensure that the dignity of those deprived of their liberty is respected in all such places in accordance with article 10 of the Covenant;

(b) Adopt measures to ensure that persons are not held in police facilities for long periods;

(c) Redouble its efforts to put an end to violence in places of deprivation of liberty, including by effectively eliminating the presence of weapons, and ensure that all cases of violence are investigated promptly, thoroughly, independently and impartially and that the perpetrators are brought to justice and duly punished.

Pretrial detention

13. The Committee notes with concern that in 2014 more than 60 per cent of persons deprived of their liberty were in pretrial detention (CCPR/C/VEN/Q/4/Add.1, para. 164) and finds it regrettable that it has not received disaggregated information in that regard (art. 9).

The State party should step up its efforts to reduce the high percentage of persons in pretrial detention. In particular, it should take the necessary steps to ensure that pretrial detention is not the rule and that, in practice, priority is given to alternatives to that form of detention. In this connection, the Committee wishes to draw the State party's attention to paragraph 38 of its general comment No. 35 (2014) on liberty and security of the person.

Observance of human rights in the context of demonstrations

14. The Committee takes note with concern of reports of the alleged commission of human rights violations during protests. In this connection, and while taking into account the information it has received which indicates that some protesters may have

resorted to violence, the Committee is concerned at numerous reports of the alleged commission of human rights violations during the protests that took place in the early months of 2014, including cases of excessive and disproportionate use of force, torture and ill-treatment, arbitrary detention and failure to uphold fundamental legal safeguards. While it takes note of the information provided by the State party regarding the investigations under way, the Committee notes with concern that only seven civil servants have been convicted to date. It is further concerned at reports of the involvement of military personnel in the policing of public gatherings and demonstrations (arts. 2, 6, 7, 9, 10, 14, 19 and 21).

The State party should:

(a) Continue to take steps effectively to prevent and eliminate the excessive use of force by law enforcement officials, especially during demonstrations, including by intensifying training in human rights and the appropriate use of force;

(b) Ensure that all human rights violations, including those that may have been committed by private individuals with the acquiescence of State officials, are investigated promptly, thoroughly, independently and impartially and that the perpetrators are brought to justice and, if found guilty, are punished in accordance with the gravity of their acts;

(c) Redouble its efforts to effectively prevent acts of torture and ill-treatment and punish those responsible;

(d) Ensure that no one is detained arbitrarily and that all persons who are charged with an offence have access to a fair and impartial trial;

(e) Ensure that, in the light of article 9 of the Covenant, persons deprived of their liberty enjoy all the fundamental legal safeguards from the very outset of their deprivation of liberty. In that connection, the Committee encourages the State party to implement the relevant recommendations made by the Committee against Torture in its recent concluding observations (CAT/C/VEN/CO/3-4, para. 9);

(f) Ensure that public order is, to the maximum extent possible, upheld by civilian rather than military authorities.

Independence of the judiciary

15. The Committee remains concerned at the situation of the judiciary in the State party, in particular with regard to its autonomy, independence and impartiality. It notes with concern that only 34 per cent of judges are tenured, which means that the remainder have provisional status and that they can be appointed and removed on a discretionary basis. The Committee finds it regrettable that it has received no information on the percentage of prosecutors of the Public Prosecution Service who are tenured and, in this regard, it is concerned by reports indicating that the percentage is very low. The Committee is further concerned by reports of the adverse consequences faced by some judges who, in the course of their duties, have handed down decisions that were unfavourable for the Government. The Committee is, in particular, concerned about the case of Judge María Lourdes Afuni, who was arrested in 2009 for having ordered the conditional release of a person whose detention had been deemed arbitrary by the Working Group on Arbitrary Detention and, later, by this Committee (communication No. 1940/2010). It is also concerned at claims that Judge Afuni was subjected to ill-treatment and sexual assault during her detention and that those claims were not promptly investigated (arts. 7 and 14).

The State party should take immediate steps to ensure and uphold the full autonomy, independence and impartiality of judges and prosecutors and guarantee that they are free to operate without pressure or interference of any kind. In particular, it should take action to remedy the provisional status of the majority of judges and prosecutors as soon as possible. It should also ensure that Judge Afiuni's legal situation is resolved as soon as possible by means of a fair, independent and impartial trial and that the claims that she was subjected to ill-treatment and sexual assault during her detention are investigated in a prompt, thorough, independent and impartial manner.

Military courts

16. The Committee notes with satisfaction that article 261 of the Constitution of the Bolivarian Republic of Venezuela provides, inter alia, that criminal offences, human rights violations and crimes against humanity are to be tried by the ordinary courts. However, it is concerned that military courts are competent to try civilians under certain circumstances. Moreover, it finds that it is regrettable that it has not received information concerning the actual use of military courts to try cases against civilians, in particular trade unionists (art. 14).

The State party should adopt the legislative or other necessary measures to prohibit military courts from trying civilians.

Alleged intimidation, disparagement, threats and/or attacks against journalists, human rights defenders and lawyers and alleged arbitrary detentions of some members of the political opposition

17. The Committee is concerned at reports that journalists, human rights defenders and lawyers have been subjected to intimidation, disparagement, threats and/or attacks. It is further concerned at reports of the arrest of political opposition members Leopoldo López and Daniel Ceballos, which have been declared arbitrary by the Working Group on Arbitrary Detention (arts. 6, 7, 9, 19, 22 and 25).

The State party should take the necessary steps to:

(a) Provide effective protection to journalists, human rights defenders, social activists and lawyers who are subjected to intimidation, threats and/or attacks because of the work they perform in monitoring and providing information on human rights issues and other matters of public interest;

(b) Ensure that no public official takes measures or performs acts that may constitute intimidation, persecution, disparagement or undue interference in the work of journalists, human rights defenders, social activists, lawyers or members of the political opposition or in the exercise of their rights under the Covenant;

(c) Ensure that all allegations concerning intimidation, threats and attacks are promptly, thoroughly, independently and impartially investigated and that the perpetrators are brought to justice and duly punished.

Disparaging statements about members of civil society organizations who have contributed to the work of the Committee

18. The Committee is concerned at reports that some persons who contributed to its work in connection with the consideration of the fourth periodic report of the State party were subsequently the target of disparaging statements made by the President of the National Assembly in the television programme *Con el Mazo Dando*, who cited information provided by "cooperating patriots". Those statements were made shortly

after the Committee had drawn the delegation's attention to previous statements by the same person regarding the contribution of civil society organizations to the work of other international human rights mechanisms. The Committee draws particular attention to General Assembly resolution 68/268, of 9 April 2014, in which the Assembly "*strongly condemns* all acts of intimidation and reprisals against individuals and groups for their contribution to the work of the human rights treaty bodies, and urges States to take all appropriate action ... to prevent and eliminate such human rights violations" (para. 8).

The Committee, reiterating the calls it made during the constructive dialogue on this subject, urges the State party to take all necessary steps to protect those persons who have contributed to the work of the Committee and to ensure that public officials cease to make disparaging statements about them. It also requests the State party to inform it of the measures taken in this regard.

Freedom of expression

19. The Committee takes note of the wealth of information provided by the State party concerning the situation in the State party with regard to freedom of expression. It is concerned, however, at reports regarding a number of provisions and practices which could discourage the expression of critical positions or critical media and social media reporting on matters of public interest and which could adversely affect the exercise of freedom of expression, including provisions that make defamation and offending or failing to show respect to the President and other senior officials criminal offences, and reports regarding the extensive monitoring of media content by the National Telecommunications Commission. The Committee also expresses concern at reports regarding the limited nature of access to information that is in the public interest (arts. 19, 20 and 25).

The State party should take all necessary steps to guarantee the full and effective exercise of the right to freedom of expression and freedom of the press enshrined in article 19 of the Covenant. In particular, it should:

(a) **Ensure that its legislation is in full conformity with article 19 of the Covenant; that any restrictions on the exercise of freedom of expression, including the exercise of monitoring powers, are in accordance with the strict requirements set out in article 19, paragraph 3, of the Covenant, which are elaborated upon in the Committee's general comment No. 34 (2011) on freedoms of opinion and expression; and that the authorities in charge of enforcing legislation on the exercise of freedom of expression discharge their mandate independently and impartially;**

(b) **Consider the possibility of decriminalizing defamation and repealing provisions that establish criminal penalties for persons who offend or fail to show respect for the President or other senior officials and any other similar provisions, and, in any event, restrict the application of criminal law to the most serious cases, bearing in mind that imprisonment is never an appropriate punishment in such cases;**

(c) **Guarantee easy, prompt, effective and practical access to information that is in the public interest.**

Freedom of peaceful assembly and freedom of association

20. The Committee is concerned at reports of the existence of a number of rules, including some of those set out in the National Security Act, which could adversely affect the exercise, in practice, of the right to freedom of peaceful assembly. In addition, it finds it regrettable that there has been a lack of clarity about the need to

request authorization to hold a public gathering or demonstration and about the reality of the situation since, although the State party reported that the notification to be given to the relevant authorities by the organizers does not constitute a request for authorization, the Committee observes that, in its judgement of 24 April 2014, the Constitutional Chamber of the Supreme Court ruled that there was an obligation to exhaust the administrative procedure for granting authorization. The Committee is further concerned at reports of the adoption of certain measures that could hinder the full realization of the right to freedom of association. In this connection, it finds it regrettable that there has been a lack of clarity about the scope of the concept of “political rights organizations” and, consequently, about whether the restrictions on funding from abroad for such organizations under the National Sovereignty and Self-Determination Act could have an impact on the work of human rights organizations. The Committee finds it regrettable that it has received no clarification on the implications for legal persons of their registration in the Register for Comprehensive National Defence (arts. 21 and 22).

The State party should take the necessary measures to ensure that all individuals under its jurisdiction are able to fully enjoy their rights to freedom of peaceful assembly and freedom of association and that the exercise of those rights is subject only to restrictions which are in accordance with the strict requirements of articles 21 and 22 of the Covenant.

Rights of indigenous peoples

21. The Committee takes note with satisfaction of the extensive legal framework developed in the State party in the area of indigenous peoples’ rights, which includes the recognition of the right to be consulted. It finds it regrettable, however, that it has not received sufficient information about the implementation of the right to prior consultation in relation to the granting of exploration and resource development licences in their territories. While it takes note of the information provided by the State party which indicates that a significant percentage of the applications for land demarcation have led to the award of collective land titles, the Committee observes that the demarcation process had proceeded very slowly. The Committee is also concerned at the information it has received which indicates that some indigenous peoples have been victims of acts of violence committed by State and non-State actors (arts. 1, 2, 6, 7 and 27).

The State party should take the necessary measures to:

(a) Ensure that the necessary prior consultations are held with indigenous peoples to obtain their free, prior and informed consent before any measure is adopted or implemented that may substantively compromise their way of life and culture, in particular in relation to projects that may have an impact on their lands and territories and other resources, such as natural resource exploration and/or development projects. The State party should expedite the adoption of regulations on prior and informed consultation and ensure that indigenous peoples are actively involved in developing those regulations;

(b) Expedite and complete the demarcation of indigenous lands as soon as possible;

(c) Provide effective protection for indigenous peoples against all acts of violence and ensure that the perpetrators of such acts are brought to justice and duly punished and that victims obtain appropriate redress.

Denunciation of the American Convention on Human Rights

22. The Committee takes note with concern of the State party's denunciation of the American Convention on Human Rights.

The Committee invites the State party to consider becoming a party to the American Convention on Human Rights once again with a view to providing supplementary protection for the rights enshrined in the Covenant at the regional level.

Dissemination of information relating to the Covenant

23. The State party should widely disseminate the Covenant, the two Optional Protocols thereto, the text of its fourth periodic report, the written replies to the list of issues drawn up by the Committee and the present concluding observations among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, as well as the general public.

24. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, within one year the State party should provide relevant information on its implementation of the recommendations made by the Committee in paragraphs 14 (observance of human rights in the context of demonstrations), 15 (independence of the judiciary), 17 (alleged intimidation, disparagement, threats and/or attacks against journalists, human rights defenders and lawyers and alleged arbitrary detention of some members of the political opposition) and 18 (disparaging statements about members of civil society organizations who have contributed to the work of the Committee).

25. The Committee requests the State party to provide specific, up-to-date information on the implementation of all its recommendations and on the Covenant as a whole in its next periodic report, which is to be submitted no later than 24 July 2018. The Committee also requests the State party, when preparing its next periodic report, to consult extensively with civil society and non-governmental organizations operating in the country. In accordance with General Assembly resolution 68/268, the report should not exceed 21,200 words.